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The Transactional Law Clinic: A Pilot Experience

Lessons for the Educator, the Learner, the Legal Practitioner and the Community

A brief on lessons learned and good practices for a University Based Transactional Law Clinic

If I had to choose three words to describe my BLC journey, they would be; experiential, fulfilling, and enlightening. It has been a journey of unprecedented self-discovery and personal growth.

I have acquired a wide range of skills in drafting legal documents, negotiation, legal writing and research, client interviewing, communication and interpersonal skills, time management, and organizational skills. I have also developed a deeper understanding and respect for social justice.

While it has not been smooth the entire way, I can confidently say that in every challenge lay a valuable lesson. (Final Reflective Report) ~ Jolly Kibalama (LL. B III) Clinic student

Introduction:¹

Over the years, legal education at university has evolved from being purely teaching centred. Law Schools have evolved to provide innovative solutions to societal problems. These University-based innovations have the potential to help industries grow and address the challenges of access to justice. These innovations present an opportunity for universities to play a central role in knowledge exchange.

With the exception of some science disciplines, teaching in universities has remained largely theoretical, with limited capacity to skill students. This has been the case especially in the

¹ This background is a summary from Mbazira, C., & Ahumuza, D, A. (2020), *Background paper to the Transactional Law Clinic Manual for the Business Law Clinic of the School of Law, Makerere University*. Kampala.

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humanities disciplines. Moreover, these disciplines have generally not harnessed the knowledge they have to directly impact on society. One such discipline is law.

The teaching of law has traditionally been theoretical, largely based on lecture and case analysis method. This has come with a number of limitations for students, including the opportunity to develop critical thinking and acquisition of practical skills and crucially, exposure to society. Practical skills are still predominantly taught at the Bar qualification, itself a limitation given the time constraints.

Over the years, some law schools have taken remedial measures to ensure that the teaching includes some practical elements but impacts on students and society alike. One such intervention has been through the use of the clinical methodology of instruction. This has given birth to the global clinical movement, which started in Russia and United States but now embraced worldwide.

Some universities have taken advantage of this movement to establish legal aid clinics and to promote public interest lawyering among others, through public interest litigation. In the case of Uganda, the establishment of a legal aid clinic and use of clinical methods began in 2012 when the School of Law at Makerere University established the Public Interest Law Clinic (PILAC). The Clinic currently runs a Clinical Legal Education (CLE) module, has a walk-in legal aid clinic, implements the Community Law Programme and Mobile Law Clinic (CLAPMOC), and runs the Network of Public Interest Lawyers (NETPIL).

However, the clinical movement has largely concentrated on human rights and related social justice studies, as is the case with PILAC. Commercial law related subjects have largely been left out. It is in this context that the pilot Transactional Law Clinic (TLC) project under the Business Law Clinic (BLC) was born, with the bigger picture leading to the Business Law Centre (BUSLAC). BUSLAC is specifically targeting use of the clinical methodology in the teaching of commercial law related modules. In this, it is also targeting promoting commercial justice through offering legal services to targeted business groups and ultimately, advocacy for commercial law and policy reforms.

The Clinical Methodology and Clinics

The clinical methodology in the teaching of law is based on experiential learning and one which fosters the growth of knowledge, personal skills and values as well as promoting social justice at the same time. Experiential learning is ‘an approach to education in which students are exposed to real or realistic legal issues and problems.’²

² [V Kemp](#) et al ‘Clinical Legal Education and Experiential Learning: Looking to the Future’ (2016) *Research gate publications* 1, available at



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The aim of the methodology is to develop professional attitudes and foster the growth of practical skills of students with regard to the modern understanding of the role of the socially oriented professional in promoting the rule of law, providing access to justice; peaceful conflict resolutions, and solving social problems.³ The benefits of the clinical methodology have been immense, equipping students with analytical, advocacy, public speaking, interviewing and analytical skills, among others.

One of the activities that characterizes the clinical approach to teaching are clinics. These take the form of creating a ‘learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced.’⁴

Clinics worldwide are seen as a point of intersectionality between ‘faculty talent, student interest and the unmet community needs.’⁵

Today, there is a ‘global clinical movement confirming the success of the clinical approach in legal education methodology.’⁶ Bloch has argued that an emerging global clinical movement can strengthen that commitment and increase the level and quality of law school based on access to justice activity worldwide.⁷ Bloch further argues that clinical programs already increase access to justice around the world in the sense that they provide a wide range of otherwise unavailable legal services. This is especially by instilling in future lawyers a greater sense of public responsibility.

Related to clinical legal education, one of the traditional goals of clinics is enhancing access to justice. The access to justice movement has developed in three waves: the first wave focused on legal services for the poor,⁸ the second on representing collective or group interests other than

https://www.researchgate.net/publication/309135248_Clinical_Legal_Education_and_Experiential_Learning_Looking_to_the_Future (accessed on 7 June 2020).

³ European Network for Clinical Legal Education, available at <http://encle.org/about-encle/definition-of-a-legal-clinic> (accessed on 8 June 2020).

⁴ V Kemp et al ‘Clinical Legal Education and Experiential Learning: Looking to the Future’ (2016) *Researchgate publications* 1, available at

https://www.researchgate.net/publication/309135248_Clinical_Legal_Education_and_Experiential_Learning_Looking_to_the_Future (accessed on 7 June 2020).

⁵ WH Binford ‘Reconstructing A Clinic’ *Clinical Law Review* (2009) 15:283 306, available on <https://willamette.edu/law/pdf/faculty/binford-warren-article-reconstructing-clinic.pdf> (accessed on 30 May 2020).

⁶ C Bartoli & MC Romano ‘Legal clinics in Europe: for a commitment of higher education in social justice The history of legal clinics in the US, Europe and around the world’ (2016) 32 available at https://www.academia.edu/34398554/Legal_clinics_in_Europe_for_a_commitment_of_higher_education_in_social_justice (accessed on 20 June 2020) 32.

⁷ FS Bloch ‘Access to Justice and the Global Clinical Movement’ *Washington University Journal of Law and Policy* 28 113-114, available at https://openscholarship.wustl.edu/law_journal_law_policy/vol28/iss1/6 (accessed on 25 June 2020) 111.

⁸ M Cappelletti & B Garth ‘Access to Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective’ (1978) *Maurer School of Law: Indiana University* 197.

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those of the poor,⁹ and the third on institutions and procedures for processing (or preventing) disputes in the context of modern society.¹⁰

Project Goal and Objectives

The overall goal of the pilot TLC project is enhancing the appropriateness and relevance of legal education and practice in addressing the legal needs of indigent persons, low income earners, and not-for-profit business ventures. The specific objectives included:

- i) To enhance legal education through clinical methods of teaching and learning commercial aspects of law under the clinic;
- ii) To increase use of transactional legal knowledge to empower communities and foster sustainable businesses;
- iii) To enhance human capacity for law teachers to effectively engage in practical components of teaching law;
- iv) To influence policy and practice of legal education.

The Approach

A pilot study methodology was used to test the innovation on 12 law students drawn from the third and fourth year of study, academic staff from different law schools, social innovation enterprises business communities both informal and formal. Focusing on the law students, the approach used was student-centred or driven with a wide range of activities including knowledge sessions, community outreaches, guest lectures, virtual workshops, peer-to-peer learning sessions, locus/learning visits to places and entities of interest, and client meetings/interviews. All the above activities involved the participation of the students, under the guidance of the Clinic instructors and partners. Each main activity involved the holding of a de-brief session upon its conclusion for the purpose of reflection and capturing any learning. In addition, students periodically authored reflective reports on their experiences which later were translated into reflective journals.¹¹ Targeting the law teachers, the approach involved building the capacity of administrative heads of Law Schools (the law deans) and teachers of the commercial subjects through hands-on-training in clinical methods. The teachers were then encouraged to consider innovative ways of instruction

⁹ M Cappelletti & B Garth 'Access to Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) *Maurer School of Law: Indiana University* 209.

¹⁰ M Cappelletti & B Garth 'Access to Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) *Maurer School of Law: Indiana University* 222.

¹¹ See Business Law Clinic (2020). *Students' Reflective Journal Report (September 2019 – August 2020)*, Makerere University. Kampala.

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that have then tried out and documented. Focusing on the business communities, the law students interacted with real clients

on real cases which were the basis for research, problem solving and presentation. The students conducted client interviews, contributed to correspondences, counselled and advised clients, participated in legal awareness sessions, carried out legal research on cases, and wrote legal opinions and submissions on the cases all aimed at meeting the legal needs of the communities.

Results Overview

Enhancing legal education through clinical methods

From the FGDs and interviews conducted amongst learners, it was noted that the teaching of law generally, including commercial law subjects, is basically theoretical and lacks a practical element. Many students in earlier years at law school lack appropriate mentorship in commercial subjects. They rely on information or advice given to them by their peers who may already be biased against commercial law related subjects. Legal teaching methods based on experiential learning are believed to foster the growth of knowledge, professional skills and values as well as promoting social justice at the same time. Like clinics elsewhere, the BLC is seen as a great initiative to reengineer the teaching of commercial law subjects to include a social justice face, make them more relevant to contemporary Ugandan issues and challenges, mentor and interest more students into offering the optional commercial law subjects that are perceived as “hard, technical and easy to fail”, and emphasize the community value of the transactional components of commercial law subjects as opposed to focusing on litigation.

Improving the learning experience for students

The adoption of clinical legal education is a call for a new type of education that would offer students the opportunity to experience the realities of legal practice and the context in which laws develop, within the structured laboratory of legal education, providing a more pedagogically effective introduction into the profession.¹² The benefits of the clinical methodology that have been documented include: equipping students with analytical, advocacy, public speaking and interviewing skills, among others. From the FGD conducted with the pioneer TLC students, involvement, participation, interaction, and discussions were almost common in all modes of instruction. Community outreaches were generally rated the most effective because many skills were acquired from these outreaches. Simulations were also used and found effective. There were no general issues with the different methods of teaching. The students gained many skills from the clinic including: teamwork, time management, ability to meet deadlines while producing quality work, drafting skills, negotiations, skills of dealing with clients, among others. Some of the students also state that they are now much more alert and responsive to contemporary governance affairs, such as national and subnational government budgeting – because those matters have a bearing on the advice that clients may require. In education, reflective journaling is an experiential

¹² E Rekosh ‘The Legal Clinics, The Idea, Organization, Methodology’ *Public Interest Law Initiative, Columbia University* 43.



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teaching and learning tool that cultivates students' introspection and critical thinking about their course content and learning experiences for improved learning outcomes. The pioneer students have had an opportunity to journal their experience on the pilot project.

Empowering communities and fostering sustainable businesses

Economic empowerment is critical in dealing with many of the factors that cause vulnerability for vulnerable and marginalized people. The lack of access to reliable sources of information, coupled with the limited effort by government agencies to sensitise the indigent communities, has further fueled mistrust for the kind protection offered by the law and general lack of confidence in the system. Whereas some efforts have been undertaken by public interest groups and human rights advocates to address inequalities, social injustices and to put an end to human rights abuses in Uganda, little has been done to fight against commercial injustices in the country and as a result, the vulnerable and marginalised groups have continued to be exploited in transactions of commercial nature. TLCs would play a critical role and are seen as one way of ensuring community emancipation. The increase in the delivery of transactional legal services through the clinic will create an avenue for sensitising indigent communities about the available legal machinery which in turn will promote meaningful economic activity and also protect their rights and create awareness on expected obligations. The clinic is also a platform to explore community creativity and economic potentials and eventually increase community confidence in the law. Once these marginalised peoples have attained full protection of the law and can reap from its benefits, perhaps then will Uganda be able to attain that level of economic development and social justice it has for decades desired.

Enhancing human capacity for law teachers

From the interviews conducted, it was noted that the methods of instruction adopted by the instructors depended on the programme of study, the lecturer in charge, and sometimes the course unit or the subject/topic of study. Respondents on the LLM programme who had attended the LLB programme at Makerere for example found the LLM teaching methods more student-centered than at LLB level. Both current and former students of the LLB Programme at the School of Law, Makerere University indicated that instruction mainly employs the lecture, case analysis and self-study methods, with little emphasis on student-centered learning. Lecturer training/capacity building is a key element in clinical methodologies. Many of the lecturers interviewed who mainly teach commercial subjects had hardly had any formal training on the use of clinical methods. Some were not well acquainted with clinical methodologies. A few had attended at least one training on clinical methodologies of teaching. This cut across regardless of rank. As a result, many lecturers had the interest to incorporate CLE in their teaching but were unaware of how innovative they could get given the time constraints, reduced student concentration with some of the proposed methods and large class numbers. Staff exchange programmes were also seen as a practical way in which staff's capacity can be enhanced to incorporate clinical methodologies. Adoption of more practical methodologies in commercial subjects including moots, projects, simulations, use of visual aids and graphics, community involvement, among others, is another key element in clinical methodologies. There is also urgent need to leverage the use of technology in teaching generally to ensure relevancy with changing times and effectiveness.

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Challenges:

1. The use of the clinical methodology in teaching the commercial law subjects, like it is with other law subjects, challenges the status quo and introduces methodologies of instruction which are against the traditional approaches of teaching the law discipline. In some circles, this creates antipathy towards the approach. In establishing a clinic, some members of faculty and university administration may oppose the move.
2. Some of the challenges faced in the use of the different teaching methods included: time management, low levels of participation especially where the methods used were participatory yet the students are not used to them and lack of capacity to assess knowledge gaps.
3. At the pilot stage, the TLC activities have not attracted academic credit and yet they were deemed a heavy load worth crediting. The activities have had to compete with student time dedicated to accredited academic programmes. For instance, students enrolled on the TLC project have not been able to attend a number of the critical learning engagements if found colliding with other accredited academic programmes. Some of the activities have had to be abrupt in a quest for time that would favour the facilitators and the learners.
4. Execution of activities under the pilot was also met with challenges including: the students' lack of substantive legal knowledge on certain advanced branches of corporate and commercial law; language barrier during community activities - especially where some students were not fluent in the local language which is commonly Luganda; the lack of a dedicated physical workspace for the TLC, and for a few students the network connectivity when the operations of the clinic went virtual
5. COVID-19 occasioned interruptions in project implementation including having to delay implementation of some activities, having to shift from the in-person involvements to the virtual involvements which affected skilling and the envisaged experiential learning.

Recommendations:

1. Accrediting TLC as a module would be a big step forward as the students really invest a lot of time and learn a lot and may be exposed to very many skills, yet the same may never be reflected on their academic papers.
2. Lecturer training/capacity building is a key element in clinical methodologies. Many of the lecturers interviewed who mainly teach commercial subjects had hardly had any formal training on their use. Some were not well acquainted with them. A few had attended at least one training on clinical methodologies of teaching.

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3. Adoption of more practical methodologies in commercial subjects including moots, projects, simulations, use of visual aids and graphics, community involvement, among others, is another key element in clinical methodologies. There is also urgent need to leverage the use of technology in teaching generally to ensure relevancy with changing times and effectiveness. If possible, it was suggested that because of the several benefits of clinical methodologies, at least each law student could go through at least one clinical programme before graduation.
4. Continuous mentorship be given to especially joining / fresh law students to break negative stereotypes about commercial subjects. This could start during the orientation week but remain deliberate and target mostly first and second years. Connected to this is the need to get clinical programmes that target first and second years to remain interested in commercial subjects before they carry biases to later years. This could be in the form of guest speakers in commercial subjects, moots, mentorship sessions, public lectures or dialogues on law reform relevant to commercial law subjects and other contemporary issues.
5. There is need to have a more streamlined guest lecture programmes for the teaching of commercial subjects. This could involve strategic identification, scheduling and incentivizing. The school of law or TLC should have a budget for this activity. Some topics, it was recommended, could best be taught by tapping into practitioners from the different sectors such as banks, intellectual property, insurance, law firms, URSB, etc.
6. Entering partnerships with firms for advocates to act as mentors for students as they work on practical aspects of the law or file. From this activity, many aspects of practice that are never taught at law school can be learnt from such collaboration and mentorship. This arrangement could take the form of externship.
7. For the community outreach component to flourish, it is good to open and maintain a strong and cordial working relationship with community link persons. These may be local council leaders, peer/opinion leaders, or leadership in business groups. Keeping these motivated is also key.
8. There is also the need to benchmark and carry out needs assessments for both students and communities and identify the knowledge and needs gaps of the relevant stakeholders before drafting an intervention strategy. This would ensure relevant and appropriate interventions.

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