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2002 FIFTH ANNUAL COLLOQUIUM ON CLINICAL LEGAL EDUCATION
15 – 16 NOVEMBER 2002
WARSAW, POLAND

COLUMBIA UNIVERSITY BUDAPEST LAW CENTER/PUBLIC INTEREST LAW INITIATIVE
OPEN SOCIETY JUSTICE INITIATIVE
FUNDACJA UNIWERSYTECKICH PORADNI PRAWNYCH

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LEGAL CLINICS IN SOUTH AFRICA

STUDY TOUR REPORT

Johannesburg, Cape Town, Durban

December 2001

by Filip Czericki, Filip Wejman and Izabela Gajewska-Krasnicka

Introduction

This report intends to present experience and information obtained during the study tour in South Africa. Description of the legal clinics' activity and finances is the subject of the elaboration.

Polish model of the clinical program is similar to the one in South Africa. The problem of clinics' financing sources is solved in a very original and effective way in South Africa. Ford Foundation is one of the most substantial, strategic clinical sponsors in Poland and in South Africa. These reasons supported the importance of learning about the African experience by the Polish legal clinics.

The conclusion of this report should answer the question whether the model introduced in South Africa could be a potential solution in Poland.

The sequence of the reported meetings remain chronological. Members of the Polish delegation met with the representatives of the: sponsors (Ford Foundation), legal clinics' association (Association of University Legal Aid Institutions), foundation established by the

Association (Trust) and institution managing public sources to support legal advice for poor people (Legal Aid Board).

We believe that our interlocutors did not avoid discussing some of the most difficult and controversial issues.

The delegation was led by Edwin Rekosh, Executive Director of the Public Interest Law Initiative (PILI). The University of Natal legal clinic and PILI provided logistical support for the study, the travel costs were covered by COPLI and Ford Foundation. Filip Czernicki, Izabela Gajewska and Filip Wejman entered into the composition of the Polish delegation.

Report from the meetings

3 December 2001

Fran Biggs – Legal Resource Center, member of the Board of Trustees

Cheryl Loots – Department of Justice, member of the Board of Trustees

- Republic of South Africa is facing a problem, similar to Polish one, of the access to justice - no free service for poor people, unless there is a need for representation in courts.
- Clinical program in South Africa exists since 1970-ties but it was ordered and structurally organized in late 1990-ties.
- In most cases, the practicing lawyers (not law teachers, like in Poland) have created clinics. The practitioners run the clinics and are involved in a broader clinical program. Clinicians, working for a certain amount of time, are treated on the same basis as professors of law. In 2001, the first clinician has been appointed a University professor.
- All of the clinics are set at the faculties of law.
- **AULAI - Association of University Legal Aid Institutions** (from now on called Association) is a formal representation of all the clinics. The law teachers' association, at the beginning of the 1990-ties has initiated the creation of the Association. The establishment and formalization of the relations among the clinics have been considered the main achievement of the Association. At the moment, Association organizes training courses, conferences, workshops, meetings, etc. The initiatives of the Association can be sponsored by the Trust based upon the submission of the formal grant application. Members of the Association hold meetings twice a year.

- Association holds an open formula accepting any form of legal aid institution organized at the faculty of law at the university and offering legal advice to poor members of the community. Association has established and accepted rules of fair service – standards popularized among all clinics.
- **Association of University Legal Aid Institutions Trust** (from now on called Trust) – legal form similar to Polish foundation but of a simpler structure. Board of Trustees is the only organ of the Trust. It consists of 12 members including representatives of Ministry of Justice, courts, professional corporations and 2 members of the Association. The Board meets 4 times a year.
- The activity of the Trust is limited to decision making process regarding grants. Grants are based upon clinics' applications. There is also a subcommission of the Trust, which was originally an advisory body responsible for the financial issues. At the moment, members of the subcommission are members of the Board of Trustees. Meetings of the two bodies are held together.
- Trust has established internal rules according to which it evaluates grant applications of the clinics. Members of the Association, who are also members of the Trust, do not participate in decision making process regarding the grants.
- Trust does not have any administrative structure. So far, technical service has been assured by one of the biggest and strongest clinics at the University in Durban. In addition, two persons have been hired on the mandatory contract to write reports and carry on financial matters. There is however, a need and a plan to create a formal secretary of Trust.
- Members of the Trust work as volunteers, only travel expenses are covered.
- Trust does not cover all the clinical expenses. Clinics themselves organize additional fundraising. Some of them have never applied to the Trust for financial support. An average annual grant is 180.000 Rands (18.000 USD) per clinic.
- Trust has been established as a result of a change in Ford Foundation's financial politics towards legal clinics. At first, Ford Foundation sponsored several clinics applying directly to the Foundation. At the end of 1990-ties, Ford Foundation decided to no longer sponsor individual clinics and came up with an idea of granting a big amount of money to some sort of institution. Association then, established the Trust, which is to operate with clinical programs' grants.
- Trust has gained following financial means: 1.000.000\$ from Ford Foundation and 600.000\$ from the Swedish section of International Commission of Jurists (ICJ). It has been estimated that these means will last till 2004-2005. Thus, there is a need for another

fundraising. Ford Foundation has transferred the entire amount of money to the Trust and requires no reports or financial settlements. ICJ however, has divided the grant in three years rates, admitting following donations after receiving a recurring financial report. ICJ introduced another requirement – its means have to be also used in cooperation with paralegals.

- Clinical program is also sponsored by the following sources: Universities, Fidelity Fund, and Legal Aid Board (which established Legal Centers). So far, there has been no individual donor. Fidelity Fund is a special fund controlled by the lawyers from the Law Society Association. The program supports clinics with the thought that well educated students will make better lawyers in the future. Support comes also from big law firms, which have no fear of competition and fight for clients. This source however, has not been fully used.

3 December 2001

Alice Brown – Director of the Ford Foundation in South Africa

- Cooperation of the Ford Foundation and legal clinic movement in South Africa began in early 1990-ties. In 1992 Ford Foundation sponsored an exchange program for clinical teachers between South Africa and the United States. Later, national programs have been realized.

- In 1993-1994 a clinical association, consisted of clinics' representatives, has been established.

- In 1995-1996 Ford Foundation sponsored 8 out of 21 existing clinics in South Africa. At the same time, it was sending out the message that grants for individual clinics would soon be cut.

- In 1995 – 1997 following clinics received individual grants from Ford Foundation: Wits, Western Cape, Natal along with smaller ones at the Universities of Zululand, Nord, Durban Westville, Transkei and Fort Hare.

- In 1998 the Association, influenced by the Ford Foundation, established the Trust. Ford Foundation transferred a big grant to this institution.

- Clinics working at bigger Universities, such as Wits or Natal, make their own fundraising, find different sources and have financial support from their Universities. Those clinics do not use Trust's sources. Other Universities, especially those historically disadvantaged, are facing huge financial problems and are not sufficiently involved in a clinical program. Therefore, their clinics do need Trust's support.

- At the very beginning the activity of the program was run by Asha Ramgobin, Professor David McQuoid-Manson and, additionally hired, Fran Biggs who was responsible for the logistics of the venture.

4 December 2001

Judge Mohammed Navsa – Supreme Court of Appeal of South Africa, President of the Legal Aid Board

- Legal Aid Board is an organization responsible for the criminal legal representation appointed by the court. At the beginning of its existence it was facing a variety of problems, especially financial ones.
- At the moment it works smoothly, it is well organized and well funded.
- Legal Aid Board assures legal representation (legal advice appointed by the court) for poor people who can not afford legal service of their choice.
- A special strategic litigation fund was set up specifically to fund “cooperative agreements” with NGOs and clinics to provide legal services.
- Legal Aid Board also established Justice Centers. They deal with legal advice, run computer data base about legal aid and assure legal representation.

4 December 2001

Phillipa Kruger – Witwatersrand University (Wits)

- Wits is a big, wealthy, historically white University.
- Clinic at the Wits University is 20 years old and has never applied for the Trust’s grant.
- Clinical course has been included into the educational program as a mandatory course for last year law students. There were 160 students taking this course in 2001.
- The clinic consists of 6 sections, including labor law, refugee law, criminal law and civil law. There are 22 students in each section. In 2001, the clinic took around 1000 cases.
- Candidate attorneys are involved in the clinic’s activity, which is a part of their apprenticeship course. They take more complicated cases and represent the clients in courts. Students have no right of representation.
- Issues of qualifications and duties’ performance are resolved in provisions of Attorney Act.

- Wits' clinic does not submit any applications to the Trust, it prefers to search for its own sources.

4 December 2001

Frans Haupt, Niels du Plessis - University of Pretoria

- Pretoria's clinic has been established in 1979. Along with its main office at the University, it also has a local section in the region with the poorest population.
- The clinic collects its sources from the Trust, University and some other, smaller donors. There are 45 students working at the clinic (out of 400 per every study year). They are selected out of 80 candidates.
- Asha Ramgobin, who established the clinical standards and then was pushing for the establishment of the Association, has started clinical movement in South Africa.
- The Board consisting of 7 persons manages the Association. Each of 20 clinics has 2 representatives in the Association. All of the members meet twice a year. One of the meetings is dedicated to the Board's election, the other to the workshops.

5 December 2001

Kruger Van Der Walt – Stellenbosch University

- Stellenbosch is a historically Afrikaaner University, there are two lecturing languages; African and English.
- Stellenbosch's clinic helps with around 3000 cases a year. 1600 are phone and short meetings consultations, 1400 are cases demanding more serious research (480 are divorce and labor law cases). Clinic organizes workshops and exchange programs with Botswana.
- There is one director, 2 lawyers (attorneys not advocates), one candidate attorney and 32 last year students working at the clinic. Students are divided in 4 groups. Clinical education is very popular at this University, almost every student wants to work at the clinic. Grade average (especially civil procedure) is of a high importance during the enrolment.
- Educational process is divided in 3 stages: 1. practical teaching (writing letters, simple cases), 2. going for more complicated cases (divorces), 3. full cases. A student spends 3 hours a week at the clinic (2 hours of theoretical courses and 1 hour of the meeting with clients)

- The clinical course is an optional, 12-credit course (which makes 1/8 of the required annual amount). Work at the clinic also covers a required 200 hours of pro bono work. The course is graded based on: running files, final solution, and legal knowledge, consultations.
- ¼ of the clinical costs is covered by the Trust (i.e. salaries of the attorney and candidate attorney). The rest is covered by the Legal Aid Board (criminal issues), University (gives the space and covers ½ of the current costs) and Fidelity Fund (rest of the costs and a subvention to the director's salary).
- Clinic collects charges of 20 Rands (post stamps) and so called sheriff's fees (also not big)
- National Attorney Act nr 53 of 1979 has been amended in 1991 (s. 1 Act No 102 of 1991) by adding a definition of a legal clinic: "law clinic means: a) a center for the practical legal education of student in the faculty of law at a university in the Republic; or b) a law center controlled by or which is, a non-profit making organization".
- Moreover, in the local law – Cape Town Regulation – a provision has been added stating that every lawyer has to work 40 hours a year pro bono.

5 grudnia 2001

Leonardo Coosen – University of Cape Town

- Clinic at the University of Cape Town (a historically white one) was established at the beginning of 1970-ties. It was a student initiative.
- There are 45 students working at the clinic (out of 100 per every study year), all of those who applied this year have been accepted.
- At the moment, there are only civil law cases run by the students.
- Students work mostly outside the clinic, they go to see people using school buildings or church rooms for the meetings. There are 7 places where legal advice is given.
- Clinic runs 3 main programs:
 - a) Children Advocacy Project – run by the attorneys and candidate attorneys who represent children in courts.
 - b) Refugee Project – run by the students cooperating with UNHCR.
 - c) Satellite and Backup Legal Project – funded by the Legal Aid Board, run by attorneys and candidate attorneys only, dealing with a legal advising in general.

- Clinic is not a separate legal person, so all the grants and donations go through the University. Fidelity Fund, UNHCR, Trust and the University (space and equipment) offer financial support to the clinic.
- Clinic organizes workshops with the University of Western Cape. Being a member of the Association, Cape Town clinic participates in its meetings and conferences.
- University of Cape Town has an international exchange program – students from the United States and United Kingdom come to South Africa. There are also some connections with Malawi.
- In general then funding sources for clinical legal education in South Africa include:
 1. The Trust - core cost grants.
 2. The Fidelity Fund - salaries of clinic directors (or equivalent costs for other purposes if the law faculty covers that salary).
 3. The law faculty itself - space, equipment, utilities.
 4. The Legal Aid Board - through cooperative agreements funding salaries for candidate attorneys and costs for supervising them.
 5. UNHCR - for UTC Refugee Project.

5 December 2001

Beverly Franks – University of Western Cape (UWC)

- UWC is a historically disadvantaged University. Students' initiative started a clinical movement in 1970-ties.
- In 1987 – clinical education has been included into the studying program and in 1988, the first director of the clinic was appointed.
- There are 35 last year students (out of 150 per every study year), 3 attorneys, 3 persons of the administration and one candidate attorney working at the clinic .
- Enrolment procedure includes an interview and grade averages (especially civil and administrative procedures). The clinical course ends with a written exam, moot court simulation and evaluation of the letters and files management.
- Clinic runs 500-600 cases, civil law only.
- UWC pays director's salary, other funds come from the Fidelity Fund, Ford Foundation (1994-1995) and the Trust.
- Applying to Trust used to be a complicated procedure, which required a lot of paper work, planning and foreseeing. The Association organized a special workshop concerning this

procedure, explaining the rules of application, so it is no longer a complicated matter. The reports have to be sent yearly and in addition – every 6 months. One of the most difficult things is a time sheet filling to record the amount of time given by the supervisor and other staff per case (administration, organization, etc.)

- UWC clinic is a member of the Association and positively evaluates its activity: meetings, conferences, lobby movement to support clinical program, study tours to the United States.
- There is a proposition to organize the secretary of the Trust as a rotation in different clinics and to divide the tasks and responsibility of the Board, so that Asha Ramgobin can be eased of some of her many duties.

6 December 2001

Munirah Osman, John Lea, Sumayya Mitha, Schalk Meyer – members of the Trust

- The Association, which has been established in 1989, organizes conferences twice a year. Conference in July 1999 was dedicated to the creation of clinical standards and introduction of the Trust's rules. Conference in September 1999 was addressed in particular to those clinics, which were to change some of their rules and had little experience in a clinical work. Rules of fundraising, reporting and applying were discussed. Conferences in 2000 and 2001 were dedicated to clinical education, methodology and elaboration of books, there were guests invited to discuss the management skills and team working.
- There are 20 clinics in South Africa (and 21 law faculties), 15 of which are sponsored by the Trust. Annual grants – 180.000 Rands (18.000 USD) per clinic.
- At the moment, Natal and Wits do not have any money from the Trust because they are independently financed. University of South Africa in Pretoria does not fulfill Trust's standards and so far, there has been some problems with only one clinic.
- The Board meets 4 times a year. The biggest adventure of the Trust is the security of money and good administration of the sources, which creates a great climate for the founders and donors.
- The Advisory Board played a changing role in Trust's activity. At the beginning, it was a body consisting of law authorities that evaluated grant applications. Then these persons have been included in the Board of Trustees and their meeting have been held together since 2001. It is therefore, hard to talk about two organs of the Trust – their competencies and field of activity are the same.

- Secretary of the Trust is run by the clinic at the University of Natal. Asha Ramgobin is a director of the Trust's secretary and director of the clinic at the same time. She is not paid for the Trust's work. In addition, Trust hired one person half time to do administration work and one person to do current accountings.
- Trusts established rules-standards, which have to be fulfilled if the clinic wants to apply for the grant. If the clinic does not fulfill this requirement, it does not get money but members of the Trust organize some help in writing reports, supporting school supplies, etc. Trust tries to work very dynamically controlling clinics at least once a year. Representatives of the Board are also entitled to *ad hoc* visitations.
- Trust offers annual grants divided in 12 monthly rates. Each rate is transferred after receiving a monthly report. Such reports include comparison of the costs with the planned budget and time sheets arrangement (every member of the clinic is obligated to fill time sheets). 6 months and annual reports include specific financial statements reinforced by attached checks.

6 December 2001

Professor David McQuoid-Mason – University of Natal, founder of the clinic

- Clinic has been established in 1973, it was developing well and fast. It is now one of the best organized clinics in the country.
- One of the University's workers has been sent to Zulu University (which is a historically disadvantaged University) to promote the idea of clinical education. He is a director of the clinic there, works with a candidate attorney and has a well-organized secretary. The entire venture is funded by the Trust.
- There is also a regional cooperation in South Africa and some contacts with Botswana.
- Non for profit legal clinics (Communities Development Program) are a specific form of legal help for poor people. Students and clinical teachers go to the poor region and organize commercial, charity or any other activity. They train people to take over when the idea is well established. It is a way to use external financial sources and the knowledge to develop commercial activity and educate members of the community.

7 December 2001

Asha Ramgobin – University of Natal

- Not having a well organized, independent secretary was a big mistake of the Trust. Lack of the professional secretary, especially at the beginning, was very arduous and Asha spent her entire free time to deal with Trust's matters.
- It is extremely important to choose a good financial advisor and an accountant. Trust has opened a public competition to find such a firm. Luckily, there were firms to compete offering very good conditions. The international firm – Deloitte & Touche, runs all of the Trust's accountings and investments. It not only takes care of the tax accounts but assures a beneficial increase and location of the capital as well. One of the firm's representatives comes to all the meetings and negotiates with potential sponsors. Such a cooperation with a firm makes it easier to manage the Trust. In addition, it supports the image of the Trust as a reliable institution.

Conclusions: perspectives on financing legal clinics in Poland

1. Establishment of the institution similar to Trust should be considered. Foundation is the right organizational form.
2. Initiative of the foundation's establishment should come from the clinics, just like in South Africa the Association established Trust.
3. Foundation should be, in a wide range, independent from the clinics. The clinics should not decide about the grants' admission because it would put them in a conflict of interest. The independence of the foundation's organs making financial decisions, should be guaranteed by the statute. In South Africa, Trust is an independent institution, representatives of the clinics do not participate in decision making process regarding the grants.
4. Foundation should have an administration office responsible for fundraising. In a long term, it should hire professionals. The importance of such a structure was strongly emphasized by our interlocutors in South Africa.
5. Criteria of the financing should be codified as clinical activity standards.
6. Additional financial sources should come from the territorial government's units as well as from national foundations, i.e. church foundations, regional foundations or political foundations.
7. Time sheets system should be introduced to control amount of time spent on particular cases and administration's actions.

8. Selecting, in a way of competition, a professional auditing or consulting firm seems necessary.