

## TABLE OF ANNEXURES

Annexure A	Negotiation and Mediation Workshop
Annexure B	Negotiation Exercise: The Mattress Negotiation
Annexure C	Negotiation Exercise: Negotiating Values
Annexure D	Negotiation Exercise: The Tax Book Negotiation
Annexure E	Negotiation Exercise: The Moroccan Sweet Treat Negotiation
Annexure F	Mediation Exercise: The Famous Cape Malay Restaurant Mediation
Annexure G	Mediation Exercise: The Missing Machine Mediation
Annexure H	Mediation Exercise: Marie and Herman Blom Divorce Mediation
Annexure I	<i>Open Society Justice Initiative Report on First All Africa Colloquium on Clinical Legal Education 23-28 June 2003 (2004)</i>
Annexure J	Client Intake form and Interviewing Sheet
Annexure K	Client Interviewing and Advising Guide
Annexure L	Example of a case from SAFLII
Annexure M	Summary: Interviewing steps
Annexure N	An example of the basic law clinic accounting records
Annexure O	The essential components of a law clinic constitution
Annexure P	The methodology of preparing a simple budget
Annexure Q	Student timetable used at the University of Natal Howard College Campus Law Clinic in 1994
Annexure R	Ford Foundation Guidelines for Grant Seekers
Annexure S	Teaching Materials: Mock Trial
Annexure T	Teaching Materials: Street Law Lessons
Annexure U	Alternative Dispute Resolution Materials
Annexure V	Street Law Programme Standards
Annexure W	Statement of Ace Khumalo
Annexure X	Trial Plan for Ace Khumalo

Annexure Y	Witness sheet based on Ace Khumalo's statement
Annexure Z	An example of a final report of training in Malawi conducted by Robin Palmer
Annexure AA	Income and Expenditure Statement and Balance Sheet
Annexure BB	A Guide to Fundraising- Ernest Hayes and Lia van Ginneken
Annexure CC	Fundraising from US Foundations- A Short Guide
Annexure DD	Constitution of a campus law clinic from the then University of Natal (1999)

# ANNEXURE A

## TWO DAY NEGOTIATION AND MEDIATION WORKSHOP

### DAY ONE: NEGOTIATION

- 08h30-08h45 Introduction (Activity).
- 08h45-09h15 Personality test (Activity).
- 09h15-10h00 The Mattress Negotiation (Activity).
- 10h00-10h15 Tea
- 10h15-10h30 The Negotiation Process
- 10h30-11h15 Paraphrasing (Activity)
- 11h15-11h40 Planning the Negotiation
- 11h40-12h00 Negotiating Values
- 12h00-12h30 Lunch
- 12h30-13h30 The Tax Book Negotiation (Activity)
- 13h30-13h45 Getting to Yes
- 13h45- 14h30 The Moroccan Sweet Treat Negotiation (Activity).

### DAY TWO: MEDIATION

- 08h30-08h45 What Mediators Do (Activity).
- 08h45-09h15 Empathic Listening (Activity).
- 09h15-09h30 Steps in a Mediation.
- 09h30-10h00 The Mediation Process.
- 10h00-10h15 Tea
- 10h15-11h15 The Famous Cape Malay Restaurant Mediation (Activity).
- 11h15-11h30 When Mediation Works and Does Not Work.
- 11h30-12h00 The Universe of ADR.
- 12h00-12h30 Lunch
- 12h30-13h30 The Missing Machine Mediation (Activity).
- 13h30-14h30 The Blom Divorce Mediation

## ANNEXURE B

### THE MATTRESS NEGOTIATION

**Role: Prospective buyer**

#### Information known to all parties

The seller placed an advertisement in the Saturday newspaper to sell a "new, firm, twin mattress, best offer". Upon inspection in the hallway of the seller's home on Sunday morning, the buyer determines that the mattress is a name brand, still in its original plastic wrapping with a price tag of \$150 from a local department store.

#### Information known only to buyer

Your grandmother is visiting you tonight and you need a good mattress to replace the one on your bed that was chewed up by your dog last night. You will sleep on the floor and let your grandmother sleep on your bed. There is no other place for your grandmother to sleep. She has a bad back and needs a firm mattress. There are no other advertisements in the newspapers and the stores are closed. You have very little money - having just lost your job. So you need the best deal possible.

### THE MATTRESS NEGOTIATION

**Role: Prospective seller**

#### Information known to all parties

The seller placed an advertisement in the Saturday newspaper to sell a "new, firm, twin mattress, best offer". Upon inspection in the hallway of the seller's home on Sunday morning, the buyer determines that the mattress is a name brand, still in its original plastic wrapping' with a price tag of \$150 from a local department store.

#### Information known only to the seller

You bought a mattress last week for your grandmother to use when she visits you tonight. You bought the mattress on a sale at a local store for \$50. No sooner did you buy the mattress than your grandfather had one delivered to your home. You cannot return the mattress you bought from the store because it was bought on a sale. And you have no place to keep it. You want to get rid of it today so that it is not there when your grandfather arrives. Seeing both mattresses would hurt his feelings. You have little money and need to sell the mattress for as much money as possible.

[Created by Richard A. Salem Copyright 1990, Conflict Management Initiatives 1987 Conflict Management Initiatives]

## ANNEXURE C

### NEGOTIATING VALUES

1. Your client gave you authority to settle a matter while she is incommunicado. The other attorney asks: "Do you have authority to settle?" you believe it would work to your client's disadvantage to reveal that you have this authority. How do you reply?
2. You are negotiating a long-term lease for a client's store. You have not discussed health with your client, but through a mutual friend are aware your client had a recent heart attack and requires a heart by-pass operation. The landlord's attorney asks: "Is your client in good health?" If the landlord learns of your client's condition it will require your client to purchase an insurance policy he does not want and cannot afford. How do you respond to the landlord?
3. In winding up your deceased client's estate, you are asking \$7 500 for a used car, expecting to sell it for about \$7 000 You are knowledgeable about car mechanics and when you drove the car it ran well, but you suspect it will soon need a new clutch.

If not asked about the car's mechanical condition, what do you say about it to a potential purchaser who is:

- (a) a car dealer
- (b) a respondent to a classified advertisement
- (c) a lawyer you deal with occasionally
- (d) your parent?

How would you reply if the prospective purchaser asked whether the clutch and transmission were in good condition and is:

- (a) a car dealer
- (b) a respondent to a classified advertisement
- (c) a lawyer you deal with occasionally
- (d) your parent?

[Richard A. Salem Management Initiatives 1225 Oak Avenue Chicago Illinois]

## ANNEXURE D

### THE TAX BOOK NEGOTIATION

#### Confidential Facts for Sellers

You and your negotiating partner are new junior associates in a law firm which has contracted with Compulaw to provide you with a computerized legal research service complete with desktop video terminals for all lawyers and a central printer. Because (1) Compulaw is reliable, (2) the firm needs space in

its library and (3) the expense of maintaining its present collection of tax books, a decision was made to sell 300 basic volumes in its tax collection.

Last week, you were assigned the task of disposing of the books as soon as possible. They must be out of the library by next week. Storing them for up to a year will cost \$500.

You have developed the following facts:

The 300 volumes constitute a comprehensive basic library in South African tax law. All are in good condition; about 25% have never been used. The books were purchased over a 15-year period at a total cost of \$8 250. If bought new today, the same collection would cost \$15 000, but there is little demand for such a collection, new or used. You wrote to many tax-orientated law firms, but none responded.

You have a written offer from a text book distributor to buy the books for \$2 000. You were instructed to take it if no better offer materializes. Nobody knows what further changes will be made to the tax law.

Yesterday, your secretary told you that at a dinner party she met two young lawyers who were forming a new tax law firm. She mentioned the books and they expressed interest in purchasing some or all of them if the price was right. Today one of them phoned and asked to come by and talk to you about the books. You said you would only consider selling the entire collection and to come by if they were interested.

You can sell at any price higher than the distributor's offer, but the books must be out of the library by next week.

#### Confidential Facts for Buyers

You and your negotiating partner have been practising tax law with a small law firm for several years. You recently decided to form a new tax law firm with a friend who is with another firm. You and your negotiating partner have been promised work by a number of large companies and the lawyer joining you is from a well-connected and wealthy family that has agreed to cover the costs of setting up an office in a prime location and equipping it appropriately.

One of the most important tasks you face is assembling a collection of tax books that will provide the broad foundation of information you need to serve your clients. You all agree that a good tax library is worth whatever expense may be involved.

At a recent dinner party, you learned from a legal secretary that her firm was selling its 300 volume tax book collection. You expressed interest, she sent you a list of titles, and you found that the collection

covers most of the basic materials you need. You phoned the responsible associate in that firm to discuss the books. He said you should come by if you were interested in purchasing the entire collection.

In your research so far, you have learned:

The tax collection being offered by the law firm will cover 95% of your basic needs apart from the subscription services. The 300 books being offered would cost between \$12 500 and \$15 000 if purchased new today. You do not know how much the books originally cost. Some of the titles you need can

be purchased used from book distributors, but it would be impossible to buy anything resembling a complete used set because the books are not available. A dealer estimated for you that if such a used set were available, it would cost about \$5 500-\$10 000.

Due to the difficulty of even locating such a full tax collection, you have decided that you are willing to pay up to \$11 000 for the books if they are in a satisfactory condition. Your new offices will not be available for two months, so you want to leave the books where they are, if possible. You have no objection to paying for them now and letting the seller continue to use them in the intervening time.

## **Factual Summary**

### **Seller's Facts**

1. The volumes cost (new) \$8 000.
2. All the volumes in good condition; 25% have never been used at all.
3. The collection (new) would cost \$15 000 today, but there is no demand for them.
4. The firm has an offer from a law book distributor to buy the collection for \$2 000.. The firm will accept the offer unless a better deal materializes within the week.
5. Extensive advertising by the firm has resulted in no interested buyers.
6. The firm's two negotiators have full authority to sell at any price above \$2 000 on condition the books can be moved out of the library by next week.
7. It would cost \$500 to put the books in storage for up to one year.

---

### **Buyer's Facts**

1. Expect to pay about \$15 000 for a basic tax collection. That amount of money is on hand.
  2. The firm's collection comprises about 95% of what you need.
  3. You estimate that the collection would cost between \$12 500 and \$15 000 new today.
  4. No used sets of tax law books are available on the used-book market. If they were, a used set would cost from \$9 000 to \$10 000.
    - a. Due to above difficulties, you are willing to pay the firm up to \$11 000 if the books are in good condition.
  6. The lease for your new office does not begin for two more months; you have no place to store the books in the meantime.
- [Adapted by R.A. Salem from a similar roleplay in *Legal Negotiations* by Gerald Williams, West Publishing

## ANNEXURE E

### THE MOROCCAN SWEET TREAT NEGOTIATION

#### **Role: President of Athlone Pure Water Company**

Athlone Pure Water Company is engaged in the bottling, distribution and sale of drinking water. Your company has a bottling plant near the mountains and draws water from a spring on its property there. Five company trucks then deliver the water to customers in the city area.

You just learned that your only source of water is becoming discolored by underground minerals. The minerals are harmless, but they color the water brown. You decide to shut down your plant until the problem is solved. You have no other source of water. You have a one-day supply of bottled water available for distribution. Unless you can solve the problem today, your company will be unable to make deliveries on schedule and business will begin to deteriorate.

Your chemist tells you she has a remedy for the problem. If a small amount of nectar drawn from a rare Moroccan flower is mixed with the water as it is pumped into your vats, the water will return to its natural color. A small amount of this nectar is drawn from the flowers once a year and is used to coat local almonds. The product is then shipped around the world under the trade name of 'Moroccan Sweet Treats.'

You learn that since the flowers are out of season, nectar will not be available for six months. However, you also learn that a single box of 12 Moroccan Sweet Treats is available in the Sweet Shoppe at the Sun Hotel in the city. You telephoned the owner of the store. She said the box sells for \$20. She agrees to hold the box for you for two hours.

Your chemist tells you that the nectar coating on one Moroccan Sweet Treat is enough to treat one week's supply of bottled water. The 12 Sweet Treats will give you 12 weeks to find a permanent solution.

Before you leave for the city, the Sweet Shoppe owner phones to tell you that a competitor, Maitland Beverages, also wants to buy the Sweet Treats. She will see you both in two hours and will sell to the highest bidder.

You wonder if your competitor found out about your problem and is trying to put you out of business. Why else would Maitland Beverages be interested in purchasing the only available box of Sweet Treats? You phone Maitland's president and the two of you agree to meet before going to the Sweet Shoppe to see if you can work a deal. You can spend up to \$25 000.

#### **Role: President of Maitland Beverage Company**

Maitland Beverages Co. is engaged in the bottling, distribution and sale of drinking water. Your company has a bottling plant near the coast and draws water from a spring on its property there. Company trucks then deliver the water to customers in the city area.

You just learned that your only source of water is becoming discolored by underground minerals. The minerals are harmless, but they color the water red. You decide to shut down your plant until the problem is solved. You have no other source of water. You only have a one-day supply of good bottled water available for distribution, Unless you can solve the problem today, your company will be unable to make

deliveries on schedule and business will rapidly deteriorate.

Your chemist tells you he has a remedy for the problem. If a small amount of extract is taken from a rare Moroccan almond nut and mixed with the water as it is pumped into your vats, the water will return to its natural color. These almonds are harvested annually in Morocco, coated with a sweet nectar drawn from flowers in the nearby mountains and shipped around the world under the trade name of Moroccan Sweet Treats.

You learn that since the almonds are out of season, none will be available for six months. However, you also learn that a single box of 12 Moroccan Sweet Treats is available in the Sweet Shoppe at the Sun Hotel in the city. You telephoned the owner of the store. She said the box sells for \$20 . But she told you that a competitor, Athlone Pure Water Company, also wants them, She said she will sell to the highest bidder and tells you to be there in two hours.

Your chemist tells you that the almond extract from one Moroccan Sweet Treat is enough to treat one week's supply of bottled water. The 12 Sweet Treats will give you 12 weeks to find a permanent solution.

You wonder if your competitor found out about your problem and is trying to put you out of business. Why else would Athlone Pure Water be interested in purchasing the only available box of Sweet Treats? As you are planning your strategy, the President of Athlone Pure Water phones you and the two of you agree to meet before going to the Sweet Shoppe to see if you can work out a deal. You can spend up to \$25 000,

[Created by Richard A. Salem 1990 Conflict Management Initiatives]

## ANNEXURE F

### THE FAMOUS CAPE MALAY RESTAURANT MEDIATION

#### Facts known to all parties

Ed owns 40% of the stock in the Famous Cape Malay Restaurant. Three years ago he hired Joanna, his long-time friend, to be chef at a salary of \$15 000 a year. The restaurant was struggling at the time and Joanna was promised a share of the business if things went well. The restaurant did well during the next year and Ed rewarded Joanna with a \$5 000 bonus. He also told her he was instructing the restaurant's lawyer to prepare a contract giving Joanna a 10% interest in the business. Joanna expressed great pleasure. Hearing nothing after three months, Joanna asked about her share of the business. Ed responded that the lawyers were slow in preparing the paperwork, but assured Joanna with a handshake, that: "As far as I am concerned, Joanna, you own 10% of the business."

Joanna felt secure with that understanding. The neighbourhood began to attract more tourists and the restaurant continued to thrive. Another three months passed with no formal agreement. Then Ed presented Joanna with a cheque for \$4 000, advising her to consider it a dividend from profits and assuring her there would be more at the end of the year. Joanna said that she felt primarily responsible for the restaurant's success. She appreciated the cheque, but she was annoyed that she had not formally received her interest in the restaurant. She said that unless she received an immediate 30% share of the business, she would take advantage of an opportunity to leave to start a restaurant bearing the name "Joanna's Cape Malay Restaurant" nearby. Ed said Joanna could not open the new place because under the terms of the contract the lawyers were preparing, Joanna owned 10% of the restaurant and was restricted from competing for five years within a 10-kilometre radius. Joanna was outraged. She said she had no recollection of any discussion about a restraint of trade provision and does not accept it. Ed said he mentioned the provision to Joanna when they shook hands over the 10% ownership deal. Joanna said she was going to talk to a lawyer.

A mutual friend suggested that Joanna and Ed attempt to resolve their differences through mediation. They agreed and mediation was arranged.

#### Facts known only to Joanna

You and Ed have a long standing relationship. You believe that your handshake sealed the deal that gave you 10% of the restaurant. You have no recollection of him saying anything about a restraint of trade clause.

You are angry at Ed for not completing arrangements for the transfer of ownership shares. You understand he has been busy, but there can be no excuse for this long delay.

You don't like to get involved in the business aspects of the restaurant because it detracts you from the creative process of your cooking, but you are finally at a point where you think you should take some responsibility for learning the financial aspects of the business in the event you someday want to open your own place.

You were speaking from anger and bluffing when you threatened to open a competing restaurant unless you were given a 30% share of the Famous Cape Malay Restaurant. You actually do not have an opportunity to open a new restaurant at this time. However, you have read that a number of chefs are doing so in partnership with wealthy investors.

You are ambivalent about what to do now. Part of you would like to work things out with Ed. He is trustworthy and basically a good person to work with; you are not likely to find better. The other part of you is furious that Ed has taken this all so lightly and doesn't seem to take you seriously when it is your work that has made the restaurant so successful.

Although you agreed to a 10% interest, you think a larger share would be reasonable. As a minimum, you want a formal document showing that you own 10% of the restaurant. If you can get more than that, so much the better. You have not yet spoken to a lawyer and would prefer not to. Be sure to ask the mediators whether the handshake agreement is binding. The mediators should know. Be certain to press the mediator on the issue.

### **Facts known only to Ed**

You and Joanna have a long standing relationship. You believe that your handshake sealed the deal that gave Joanna 10% of the restaurant. You are committed to turning 10% of the shares in the restaurant over to Joanna, but you have not figured out how to do so. You have been stalling for time and the lawyers have not yet drafted the agreement.

You are the largest shareholder with 40% of the business. Three unrelated individuals each own 20%. They were resistant when you first told them that each would have to give up 2.5% of their total shares to provide Joanna with 10%.

You decided to commit the shares to Joanna verbally and work it out with your partners later. You thought they would be more willing to compensate Joanna with shares in the restaurant after profits increased substantially. Business has been extraordinary and net profits for the current year are estimated at \$75 000 versus \$15 000 last year. Unfortunately, your partners attribute the restaurant's success more to tourism than to Joanna's ability as a chef. They will take more convincing.

Joanna is important to the success of the Famous Cape Malay Restaurant. Because of the increase in tourism, the restaurant will operate at a profit no matter who the chef is. But it is important to you that the Famous Cape Malay Restaurant continues to be recognised as one of the city's finest eating establishments. Losing Joanna would be a terrible setback.

You are angry that Joanna is calling a lawyer and demanding 30% ownership. You know that some chefs have a large piece of the business, but you feel that you and Joanna struck a fair deal at 10%. After all, Joanna took no risk. Nonetheless, you know there are lots of opportunities for good chefs. You want the mediator to support your contention that the handshake agreement is binding and Joanna is restricted from competing with you. You distinctly recall mentioning the restraint of trade clause.

You would be embarrassed to read in the newspapers that the quality of your restaurant had deteriorated because your chef quit to open a highly recommended restaurant nearby. You believe that Joanna is the best chef in the city, but you are not sure it would be wise to tell her so. It could give her a further competitive edge in your negotiation.

[Adapted by David McQuoid-Mason and Richard A. Salem]

## **ANNEXURE G**

### **THE MISSING MACHINE MEDIATION**

#### **Information shared by both parties**

Rapid Trucking Co. delivers tool lathing machines for Diamond Machine Tool, Ltd. Diamond was Rapid's first customer after the transport company was organized three years ago and the two companies have had an excellent business relationship since then. Diamond provided Rapid with \$40 000 in business in the past year and until one month ago always paid its bills within 10 days.

One month ago, Rapid picked up a machine at Diamond for delivery to White River Milling. Payment of \$1 100 for transport charges was to be made to Rapid upon delivery. The driver accepted payment, but when he gave the cheque to Rapid's accounts clerk, it was noticed that the cheque was for only \$100. The clerk phoned White River Milling and was told that the error had been discovered and that a cheque for \$1 000 had already been mailed to Diamond.

Rapid was unable to confirm whether Diamond had received the cheque. Phone inquiries and faxes to Diamond during the next three weeks went unanswered.

Five days ago, Diamond routinely requested Rapid's services for another delivery. Rapid picked up the machine, but it was not delivered.

The manager of Diamond phoned the manager of Rapid three days after the pick-up and demanded delivery of the machine. An argument ensued and the manager of Rapid slammed down the phone.

Diamond's lawyer phoned Rapid the next day, threatening legal action and asked for the name of the company's attorney. She was told Rapid could not afford a lawyer until the \$1 000 was paid. The next day the lawyer called back and suggested mediation. The manager of Rapid agreed.

The mediation was scheduled for the next day with a mediator both parties knew to be reliable.

#### **Information known only to the Manager of Diamond**

This has been a difficult time for you and your company. You committed yourself to opening a new plant in another city just before a recession. Your company is strapped for cash and barely able to meet the payroll. But the gamble paid off. Just this week, you received verbal assurance that a manufacturer with six factories in the region will place the largest order in your company's history. The order will assure full utilization of your plant capacity. The contract will be signed in two days.

You are upset about the way you treated Rapid Trucking, but you were backed into a corner and had no choice. The \$1 000 underpayment was an error, but when you collected the money you needed it for your payroll. You had exhausted your credit lines. If word got out that you were in a financial squeeze, you would have lost your pending contracts. You could not even tell Rapid.

When the problem with Rapid occurred, you told your staff to stonewall it. Your new secretary, who is also your 18-year old daughter, succeeded in keeping Rapid's manager off your back. Bringing your daughter into the business was a smart move. Operations have sharpened dramatically. Ironically, your secretary's only complaint since joining the company has been that clerks at Rapid have been making

nasty remarks to her for turning away their sexual advances.

You were out of town most of the time and didn't realise how hot things were getting with Rapid until you received a registered letter. Rather than come up with the \$1 000, you threw business to Rapid, hoping that would tide them over. They showed their gratitude by holding a \$215 000 machine hostage and jeopardizing one of your best accounts.

You were angry with the manager of Rapid, but were willing to work things out until the phone was slammed down in your ear. That really made you mad, but with Rapid holding a machine that you must get delivered promptly, there was little you could do.

Your lawyer suggested mediation. You are sceptical, but you agreed to go along. If you had it your way, you would go to court and obtain an order to get the machine returned. It is too bad your relationship with Rapid must end this way. You are not likely to find anyone else as good now that your business is picking up and you will need reliable service more than ever. Rapid always gave you priority treatment and until this incident, never missed a deadline. Their charges are about 30 percent less than the going rates. You have been prepared for, and willing to pay, a rate increase from Rapid for more than a year, but it never came.

You want to settle today, but if you cannot you will go to court. You are prepared to pay Rapid the \$1 000 as soon as the machine is delivered to you or your customer. You would like to be able to tell Rapid what caused the problem, but you cannot share this information until after your big contract is signed.

#### **Information known only to the Manager of Rapid Trucking**

You learned about Diamond's failure to pay from your accounts clerk ten days after the incident. Your repeated calls to Diamond's manager went unanswered; you were told that the manager was out of town opening a new plant and could not be reached. You wrote three letters during the next two weeks. The last one was registered, but all went unanswered.

When you received the new order one week ago, you knew how to get your money. Instead of making delivery, you stored the machine. When the manager of Diamond phoned the other morning, you got so angry you slammed down the phone.

When Diamond's lawyer phoned, you became worried and consulted your own attorney. He advised you to surrender the machine promptly. You were considering your alternatives when Diamond's lawyer called back and suggested mediation.

You have cash flow problems and Diamond's failure to pay the \$1 000 almost embarrassed you. You thought payroll cheques might bounce, but fortunately none did. Diamond's manager is aware of your cash flow problem. (You have never been able to figure out how to resolve it!)

Diamond has always paid you promptly which is one reason you give Diamond a favorable rate and bill the company 30 percent less than any other customer. You do not believe any other transport company can match these rates. Diamond is your oldest customer and one of your biggest accounts, providing you with \$40 000 business a year. Diamond gambled on you when you started in business and in return you have always given it priority service as well as low rates. In addition, you fear that raising your rates may endanger the account.

You are very, very angry that the manager of Diamond refused to make payment and forced you to take a machine hostage. You have been especially uncomfortable since you learned the machine is valued at

\$215 000. But you were in financial straits and had to get the company's attention. You are also confused and frustrated that the manager of Diamond did not respond to your calls or letters. You always had a warm working relationship.

The only reason you can think of for the problem is Diamond's new secretary to the manager; perhaps your messages weren't getting through. You were getting complaints about the secretary's lack of cooperation from your staff even before this incident. Diamond should get rid of this secretary so that things can get back to normal. But it is the manager with whom you are angry.

This incident probably will cost you your oldest and one of your largest accounts, but not your most profitable one. Your profit margins on Diamond's jobs are low. It is only the prompt payments that have enabled you to continue with them. Now you can no longer rely on that. You will miss Diamond, but maybe this will force you to seek some new profitable business. There is really no room for sentiment in business.

[Created by Richard A. Salem, based on an actual case. Copyright 1990, Conflict Management Initiatives]

## ANNEXURE H

### MARIE AND HERMAN BLOM DIVORCE MEDIATION

#### Information shared by all parties

Marie and Herman Blom have been married for nine years. They have two children; an eight year old boy and a six-year-old girl who attend government schools. The family lives in a three bedroom townhouse purchased 7 years ago for \$50 000 with a deposit of \$12 500 which was a gift from Marie's parents. Monthly payments are \$600 including rates.

Herman Blom, a graduate of a Medical School, is chief family physician at a medical clinic which serves a low-income community. His salary is \$29 000 a year. He works a regular 10-hour schedule six days a week and is often called to work after hours and on his day off. He also serves on the trusts of several non-government organizations. Herman is deeply committed to his work in the low income community. In fact, this commitment is a primary factor in the Blom's decision to terminate their marriage. Not only is the family always strapped for cash, but Herman is seldom home and there is no family social life.

Marie Blom has a degree in literature from the local University. Unable to find a university position after graduation, she taught at a High School, but found it difficult relating to students who didn't really care about literature. She resigned after one term. Marie then worked as an assistant manager in a book store until their first child was born. Three years ago, with financial help from her father, she and a neighbour opened a small art and handicrafts gallery. Business has improved somewhat each year, but the gallery is still losing money. Her father has been providing about \$3 600 a year to meet the losses.

The Blom's townhouse is registered in both their names, but Herman has been making all the bond payments. The house has been appraised at \$150 000 and is their major investment. It has a bond of \$40 000, leaving an equity value of about \$110 000. They have \$4 500 in savings, minimal insurance, and no other investments. The family car, a four-year-old Toyota station wagon, is owned by Herman.

#### Confidential Information for Marie

Marie Blom wants (a) custody of the children; (b) occupation of the townhouse; (c) ownership of the family car; and (d) maintenance payments for the children. She also wants maintenance payments for herself until her gallery turns the corner and provides a satisfactory living. There have been changes in the neighbourhood and she is confident that she will earn a profit this year or next.

Marie acknowledges that she cannot be certain whether the gallery will ever provide her with full support. She is hopeful that between the gallery, payments from Herman and some assistance from her parents, she will be able to make ends meet. The gallery gives her great comfort and satisfaction, especially in times of stress. Without it she doesn't know how she would have survived the past two years.

Marie recognizes that Herman's current earnings will not enable him to provide much support, but she feels that there are numerous opportunities for him to earn substantially more money by working a day or two each week at a private clinic or a hospital emergency room. She knows he does not enjoy that type of work. He has rejected the idea whenever she raises it. But since his work decisions are the main reason the marriage was destroyed, she believes he should make that sacrifice, at least until her business gets on its feet.

Marie is willing to provide visitation rights so that Herman can be with the children on his day off (when they are not in school) and for one month during summer. This is more time than he spent with his children during the marriage. Since their marriage, Herman never took more than a few days off at a time and he only did that when family circumstances required it.

Marie's primary concern is that the divorce causes as little disruption and pain as possible to the lives of the children. Above all, she does not want the divorce action to leave a residue of bitterness that might tempt either parent to deprecate the other in front of the children. Marie feels it is important that this be an amicable divorce. She knows that she and Herman will have an ongoing relationship and she doesn't want more conflict than is necessary.

### **Confidential Information for Herman**

Herman Blom acknowledges that his devotion to his work contributed to the divorce, but he says Marie must share responsibility since she knew of his commitment when they decided to marry. Nothing has changed. Herman loves his work. There are barely enough hours in the day to do it all. Other than spending a little time with his children, he has no desire to do anything but work at the clinic.

Herman is willing to give up custody of his children, but he wants visitation rights one weekend day and three evenings every week, plus one full weekend each month. He also wants to be with the children for three or four days at Christmas time. He says he plans to spend more time with the children now that he is not living with them.

Herman is willing to let Marie have the townhouse and the car, but he wants her to sell her interest in the gallery and get a job. He views the gallery as an expensive hobby and knows it will never support her. He still cares about Marie, and feels it would be in her own best interest to become self-supporting and not rely on Herman or her parents. There are plenty of high school teaching jobs available. If Marie is not willing to work and only wants to tend to the gallery, then she should let her parents provide support. They are wealthy and could provide far better support than Herman could.

Herman's primary concern is that the divorce causes as little disruption and pain as possible to the lives of the children. Above all, he does not want the divorce action to leave a residue of bitterness that might tempt either parent to deprecate the other in front of the children. Herman feels it is important that this be an amicable divorce. He knows that he and Marie will have an ongoing relationship and he doesn't want more conflict than is necessary.

[Devised by Richard A Salem. Conflict Management Initiatives, Chicago, 1990]

Annexure I

Combining Learning and Legal Aid: Clinics  
in Africa

*Report on the First All-Africa Colloquium on Clinical Legal  
Education, 23-28 June 2003*

October 2003

[www.justiceinitiative.org](http://www.justiceinitiative.org)

## Clinical Legal Education in Africa

*Report on the First All-Africa Colloquium on Clinical Legal Education, 23-28 June 2003, organized by the Association of University Legal Aid Institutions of South Africa, the Open Society Justice Initiative and the University of Natal.*

University faculty and legal practitioners from over twenty countries attended the All-Africa Colloquium on Clinical Legal Education, which took place in Durban on June 23-28, 2003. The first continent-wide meeting on university-based legal clinics brought together over 60 individuals, ranging from seasoned “clinicians”—as clinical teachers and supervisors are known—to prospective pioneers, and included experience from both long-established clinics (such as in Kenya, South Africa and Zimbabwe) and the newest on the continent (in, for example, Mozambique and Sierra Leone). Reports from clinics outside Africa—in Bangladesh and Brazil—provided further valuable perspectives. For participants from countries currently considering the creation of university-based clinics—Angola, Ethiopia and Nigeria—the meeting provided a unique opportunity to learn about each phase, from start-up through curriculum development to potential collaboration with state legal aid services. Interested university faculty from francophone African countries, Benin, Burkina Faso and Senegal, where there are few initiatives as yet, were handed useful arguments for the promotion of clinical education.

The Colloquium’s objectives were: to inventory existing and expected clinical initiatives on the continent and discover how they can learn from each other; to identify key challenges in founding clinical programs and develop strategies for addressing them; and to explore strategies for effective networking and capacity building of African clinical programs. Discussion focused largely on highly practical issues—the objectives of legal clinics, the steps involved in setting one up, the likely obstacles in the African context and strategies for tackling them. Focused presentations were followed by region-specific working groups to discuss concrete aspects of legal clinic construction within universities. Significant time was devoted to

defining precise objectives for clinical legal education. These include in particular ensuring a rounded practical education for legal students and the contribution clinics can make to access to justice. The South African experience of integrating clinics with the state legal aid board and community-based paralegal networks to create “justice centres” offering fundamental legal support for individuals everywhere was examined in detail.

However, notwithstanding the meeting’s functional orientation, numerous bigger picture threads ran through the presentations and the overall debate. Among these were: the role of the legal profession in advancing social justice and human rights; the importance of real-life legal experience to a lawyer’s education; and the vital contribution law students can make to increased access to justice. There was much debate on the potential of clinics in the African context, where legal aid systems are often weak, access to justice incomplete, and university law departments inflexible or conservative.

The Colloquium generated a number of initiatives:

- Plans to develop clinics in a number of countries, notably in west Africa, where a nascent clinic in Sierra Leone may soon be joined by a pilot clinic in Nigeria, and possible initiatives in francophone west Africa. Other countries where developments are expected, resulting in part from the meeting, include Angola and Mozambique.
- Training courses for clinical professors are to be organized at the University of Natal early in 2004. To maintain the momentum generated by the Colloquium a second colloquium was suggested for 2004. A steering committee has been formed to oversee arrangements.
- Weeklong study-visits will be organized for national clinical teams to functioning South African clinics, to begin in late 2003 with groups from Nigeria, Sierra Leone and Ethiopia.

- The resource materials generated for the event will be organized and expanded to serve as a start-up and operational resource for clinical programs on the continent.

The event was organized by the Justice Initiative in cooperation with the South African Association of University Legal Aid Institutions (AULAI) and the University of Natal and sponsored by the Open Society Institute, with additional funding from the Ford Foundation, the Kenyan section of the International Commission of Jurists (ICJ) and the European Union funded Foundation for Human Rights in South Africa.

### **Introduction: Modelling South Africa**

This report follows the Colloquium agenda in allocating significant space to South Africa's experience. The meeting's setting in Durban and the attendance of numerous experienced local clinicians reflect South Africa's uniquely advanced clinical background. Today 21 South African law schools run independently-funded law clinics. The first was established at the University of Cape Town in 1972. The Universities of the Witwatersrand (Johannesburg) and Natal (Durban) followed suit in 1973. By 1994, the South African Legal Aid Board had entered into partnership agreements with five universities to run additional public defender clinics for law graduates. These and similar initiatives now form the basis of "one stop shop" clinics called "justice centres", aimed at ensuring access to legal advice, information and assistance in rural and poor areas of the country.

South Africa is equally noteworthy for its strong legal structures for human rights and the rule of law, largely a result of the long civil rights campaign to overthrow apartheid. *Karthy Govender*, Chair of AULAI, observed that the 1996 Constitution embedded notions of "participative and direct democracy" founded on respect for the rights of South Africa's many constituent ethnic groups. "The process of drafting the Constitution was a formidable struggle to move from repression to democracy—and it was achieved by lawyers," he observed. The continued consolidation of South African democracy ensures that the country

remains a superb model for its neighbors, who often contend with extremely poor human rights conditions at home.

Today, vibrant debate on core human rights questions is embedded in South African public discourse. Colloquium participants had the privilege of an address by *Zachariah Yakoob* of the South African Constitutional Court on the role of social and economic rights in the current South African constitutional order. A drafter of the Constitution and author of the critical *Grootboom* ruling,<sup>1</sup> *Yakoob* declared "it is clear that if a man does not have health, housing, a job, food, water, his 'civil and political rights' are of no use to him. To approach such a man on the basis of the difference between civil and political and social and economic rights is meaningless." The South African Constitutional Court has played a unique role in providing substance to the social and economic rights of indigent South Africans.

The South African setting also allowed for analysis of issues specific to that country's often harrowing, recently inspiring, experience—yet highly relevant elsewhere on the continent. *Asha Ramgobin*, director of the University of Natal's clinic, together with *Munirah Osman-Hyder*, introduced participants to some of the more challenging cases to pass through the clinic. The virulence and agonizing consequences of South Africa's severe HIV/Aids outbreak have demanded a complex response, including but not restricted to legal measures to combat discrimination and obtain medicines. Ramgobin also related the Natal clinic's first major challenge—to represent 300 applicants from nearby Cato Manor, who were threatened with eviction to make way for construction development. A just settlement was ultimately achieved.<sup>2</sup>

---

<sup>1</sup> *Government of South Africa v. Grootboom and others*, Constitutional Court- CCT11/00 2001 (1) SA 46 (CC) 4 October 2000. The constitutional court ruled in this case that the government had an obligation to ensure that state budgetary funding was allocated to the progressive implementation of the right to adequate housing contained in the constitution.

<sup>2</sup> See Ramgobin, A., *Reflections on the Challenges Facing Public Interest Lawyers in South Africa: Balancing the interests of land claimants with the need for low cost housing in Cato Manor*.

Like many emerging democracies, South Africa is a country where the cautionary maxim cited by Karthy Govender that “a lawyer is either a social engineer or a social parasite” carries weight. Outstanding examples of public interest lawyers—from Durban resident Mahatma Gandhi through the civil rights movement to South Africa’s first post-1994 President Nelson Mandela—can be set against the stock figure of the “ambulance-chaser”, familiar everywhere. Among other things, clinical legal education is a means to find tomorrow’s public interest lawyers among today’s students of law. Their role is as critical in countries familiar with the small indignities of everyday injustice as in those devastated by human rights atrocities.

Although there is less experience of legal clinics outside South Africa, recent signs show a growing interest elsewhere on the continent. There are clinics in Kenya, Lesotho, Malawi, Tanzania, Uganda, Zambia and Zimbabwe and fledgling programs in Ethiopia, Mozambique and Sierra Leone (see the Chart in the Annex).

### Laboratories of Learning

University-based clinics take different forms. Most include both classroom and practical lessons—where the classroom component often involves the teaching of skills and values through simulations, readings, discussion and reflection; and the practical experience can include working at in-house clinics under the supervision of university-based lawyers, or through externships with non-governmental legal organizations or courts. The classroom provides a forum for preparation of and reflection on the practical work. In all cases, clinics involve learning from experience—and in some countries they may further serve to supplement gaps in formal access to justice.

The pedagogical goals of clinical legal education are summed up in the term “laboratories of learning”. By introducing law students to the actual legal problems experienced by individuals in the course of their daily lives, clinics expose students to the realities of law in practice and to clients as real people with problems that can be framed,

refined and resolved by means of the law. These experiences widen students’ perspectives on the potential of law to deliver justice. Students in clinics further “learn how to learn from experience”, a process referred to by *Peggy Maisel* of the Florida International University College of Law as “reflective lawyering”. A sense of ethics and professional responsibility is thereby stimulated.

According to *David McQuoid-Mason*, professor and veteran clinician at the University of Natal, clinical students become skilled *inter alia* in: client interviews and counseling; advocacy; negotiation; critical thinking; problem-solving; legal research; case-planning; drafting; communication skills; and “thinking on your feet”. The role of clinics in nurturing these skills is particularly important in those African countries whose legal traditions have placed more emphasis on formalism and less on good lawyering skills, as Maisel notes. In many law departments on the continent, according to *Yousuf Vawda*, a former Chair of AULAI, “students have to be prepared for a profession with a particular history and ethos [where] little attention is paid to critical thinking, to extending the parameters of the possible and the desirable or to examining both positive and negative aspects of law and practice.” In these circumstances it is perhaps no harm if law clinics rock the faculty boat.

For clinics to function effectively, the curriculum must include the above skills explicitly as educational objectives, together with the goal of promoting public interest law. The latter is encouraged among students by prioritizing the legal problems that reflect the most important development needs of the country of which they have first-hand experience—and by emphasizing the equal right to justice of disadvantaged clients and communities.

*“Experiential learning generates its own resources”*  
Yousuf Vawda contrasted the ideal clinic—where student groups would be small, resources abundant, clinicians highly experienced, and students proactive—with the reality in most law schools: “usually the reverse”. Law clinics champion *experiential learning*, recognizing that apparent shortcomings are also the raw materials for working in a given social reality. By using the resources at hand,

the results will more closely match the environment where practice is to take place. Good teaching is equally possible in low-tech environments, Vawda commented, because learning is less dependent on the kind of equipment available than on the willingness of clients, students and supervisors: "People are our best resources."

Nevertheless, if clinics are to be successful a number of basic conditions must be met. Student groups must be as small as possible. Some form of accreditation is needed, at least in the mid- to long-term—otherwise students' coursework will impinge on clinical engagement. Teachers must be trained and able to meet regularly in order to ensure some basic common objectives and methods. Joy K. Asiema of the University of Nairobi, Kenya, noted that a good clinical class requires extensive preparation by the teacher, attention to detail during execution, and proper evaluation afterwards by both teachers and students. And staff must be properly paid—preferably as part of the faculty—so that they do not simply leave in search of better work.

Other cost-effective methodologies to assure that clinics become a quality learning environment include an explicit emphasis on problem-solving (through, for example role assumption), partnerships and team work. Close supervision by experienced teachers—or by advanced students, who can receive credits for it—is vital to ensuring a reflective learning experience. Evaluation and feedback processes need to be embedded, both in the classroom and "in the field".

#### *Law and society*

Because clinics operate in a particular social and legal context, they can engender an understanding of the bigger picture and a broader view of the role of law in society. As McQuoid-Mason remarks, "Student activities in legal aid clinics expose them on a regular basis to social justice issues in the new South Africa. Clinical work enables them to obtain a realistic insight into whether the government is able to deliver on the ambitious list of socio-

economic rights enshrined in the final Constitution."<sup>3</sup>

Furthermore, in countries rich in cultural diversity, where customary law is often embedded in the legal system—as in many African countries—clinics provide an occasion to examine possible or actual clashes between different traditions—and involve students in their resolution. In one example from the University of Natal's clinic, a client from a Zulu-speaking traditional family brought a complaint of non-payment of bride price (*lobola*). Rather than simply applying the law, clinicians chose instead to examine the practice from the perspective of women's rights. Questions of this kind are relevant in numerous countries. Should traditional practices be treated as sacred cows or should they be open to critical examination in the interests of equality and justice?

#### *Integration with the curriculum*

Joy K. Asiema described a "hybrid" clinic in the University of Nairobi, which provides students with valuable experience but is not yet fully integrated into the law curriculum. Clinical education at the "Students' Association for Legal Aid and Research" (SALAR) is very popular, but as yet neither mandatory nor accredited. Students receive training and prepare briefs on cases which are then passed to lawyers.

The Nairobi clinic's objective of fuller integration in the academic curriculum is shared by most university clinics. Of necessity, clinics often begin small and only gradually accumulate the skills and experience required for recognition as a full-fledged accredited course. Often, a clinic must demonstrate both its value as a teaching tool and its genuine use to public interest law in order to win over faculty members who may at first be suspicious on both counts. Over time, however, everyone benefits from the transition. The university broadens its curriculum and appeal. Only a course offering credits or the equivalent will justify the time required by students to apply themselves fully. Only committed students can properly assist the local community. A curriculum course can attract and keep better staff faculty, and ensure that they are paid

---

<sup>3</sup> McQuoid Mason, D., "Teaching social justice to law students through community service: The South African experience" in Baloro et al, *Transforming South African Universities, Capacity Building for Historically Black Universities*, Africa Institute of South Africa, 2000, p.91.

properly. Teachers too can benefit from a closer view of laws in operation in the real world. Clinics become a means to improve the quality of the legal profession generally.

### Access to Justice: Clinics and Legal Aid

“Legal aid in Africa exists in name only in most countries,” according to *Clifford Msiska* of Penal Reform International in Malawi. “This fact is confirmed by the overcrowding in prisons, with high remand populations across the continent.” Although indispensable to the fundamental right to a fair trial, few African states are capable of providing legal assistance as demanded by international human rights norms “where the interests of justice so require”. In addition, for many Africans, both their rights and the legal system to which they pertain are written only in foreign languages and are poorly known or understood. Msiska notes that in Kenya legal aid is in practice available only in cases of homicide “and even then only for the trial phase.” Resources are a problem, but not the only one: lawyers are comparatively few, generally urban-based, and overwhelmingly concerned with civil matters.<sup>4</sup>

When it comes to legal aid systems, governments in many countries are unable to operate in isolation from civil society, due in part to a lack of adequate resources but also to the fact that the intended beneficiaries might need to have their needs articulated independently.<sup>5</sup> In South Africa, university-based clinics have become increasingly integrated with the wider national system of legal aid delivery.

The need for legal aid in South Africa is great. According to *Martin Monyela*, Secretary General of the National Community Based Paralegal Association (NCBPA), three million households—

almost 18 million people—live under an official poverty line of U.S. \$58 or less per month. Of these the hardest hit are women and blacks: 57 percent of black South Africans are designated poor as against 2.1 percent of whites. About 20 percent of South Africans have no formal education, and many do not speak English, still the predominant language of legislation in South Africa.<sup>6</sup>

After 1994, the effective democratization of legal aid in South Africa created unprecedented pressure on a system poorly designed to meet everyone’s needs. By 1998 the Legal Aid Board (LAB) was close to bankrupt, and the *judicare* system—by which private lawyers were paid on a case by case basis to represent indigenous defendants *ex officio*—had to be reviewed definitively.<sup>7</sup> By then, however, legal clinics had already established an important role in supplementing the legal aid system.<sup>8</sup> State legal aid was increasingly used to help fund law clinics, many of which had been in operation since the early 1970s from 1994 on, when clinics began to take on some of the legal aid caseload. In South Africa, where clinic students cannot represent clients in the courts, they can nevertheless fulfill crucial legal functions in numerous areas where representation is not required—notably legal research and advice. Also, law student provision of these services is highly cost effective, coming in, between 1994-1996, at about half the amount paid for *judicare* lawyers.<sup>9</sup>

### Paralegals

Access to justice is a problem for the poor—the wealthier can generally afford lawyers. Few lawyers, for their part, choose to work in the non-lucrative legal aid sector, or indeed in criminal law generally. In poor countries there are not enough lawyers to meet the

<sup>4</sup> Msiska, C., “A Paper on Paralegal Advisory Services in Malawi Presented at the First All-Africa Clinical Education Colloquium”, 25 June 2003.

<sup>5</sup> Bengtsson, D., “Justice For All? Law Clinics in South Africa”, LLM. Thesis, Gothenburg University, Spring 2002, p.27. Online at: <http://130.241.135.85/studentuppsatser/uppsatser/200278.pdf>

<sup>6</sup> Monyela, M., “Presentation to All Africa Clinical Legal Education Colloquium”, 25 June 2003.

<sup>7</sup> McQuoid-Mason, D., *Access to Justice and the Role of Law Schools in Developing Countries: The South African Experience*, 2 June 2003, p.37. Forty-six percent of a total of 997,707 cases were referred between 1994-1998.

<sup>8</sup> McQuoid-Mason, “Legal Aid and Development: Lessons from South Africa and Some Thoughts for Nigeria” in *Law and Development: Facing Complexity in the 21<sup>st</sup> Century*, Cavendish Publishing Limited, 2002, pp.208-209. See also Bengtsson, pp.2-3.

<sup>9</sup> McQuoid-Mason, *supra* fn 8.

demand for legal services and qualified lawyers are generally concentrated in urban areas—with a consequent under-servicing of legal needs in rural and poorer areas.

Paralegals provide one means to help address these problems. Paralegal offices in rural locations can serve both as centers for dissemination of basic legal information and as the first port of call for individuals needing legal advice or assistance. In Malawi, where up to 50 percent of prisoners are awaiting trial, one approach has been to provide prisoners themselves with the basic legal knowledge for their own defense, according to Clifford Msiska. Part of South Africa's response to the burgeoning demand for legal services, has been to formalize the involvement of a nation-wide network of paralegals through a Legal Practice Bill, yet to be passed, which recognizes paralegals and ascribes them some powers, such as a limited right of appearance in courts.

According to Monyela, two factors facilitate this formalization.<sup>10</sup> The first is the existence of an organized paralegals network in South Africa since the formation of the NCBPA in 1996, bringing together over 350 advice offices from all nine provinces. The second is the development of standards and qualifications to ensure a basic quality of service among paralegals. This process, which is currently underway in South Africa, can be facilitated through links with universities and university-based clinics. The University of Natal has so far trained 150 paralegals in this way.<sup>11</sup>

To function effectively paralegals must have the backup of “a practitioner who can take matters to court where the paralegal feels there is a need to litigate”, according to *Bongani Khumalo*, director of the Community Law and Rural Development Centre.<sup>12</sup> Links with the formal legal profession are also needed to allay qualified lawyers' concerns that paralegals might steal their clientele and/or harm clients' interests through unprofessional

service. With the support of the legal profession paralegals can act fruitfully as a channel and filter for the formal system rather than a drain on it.

Since 1998, South Africa has been working towards combining the legal services of university clinics, paralegals and the LAB into *justice centres*, providing basic legal information, legal advice and the information needed for recourse to the courts where necessary. According to *Brian Niar* of the LAB, there are 40 justice centres currently in existence in South Africa, with 20 more planned for the end of 2003. Ultimately the aim is to have one within 100 kilometers of every town and village.

#### *Specialized clinics*

Clinics can play a crucial role in focusing legal assistance on the rights of marginalized or vulnerable groups, such as ethnic minorities, refugees, children, prisoners or women. Specialization allows clinics to tackle systemic deficiencies in the delivery of justice, while at the same time building the expertise of students in a particular area of law. Often the first step is to inform individuals of their rights. “Street law clinics”, as they are called in South Africa, aim explicitly at raising rights consciousness among targeted vulnerable groups. In Benin, a similar role is performed by non-university-based non-profit legal centers targeting women. “What we try to do,” according to *Marie-Elise Gbedo*, director of the Cotonou-based Association de Femmes Juristes, “is to show that justice is not just for the rich—it is for all.”

Examples of South Africa's specialized clinics were presented at the Durban Colloquium. *Lee Ann de la Hunt* of the University of Cape Town spoke of that clinic's program on the rights of refugees, a significant issue in a country positioned close to several troubled states. The situation of refugees is exacerbated by what de la Hunt describes as “the general xenophobia in our country”. The clinic's work was formalized with the UNHCR in 1998. One of the clinic's students recently published a paper detailing South Africa's obligations towards refugees. “We feel that the way our society treats foreigners is a measure of our commitment to international human rights,” says de la Hunt. A project at the clinic at Rhodes University focuses on domestic violence, considered acceptable in many parts of the country, according to *Sibongile Mkumatela*.

<sup>10</sup> Monyela supra fn 6.

<sup>11</sup> Khumalo, B., “Community-Based Sources of Legal Information and Redress”, paper presented at the Africa Clinical Legal Education Colloquium, 25 June 2003.

<sup>12</sup> Ibid.

*McDivitt Hove* of the University of Natal clinic spoke about the children's rights program there. Children are frequently incarcerated in South Africa, although unlike adults they are not generally equipped to educate themselves about their rights. Hove declared: "What we must do for these children is give them a sense of belonging. And incarceration will not do that. The only way we can do that is through society—through what we do." *Rowena Bernard* and *Gary Howard*, also of the University of Natal's clinic, spoke respectively about clinical projects on HIV/Aids, an urgent problem in South Africa, and on land rights, an issue with complications extending back to the apartheid days. Eviction cases require swift reactions on the parts of clinics—something which has been facilitated in South Africa through so-called "clusters"—i.e. groups of clinics and other legal actors who coordinate around certain issues. Each of these subjects is relevant in other African countries too.

#### **Clinics Elsewhere: Africa, Asia, Latin America**

Participants learned of the significant experience of clinics in Kenya and Zimbabwe, as well as recently founded clinics in Mozambique and Sierra Leone. Clinicians from Bangladesh and Brazil provided comparative perspectives from further afield.

##### *Kenya and Zimbabwe*

Clinical structures differ. Moi University in Kenya, as described by *Tom Ojienda*, has a similar structure to the University of Natal, South Africa—including preparatory clinical components in the first three years of the LLB degree, with practice at the clinic reserved to the fourth year. In the University of Zimbabwe, however, which has run a clinic since 1973, students are excluded in first year but already begin work on cases in their second and third years, according to *Vengai Guni*, the clinic's director. By their fourth year, better students can take cases in the High Court with the permission of the Attorney General—a possibility not available to South African students. During the summer breaks, Zimbabwe's clinical students are "farmed out" to private law firms, the Attorney General's office and

other private sector work such as at insurance companies.

Human rights cases have recently become "a burgeoning field" in Zimbabwe, according to Guni, and many cases are taken on in students' fourth year, including a contemporary case where bail set on a political leader charged with treason, at 10 million Zimbabwean dollars (c. U.S.\$ 12,000), was "tantamount to not allowing bail at all". In Guni's understated words "Human rights cases are often dangerous, but we manage."

##### *Bangladesh*

By contrast, in Bangladesh neither students nor staff are allowed to practice law, according to clinical pioneer *Mizanur Rahman*, and so the emphasis is on simulation and moot courts. Yet in a country whose judiciary has been referred to by Transparency International as "the most corrupt institution in the world",<sup>13</sup> there is plenty of room for alternative approaches in the classroom. Clinics aim to eschew the "Asian despotism" model of guru-like teaching in Bangladeshi schools, in favor of empowering a generation first as independent "rebellious lawyers", and then as "developmental lawyers" to tackle the massive poverty that plagues the country.<sup>14</sup>

##### *Brazil*

Brazil's legal clinics have been in operation for over 30 years, when they were established as a response to military rule, according to *Ana Claudia Pardini* of the Dom Paul Evaristo Arns clinic in the Catholic University of Sao Paulo. Today they can function as legal offices, once they obtain a license, to serve households earning less than U.S.\$ 280 per month. Students are closely supervised as they file their first cases, and attend court in the gallery only. Since its beginning in 1999, the clinic has been inundated with cases: 15,000 in total, of which 500 are currently pending. In one groundbreaking case, the clinic challenged the city of Sao Paulo on behalf of two

---

<sup>13</sup> Transparency International Bangladesh, *Annual Report of Transparency International Bangladesh 2002*.

<sup>14</sup> Rahman, M., "From Traditional to Rebellious to Developmental Lawyering: Tortuous Journey of clinical Legal Education in Bangladesh", presentation at the First All-African Colloquium on Clinical Legal Education, Durban, 25 June 2003.

neighborhoods, Jardim Angelo and Capao Redondo, both of which suffered high levels of homicide. A simulated tribunal generated media attention, forcing the state to agree to build recreational “social areas” for the two areas. The decision impacts 200,000 people directly.

#### *New schools: Sierra Leone and Mozambique*

The newest African clinics are in Sierra Leone and Mozambique. *Yada Williams* of the Human Rights Clinic at Fourah Bay College in Sierra Leone described an inter-disciplinary clinic that works together with non-legal departments such as economics and sociology to develop a means to help the country overcome the horrific human rights legacy of more than a decade of civil war. The clinic, he said, is “creating a pool of human rights activists in an understaffed human rights community.” A clinic established in 2003 in Eduardo Mondlane University in Mozambique has barely begun operations. Clinicians *Elisia Vieira* and *Tomas Timbane* reported that firm foundations are slowly consolidating beneath the enterprise, though many challenges remain, with few staff to date, no full time lawyers, and scant funding. The new clinic has an arrangement with the Human Rights League of Mozambique, which refers clients with cases suited to the clinic’s capacity and experience.

#### **Setting up a Clinic**

At the Colloquium, region-centric working groups discussed the challenges met, where clinics already exist, or expected, where they do not. Possible strategies were put forward.

#### *Challenges*

The primary challenge located by all groups was a lack of resources. This includes shortages of material/administrative resources, such as the limited availability of office/classroom space for a clinic, low access to computers and communications infrastructure, insufficient pay for potential clinicians, a lack of books and training materials. Transport was frequently mentioned as a practical difficulty, particularly where access to justice is constrained for rural communities to which, ideally, clinic students should travel. In

addition there are often scarce human resources—an absence of training and experience in practical legal education of clinic staff and low capacity to fundraise.

Other challenges identified across all regions included:

- Large student interest as against probable initial low faculty involvement;
- The fact or likelihood of lukewarm reception from the faculty, and a resistance to altering curricula;
- Language difficulties—students may speak different languages and/or have low literacy in English/French/Portuguese, the languages of law in Africa;
- Absence of student practice rules to enable students in the final grade to appear in court with supervision;
- Resistance on the part of professional legal practitioners to the involvement of non-professionals, including students and paralegals;
- The generally low knowledge among general populations regarding their rights.

Some challenges are specific to particular countries/regions. For example, the legal system in some regions, such as lusophone Africa, may differ from that in operation in countries with clinical experience; requiring that potential models be adapted significantly before use. University systems too differ: government influence over university structures in the francophone African countries can prevent faculty staff from altering curricula significantly without state support. In addition, clinical legal education needs a stable democratic environment in which to function, a condition lacking in a number of countries. In anglophone west Africa, unstable academic calendars, resulting, in Nigeria, from general unrest (such as labor disputes), or, in Sierra Leone, from long-term political instability, pose a significant problem to adopting new curricula. In East African countries with a tradition of clinical legal education, identified challenges were more functional in nature—one participant claimed that clinicians were “stuck with traditional assessment procedures—i.e. reporting—and need to think more innovatively”.

#### *Strategies*

Many of the possible solutions to the above challenges depend to a significant extent on the support of university faculty. These include, for example,

obtaining sufficient classroom space and equipment, starting training programs or fundraising initiatives, tailoring curricula to local needs, crediting clinical work, and networking with legal professionals and paralegals. Engendering the goodwill of the department—and overcoming any initial hostility—is therefore a priority. This may mean inviting faculty members to offer input into the clinical program during setup and operational stages, or asking for contributions of teaching time or for help in evaluating student progress. New clinics functioning at a small scale risk isolation from the department unless integration is pursued proactively. One clinician reported taking advantage of a change in leadership at the law department in order to give a presentation about the clinic and its activities to the faculty as a whole, thereby greatly increasing coordination between the clinic and the department.

Other strategies include promoting national and regional networks to create momentum behind the notions of clinics and of public interest law, collaborating with NGOs both in setting clinics up and channeling relevant cases to them. In francophone Africa, it was suggested that, to begin, loose arrangements between clinics and universities might demonstrate the usefulness of clinics, which could commence operations physically outside university campuses at first.

*A template for starting up*

*Robin Palmer* of the University of Natal, has laid out a nine-point list of issues that must be explicitly addressed by anyone wishing to set up a clinic:

1. The clinic's objectives and mission statement;
2. The clinic's structure within the law school/university or NGO;
3. Funding;
4. Infrastructure, administrative structures/ staff;
5. Training needs (for staff and students);
6. The academic curriculum;
7. Cooperation with government and non-governmental bodies;
8. Marketing, public relations and fundraising;
9. Developing a medium- and long-term plan.

Participants at the Colloquium gave thought to each of these points in constructing clinics in their respective countries, and drew up a list of strategies under each heading in each country present.

### **Conclusion**

The four-day Colloquium included much besides practical discussions on setting up clinics. There were organized visits to the campus clinic at the University of Natal, and to a functioning paralegal office outside Durban. The Colloquium's peaceful setting on the campus of the University of Natal made for a pleasant environment to meet informally, conducive to reinforcing the foundations of this de facto network of African clinicians. A steering committee has been set up to guide the process more formally. Training courses for clinical professors are to be organized at the University of Natal early in 2004, and study visits to South African clinics will be organized for clinical teams from other African countries. To maintain the momentum, a second Colloquium was suggested for 2004.

ANNEX 1: African Clinical Initiatives Overview, September 2003

Country	University-based clinic?	Relevant Organizations	Remarks
Angola	No	Catholic University/ Agostino Neto University	600 lawyers in the country. 90 percent of lawyers in the capital, Luanda.
Benin	No	Association de Femmes Juristes du Benin (3 centres); University of Abomey-Calavi; National University of Benin	Non-university clinical centers exist. Students can't practice. Curriculum centrally controlled.
Burkina Faso	No	University of Burkina Faso	Students can't practice. Curriculum centrally controlled.
Ethiopia	New initiative underway.	Mekelle University, Tigray; University of Addis Ababa (no clinic)	Intensive lobbying required to convince government to allow accreditation.
Kenya	Two.	University of Nairobi; Moi University	"Hybrid" approach—clinics are integrated with courses but no credits, live client meetings and externships.
Lesotho	One.	University of Lesotho	Students give counsel and interviews, do legal research and monitored internships.
Malawi	One starting up.	University of Malawi	"Practical legal studies" department will mainstream into course. Three faculty. 300 lawyers for 10 million people.
Mozambique	One new initiative underway.	Eduardo Mondlane University	Since March 2003: "Centre for Practical Legal Studies" Cases are referred to the "Human Rights League". Labor rights; prison visits.
Nigeria	Plans in progress with British Council help.	Augustine Nnamani Enugu Campus; University of Ibadan; University of Ado-Ekiti	130 million people; 36 universities; 13th poorest country in the world. A street law clinic exists. British Council support.
Senegal	No. Students help in non-university clinic.	Université de Gaston Bergé, St. Louis.	Initiative to start a clinic <i>outside</i> the university, drawing on law students.
Sierra Leone	One recent initiative.	Fourah Bay College, Freetown	"Human Rights Clinic." Extracurricular, no credits, open to other faculties besides law.
South Africa	Over twenty clinics since 1972.	A clinic in every law school.	Compulsory, accredited part of LLB. Legal clinics work together with Legal Aid Board and paralegal network.
Tanzania	One clinic.	University of Dar-Es-Salaam	Four year clinical program, including internships. Aim to foster legal practice in the core region.
Uganda	Two clinics.	Kampala Law Development Center	All lawyers undertake a diploma course to develop skills in legal practice. Focus on juvenile justice and community awareness.
Zambia	One clinic.	University of Zambia, Lusaka	Works closely with the Law Association of Zambia; training, counseling, training paralegals and legal awareness; government internships.
Zimbabwe	One clinic since 1973.	University of Zimbabwe	Compulsory for third and fourth years. Human rights focus planned. Currently most cases deal with "fast-track land redistribution". Students can practice.

## Annex 2: List of Participants

### Angola

**1. Mr. Eduardo Vita**  
Angola Bar Association

### Benin

**2. Mrs. Marie -Elise Gbedo**  
Women Lawyer's Association

**3. Dr. Victor Topanou**  
Law Faculty  
National University of Benin

**4. Mr. Gilles Badet**  
University of Abomey-Calavi

**6. Mr. Eduard Andre Gogan**  
Prisoner Assistant Project

### Burkina Faso

**5. Prof. Salif Yonaba**  
Faculty of Legal and Political Sciences  
University of Burkina Faso

### Botswana

**6. Prof. Daniel Nsereko**  
University of Botswana

### Ethiopia

**7. Prof. Wray Witten, Dean**  
Faculty of Law  
Mekelle University

**8. Mr. Abraham Ayalew**  
Faculty of Law,  
Mekelle University

**9. Eyoel Behailu**  
Faculty of Law  
Mekelle University

### Kenya

**10. Mrs. Joy K. Asiema**  
Faculty of Law, University of Nairobi

**11. Mr. Tom Odhiambo Ojienda**  
Moi University Faculty of Law

**12. Kanyi Kimondo**  
ICJ—Kenya

### Lesotho

**13. Mr. Qhalehang Letsika**  
University of Lesotho Faculty of Law

### Malawi

**14. Ms. Ngeyi Ruth Kanyongolo**  
University of Malawi, Chancellor College

**15. Mr. Raphael Kasambara**  
University of Malawi, Chancellor College

**16. Mr. Chikosa Banda**  
University of Malawi, Chancellor College

**17. Mr. Clifford Msiska**  
Penal Reform International

### Mozambique

**18. Mr. Tomas Timbane**  
Eduardo Mondlane University

**19. Mr. Filipe Sitoi**  
Eduardo Mondlane University

**20. Mrs. Lucia Da Luz Ribeiro**  
Eduardo Mondlane University

**21. Ms. Elysa Vieira**  
Eduardo Mondlane University

Namibia

**22. Mr. Samuel K. Amoo**  
University of Namibia

Nigeria

**23. Mr. Ernest Ojukwu**  
Nigerian Law School  
Enugu Campus

**24. Mr. Yemi Akinseye -George**  
University of Ibadan, Law Department

**25. Prof. Akin Ibidapo-Obe**  
University of Ado-Ekiti, Nigeria

Senegal

**26. Mr. El Hadji Daouda Seck**  
University of St. Louis

Sierra Leone

**27. Mr. Yada Hashim Williams**  
Barrister & Solicitor/Faculty Supervisor  
Human Rights Clinic, Fourah Bay College,  
University of Sierra Leone

**28. Mr. Emeka Taylor**  
Supervisor, Human Rights Clinic  
Fourah Bay College

**29. Emanuel Ekundayo Constant  
Shears-Moses**  
Barrister, Fourah Bay College

Tanzania

**30. Ms. Cheggy Mziray**  
University of Dar-Es-Salaam, CSFM Faculty of  
Law

Uganda

**31. Ms. Theodora Bitature Webale**  
Legal Aid Clinic  
Kampala Law Development Center

**32. Ms. Sophie Kyagulanyi**  
Foundation for Human Rights Initiative

**33. Mr. Bakidde A. Mubiru**  
IUIU – Islamic University in Uganda

Zambia

**34. Dr. Margaret Munalula**  
University of Zambia

**35. Col. Clement Mudenda**  
NLAC for Women

Zimbabwe

**36. Dr. Vengai Guni**  
Legal aid and advice scheme  
University of Zimbabwe  
Faculty of Law

Resource Persons/Presenters and Organizers

**37. Prof. David McQuoid-Mason**

**38. Prof. Mizanur Rahman**  
Faculty of Law, University of Dhaka,  
Bangladesh

**39. Mr. Olawale Fapohunda**  
Managing Partner  
Legal Resource Consortium, Nigeria

**40. Ms. Asha Ramgobin**  
Advocate of the Supreme Court of South Africa  
and Director of Campus Law Clinic, Durban,  
South Africa

**41. Prof. Peggy Maisel**  
Director of Clinical Programs, Florida  
International University College of Law, USA

**42. Mr. Yousuf Vawda**  
University of Durban, Westville

**43. Mr. Bongani Khumalo**  
Community Law and Rural Development Centre,  
Durban, South Africa

**44. Ms Anna Claudia Vazzoler**

Legal Clinic of Catholic University of Sao Paulo,  
Brazil

**45. Mr Jobst Bodenstein**

Community Law Centre, University of the North  
West, South Africa

**46. Ms Elsabe Steenhuisen**

Director RAU Law Clinic, South Africa

**47. Mr Schalk Meyer**

AULAI, South Africa

**48. Ms Natasha van Wyk**

University of Pretoria  
Law Clinic, South Africa

**49. Mr David Neke**

Wits Law Clinic  
Johannesburg, South Africa

**50. Ms Shaheeda Hassim Mahomed**

Wits Law Clinic  
Johannesburg, South Africa

**51. Ms Leslie Swart**

Potchefstroom University  
Noordburg, South Africa

**52. Prof. Lee Anne de la Hunt**

Legal Aid Clinic  
University of Cape Town, South Africa

**53. Mr Franciscus Haupt**

Director –Law Clinic  
University of Pretoria, South Africa

**54. Ms Danny Wimpey**

RAU Law Clinic, South Africa

**55. Mr Sibongile Mkumatela**

Rhodes University Legal Aid Clinic  
South Africa

**56. T.P.Pillay**

UDW Law Clinic, Durban, South Africa

**57. McDivitt Hove**

UND Law Clinic, Durban, South Africa

**58. Rowena Bernard**

UND Law Clinic, Durban, South Africa

**59. Munirah Osman-Hyder**

UND Law Clinic, Durban, South Africa

**60. Thulise Mhlungu**

UND Law Clinic, Durban, South Africa

**61. Mr. Zaza Namoradze**

Director Budapest office  
Open Society Justice Initiative, Hungary

**62. Ms. Mariana Berbec**

Junior Legal Officer  
Open Society Justice Initiative, Hungary

**63. Mr. Stephen Humphreys**

Senior Information and Editorial Officer  
Open Society Justice Initiative, U.K.

**64. Mr. Kayode Fayemi**

Board member  
Open Society Justice Initiative, Nigeria

**65. Mr. Sammy Modiba**

Program Officer  
Open Society Initiative for Southern Africa,  
South Africa

**66. Prof. Karen Tokarz**

Washington University School of Law  
USA

### *Acknowledgements*

The Justice Initiative would like to thank the many people who contributed to the success of the First All-African Colloquium on Clinical Legal Education and to the writing of this report, through their organization of and participation in the meeting itself, and/or through their willingness to review all or part of the present report. In particular we are grateful to the steering committee: Olawale Fapohunda, Peggy Maisel, David McQuoid-Mason, Thulise Mhlungu, Zaza Namoradze, Munirah Osman-Hyder, Asha Ramgobin and all at the University of Natal Campus Law Clinic. Special thanks is also due to others who gave presentations at the meeting: Joy K. Asiema, Rowena Bernard, Lee Ann de la Hunt, Marie-Elise Gbedo, Karthy Govender, Vengai Guni, McDivitt Hove, Gary Howard, Bongani Khumalo, Sibongile Mkumatela, Martin Monyela, Clifford Msiska, Brian Niar, Tom Ojienda, Robin Palmer, Ana Claudia Pardini, Mizanur Rahman, Tomas Timbane, Yousuf Vawda, Elisia Viera, Yada Williams, besides many participants not mentioned here. We are particularly grateful to Mariana Berbec and Mark Choonoo whose logistical organization made the meeting possible. This report was drafted by Stephen Humphreys.

The Open Society Justice Initiative, an operational program of the Open Society Institute, promotes rights-based law reform, builds knowledge and strengthens legal capacity worldwide. Justice Initiative projects seek to shape law reform policy and achieve concrete results through hands-on technical assistance; litigation and legal advice; knowledge dissemination and network building; and counsel to donor institutions. The Justice Initiative works in the following thematic areas: national criminal justice reform; international justice; freedom of information and expression; anticorruption; equality and citizenship. Its offices are in New York, Budapest, and Abuja.

The Justice Initiative is governed by a Board composed of the following members: Patricia M. Wald (Chair), Thomas Carothers, Maja Daruwala, J. 'Kayode Fayemi, Anthony Lester QC, Juan E. Méndez, Aryeh Neier (ex officio), Diane Orentlicher, Wiktor Osiatyński, András Sajó, Herman Schwartz.

The staff includes James A. Goldston, executive director; Zaza Namoradze, Budapest office director; Mariana Berbec, junior legal officer, legal capacity development, Bruce Broomhall, senior legal officer, international justice; Helen Darbishire, senior program manager, freedom of information and expression; Nazgul Ergalieva, legal officer, Central Asia; Julia Harrington, senior legal officer, equality and citizenship; Stephen Humphreys, senior information and editorial officer; Katy Mainelli, administrative manager; Chidi Odinkalu, senior legal officer, Africa; Darian Pavli, legal officer, freedom of information and expression; and Martin Schönteich, senior legal officer, national criminal justice.

#### **New York**

400 West 59th Street  
New York, NY 10019 USA  
Phone: +1 212-548-0157  
Fax: +1 212-548-4662

#### **Budapest**

Oktober 6. u. 12  
H-1051 Budapest, Hungary  
Tel: +36 1 327-3100  
Fax: +36 1 327-3103

#### **Abuja**

Plot 1266/No.11, Amazon Street  
Maitama, Abuja, Nigeria  
Phone: +234 9 413-3771  
Fax: +234 9 413-3772

E-mail: [info@justiceinitiative.org](mailto:info@justiceinitiative.org)

**[www.justiceinitiative.org](http://www.justiceinitiative.org)**

# ANNEXURE J

## CLIENT INTAKE AND INTERVIEW FORMS

\_\_\_\_\_

Reg. # (Name) (Date, place of birth)

\_\_\_\_\_

(charges, article)

\_\_\_\_\_

(Prior convictions)

\_\_\_\_\_

How was need for appointment of attorney communicated?

*Call from police, prosecutor, court, family, other* \_\_\_\_\_

Client telephone: \_\_\_\_\_

*Take as many numbers as possible of people through whom to contact client, or to contact on behalf of client in custody specify the names of people at each number:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Client address: \_\_\_\_\_

How many years at that address? \_\_\_\_\_

Previous address, number of years there: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date and time of alleged crime: \_\_\_\_\_

Date and time of client's arrest (custody): \_\_\_\_\_

Location of crime: \_\_\_\_\_

Place of arrest (where was client, when police took him/her into custody)? \_\_\_\_\_

Education \_\_\_\_\_

(Graduation \_\_\_\_\_ Highest grade reached \_\_\_\_\_)

Specialty/major (if higher education) \_\_\_\_\_

Client work history \_\_\_\_\_

---

---

---

---

---

Military Service History \_\_\_\_\_

---

---

Year(s) \_\_\_\_\_

Discharge: (honorary? \_\_\_\_\_ Y \_\_\_\_\_ N)

Health Issues? If yes, what? \_\_\_\_\_

---

---

---

Treatment history: Dates/place/Under which doctor's care (name, contact information)? \_\_\_\_\_

---

---

---

Family background: (spouse/children/dependants/elderly parents, etc.) \_\_\_\_\_

---

---

---

---

---

Other character information: \_\_\_\_\_

---

---

---

Strategy, motions to make: \_\_\_\_\_

---

---

---

---

Description of perpetrator: (*when available*) (Height/weight/color hair/eyes) \_\_\_\_\_

---

---

---

What client was wearing when arrested (attorney observation) \_\_\_\_\_

---

---

---

Description of client: (Height/weight/color hair/eyes/distinguishing traits) \_\_\_\_\_

---

---

---

Bruises on client—describe where \_\_\_\_\_

---

---

---



**CLIENT INTERVIEW SHEET**

Date \_\_\_\_\_ Court Appearance \_\_\_\_\_

Name \_\_\_\_\_ Case No. \_\_\_\_\_

Address \_\_\_\_\_ Charge \_\_\_\_\_

City, State, Zip \_\_\_\_\_ Jurisdiction \_\_\_\_\_

Telephone \_\_\_\_\_ Age \_\_\_\_\_ DOB \_\_\_\_\_

Citizen/INS Status \_\_\_\_\_ SSN/A# \_\_\_\_\_

Marital Status \_\_\_\_\_ Spouse/SO \_\_\_\_\_ Dependants \_\_\_\_\_

Employment \_\_\_\_\_

Salary \_\_\_\_\_ Assets \_\_\_\_\_

Priors \_\_\_\_\_

Education \_\_\_\_\_ Military \_\_\_\_\_

Bail Assistance (relatives, friends, contact information)

\_\_\_\_\_  
\_\_\_\_\_

Date Arrested \_\_\_\_\_ Place Arrested \_\_\_\_\_

Nature of Offence \_\_\_\_\_

Bail/Custody Status \_\_\_\_\_

Co-defendants/Counsel \_\_\_\_\_

Prosecutor \_\_\_\_\_ Judge \_\_\_\_\_

Notes \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

# ANNEXURE K

## CRIMINAL DEFENSE COUNSEL CLIENT INTERVIEWING & ADVISING GUIDE

### A. BEFORE THE CLIENT INTERVIEW

#### 1. Gather information on initial contact (by family member or client):

- Names, addresses and phone numbers of client and family members (as many alternate contacts as possible to convey messages).
- What are the charges? Get any available details of police file and any related documents.
- Is client in custody? Where? How long the client has been detained or missing?
- Is the client injured or under any disability?
- Clarify your name and contact information.
- Dates and times of next scheduled court appearance.
- Client's age and date of birth.
- Any information relevant to trying to have client released; i.e. age, health, pregnancy.
- Names and contact information for any witnesses favourable to the defense.

#### 2. Decide whether to take the case considering:

- The charges v. your ability, availability, etc.
- Conflicts of interest (other clients, yourself).
- Whether the client will be able to find other counsel.
- Whether the client or legal aid will pay your fee.
- If contact was by family member, whether client wishes you to act.

#### 3. Settle your fee retainer (This may not be possible to do before the first interview):

- Reach agreement on how you will be paid, by whom, how much, when.
- Confirm this in writing.

#### 4. Prepare to Interview the Client (Some of these steps may not be possible before the first interview):

- Contact client to set up interview (through police or prosecutor if in custody)
- Contact police or prosecutor to obtain as much information as possible about the case against your client including: contact information of police officer and prosecutor in charge
- the charges.
- the facts alleged and all supporting documents.
- Be courteous but firm and persistent throughout, making repeated requests even if futile.
- Make detailed, dated notes of or otherwise confirm in writing any lawful requests with which police or prosecutors have failed to comply.
- Contact all witnesses favourable to the defense and interview them. Put their statements in

writing and ask them to sign. See Witness Interviewing Guide.

- Contact state witnesses if permitted by law and interview them.
- Make enquiries (perhaps of client's family members) re any bias or disability of state witnesses (i.e. interest, prior dealings, etc.) and document this.
- Ask police or prosecutor for copies of, details of or a viewing of all evidence they possess including any witness statements and police notes and reports, audio or video tape recorded statements, photographs, lineup procedures, expert reports, reports regarding the testing of evidence or the results of any search of the client's person or premises.

## **B. CONDUCTING THE CLIENT INTERVIEW**

The lawyer takes notes throughout.

### **1. Stage 1 – Introductory Matters:**

During this stage the lawyer gets to know the client, obtains preliminary information and starts to build a relationship of trust with the client.

- Identify yourself and provide contact information.
- Attempt to interview the client alone if possible. Record denial of this request.
- Confirm client's name, age and contact information.
- Observe client's medical/health/mental condition. Take photo(s) if permitted or appropriate in the circumstances (to document injuries).
- Confirm current charges and any other outstanding charges with client .
- Ask for copies of all relevant documents related to the charge or at least to review them.
- Explain the charges to the client, your role and how the interview will be conducted.
- Confirm that client can read and write and knows the specific charges client is facing.
- If you are able to interview the client alone, disclose to the client all the information you have been able to obtain about the case against client including what state witnesses have said, etc.
- If a state officer is present, be careful not to disclose what witnesses or family members have told you.
- What prior dealings has the client had with the police on this or other matters?

### **2. Stage 2 – History (Listening):**

During this stage the lawyer uses open questions only, permitting the client to tell the story in his/her own words from the beginning with very little interruption.

- Ask the client to tell you what happened in client's own words.
- Try not to interrupt the client.
- Prepare topics to question further.
- Exercise caution at this stage if the interview is not private. In that case this stage may be short and the client will may need direction as to what to talk about and what not to talk about, and why not.

### **3. Stage 3 – Questioning**

During this stage the lawyer questions the client thoroughly, systematically and as detailed as possible using T-funnel technique (broad, narrow detail and scoop questions) to ensure thoroughness.

- What witnesses there were to the events? What is the probability of their testifying, their reliability and believability, their interest or bias?
- How the client has been treated or mistreated in custody including physically and threats.
- Was the client interrogated and what were the circumstances? What statement did the client make? Who wrote it? Was the client shown a copy of the statement and permitted to correct errors before signing it.
- Whether client has given a blood or breath or other bodily sample to the police.
- The client's consumption of alcohol and level of intoxication at the time of the offence (this may be a defense or diminish sentence).
- Where the client agrees or disagrees with the information provided by the state.
- Any information the client has that may be relevant to pre-trial release; e.g. health, family obligations, work, danger to the public.

### **4. Stage 4 – Advising**

- Advise the client of likelihood of interim release pending trial.
- Advise the client, on a preliminary basis, of likelihood of conviction and range of sentence and likely timeline to resolution, release etc.
- If appropriate at this time, advise client of availability/advisability and pros and cons of pleading guilty, and seek instructions.
- Advise the client about his/her rights or obligations with respect to the police, prosecution and the courts.
- Advise client how to conduct him/herself during continued custody including, if appropriate, to make no further statements to anyone (including fellow prisoners) unless obliged by law.

### **5. Stage 5 – Agreement and Adjourning**

- Reconfirm fee arrangement and how client may contact lawyer.
- Set out steps that lawyer will now be taking to further prepare (or not if in presence of state officer).
- Confirm date of next meeting with client and next court appearance.

## **C. AFTER THE INTERVIEW**

1. Make typewritten, clear detailed and full notes of meeting with client including your impressions of the client, a list of potential problems and a TO DO list.
2. Diarize next meeting with client and court dates.
3. Interview any additional witnesses disclosed at client interview.
4. Send letter to client (if appropriate and confidential) or to his/her family with client's permission confirming instructions, next meeting and court date.
5. Apply for interim release from custody if possible according to law (consider requesting this even if unlikely to succeed).

6. Visit the scene of the crime. It is always surprising what you will see more clearly.
7. Re-interview client (or at least visit at regular intervals) and re-interview witnesses if appropriate. Both you and the client will think of things after the first interview.
8. Pursue requests for disclosure of all evidence in accordance with the governing law.
9. Prepare evidence for trial. Ensure that defense witness affidavits have maximum weight by disclosing name, address, factors which strengthen their objectivity and observation and include the source of any hearsay information.
10. Prepare argument for trial. Be prepared to argue relative weight of defense evidence v. any bias, interest or lack of indicia of objectivity and observation in prosecution evidence. Some very good arguments can be made by drawing inferences from what is missing.
11. Prepare for sentencing.
12. Use documentation of any mistreatment of client, witnesses or defense counsel, denial of reasonable legal requests, rights or entitlements wherever possible to ensure client's rights are protected.

South Africa: Constitutional Court

You are here: SAFLII >> Databases >> South Africa: Constitutional Court >> 2006 >>

[2006] ZACC 5

| Noteup | LawCite

---

Campus Law Clinic (University of KwaZulu-Natal Durban) v Standard Bank of South Africa Ltd and Another (CCT1/06) [2006] ZACC 5; 2006 (6) SA 103 (CC); 2006 (6) BCLR 669 (CC) (31 March 2006)

---

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 01/06

THE CAMPUS LAW CLINIC  
(UNIVERSITY OF KWAZULU-NATAL  
DURBAN) Applicant

versus

STANDARD BANK OF SOUTH AFRICA LTD First Respondent

MINISTER FOR JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT Second Respondent

Decided on : 31 March 2006

## JUDGMENT

### THE COURT:

- [1] This is an application for leave to appeal against a judgment of the Supreme Court of Appeal (the SCA) in the matter *Standard Bank of South Africa Ltd v Saunderson and Others*.<sup>[11]</sup> The applicant applies in the alternative for direct access to this Court.
- [2] The applicant, the Campus Law Clinic at the University of KwaZulu-Natal, is a voluntary association having legal personality and the right to sue and be sued. Its objects include the promotion of legal aid to indigent persons in South Africa and the encouragement of practical legal education. The Campus Law Clinic was not a party to the proceedings in the SCA which led to the judgment against which it seeks leave to appeal nor was it involved as an amicus.
- [3] The first respondent is the Standard Bank of South Africa Ltd (Standard Bank). It was a party to the proceedings in the SCA against which the applicant seeks leave to appeal. The second respondent is the Minister for Justice and Constitutional Development (the Minister) who was also not a party to the proceedings in the SCA. The Standard Bank has indicated its intention to oppose both the application for leave to appeal and the application for direct access and lodged an answering affidavit.
- [4] The proceedings in the SCA were unusual. The litigation was commenced in the Cape High Court by the Standard Bank when it issued summons separately against nine defendants in circumstances where the defendants were in default in respect of the repayment of home loans. It intended, upon obtaining judgment against the defendants in the High Court, to proceed to execute against the mortgaged property in each case. In eight of the nine cases, the defendants had not filed a notice of intention to defend in the High Court and judgments would ordinarily have been given by the registrar

## Interviewing & Counselling Steps:

1. *Preparation for the interview:* Ensure you have all the required materials: sufficient paper, pens, water and glasses, the Office Manual, and a private area to interview the complainant.
2. *Starting the interview:* Ensure the complainant is comfortable. Explain your role as an independent IEC conciliator. Start with open-ended positive words (Eg, 'How can we help you?', and *not*, 'What is your problem?').
3. *Let the complainant tell the story:* Let the complainant talk without interruption whilst you listen carefully: maintain regular eye contact and jot down notes as client talks; list possible issues that arise; note client's demeanour, body language and voice inflections; resist the temptation to interrupt even if the story is disjointed; do not offer advice or draw conclusions at this stage, even if asked); avoid premature problem identification.
4. *Develop a chronology and time-line:* When the complainant has completed telling the story, develop a chronology (i.e., start at a given point and note down events in time sequence, step by step) for each of the potential dispute issues you had noted earlier. Once the main issue (the main cause of the complaint), and any other connected issues have been identified, confirm them with the client, and list them. It is also useful to draw a timeline at this stage.
5. *Writing the statement:* Write out the complainant's statement, and read it back to the complainant before he signs it.
6. *Proposed action:* This is followed by discussing the various available options flowing from the dispute(s) in issue, and explaining the advantages and disadvantages of each option. Advise the complainant on your opinion of the preferred option given the circumstances, and, if appropriate, choose an option despite the complainant's disagreement.
7. *Closing the interview:* Once the client has made an informed choice, confirm what further actions you will take and what actions the client must take, and explain the deadlines for these actions.

R Palmer

October 2012.

# Basic bookkeeping in Law Clinics

---

## 1 Introduction

Accounting is what the word implies – a “counting”. Accounting is the counting of all money coming into or going out of a clinic and of all money owed to or by that clinic. This information is recorded and used to show:

- 1 How much your clinic is worth;
- 2 How much money your clinic is making or losing;
- 3 How much money relates to every component of your clinic, such as your fees, computers, salaries, money in the bank, how much individuals owe you or you owe them, and so on.

## 2 How much your clinic is worth

To show you how much your clinic is worth, accountants prepare a balance sheet. This sheet lists the clinic’s assets and liabilities. As your clinic owns different assets and owes different amounts (what your clinic owes constitutes its liabilities) from year to year, month to month, and even day to day, the balance sheet will show what your clinic is worth, and what it owes, on a particular day, usually 28 February (the end of the financial year for many companies).

## 3 How much money your clinic is making or losing

To show how much money your clinic is making or losing, accountants prepare an income statement. This statement shows how much money your clinic earned by charging fees, earning interest, receiving commissions, etc. It also shows what the clinic’s expenses were over the same period. The difference between income and expenses constitutes the profit or loss of your clinic.

Unlike the balance sheet, which shows the assets and liabilities on a particular day, the income statement shows income and expenses over a period of time, usually a year, normally ending on 28 February.

## 4 The amount of money that relates to each component of your clinic

To produce the balance sheet showing how much your clinic is worth, and to produce the income statement showing the profit or loss your clinic is making, accountants use a system of accounts. An account shows the amount of money that relates to each component of the clinic – for example, salaries, cash, capital invested into the clinic, fees, and so on.

Essentially, an account is a count of a particular clinic component and records all transactions relating to that component. For example, the computer account records all money spent on computers; the bank account records all money coming into or going out of

the clinic; the fees account records all fees charged, discounts given and refunds made; and the salaries account records salaries paid. Accounts also relate to clients of the clinic and will show how much is owed by or to a particular client.

## 5 Debits and credits

To show the information discussed above, accountants use a system of debits and credits. Every account consists of a debit (Dr) column, on the left-hand side, and a credit (Cr) column, on the right-hand side, and looks something like this:

Dr	Name of Account	Cr

*Example of an account showing Debit and Credit columns*

Only two types of transactions are recorded:

- 1 Money going into or out of the clinic; and
- 1 Money owed to or by the clinic.

Depending on the type of account, debits and credits can be positive (that is, they add to or increase the account balance) or negative (that is, they deduct from or decrease the account balance). The recording of every transaction is done by debiting one account and crediting another.

Debits are indicated by entries in the left-hand (Dr) side of the account: for example,

Dr	Cash Account		Cr
7 May	Thabo Zuma	R100	

*A debit from the Cash Account*

Credits are indicated by entries in the right-hand (Cr) side of the account: for example,

Dr	Thabo Zuma Account		Cr
	7 May	Cash	R100

*A credit payment in the Thabo Zuma account*

## 6 Types of accounts

There are five types of accounts: asset, expense, income, liability and equity accounts.

### 6.1 Asset and expense accounts

For accounts dealing with assets or expenses (for example, computers, office furniture,

salaries, rent), a debit increases the account and can be seen as an addition. Hence, a debit of R1 000,00 in the computers account, the office furniture account, the salaries account or the rent account would indicate that R1 000 was spent on computers, office furniture, salaries or rent.

A credit in an account dealing with assets or expenses has the opposite effect. A credit in an asset or expense account will decrease the amount spent on that item. For example, if the computer account, the office furniture account, the salaries account or the rent account were credited with R1 000, there would be a decrease of R1 000 in the amount spent on those items. This could mean, for example, that

- 1 You have sold a computer for R1 000;
- 1 You received a cash discount of R1 000 on furniture purchased;
- 1 You overpaid a staff member by R1 000; or
- 1 Your landlord reduced your rent by R1 000 because of defective plumbing.

## **6.2 Income and liability accounts**

For accounts dealing with income (such as sales, fees or interest) or liabilities (such as capital borrowed from the bank, or money owing to a finance house for the purchase of a car), debits and credits have an effect opposite to the one they have on asset and expense accounts.

A debit decreases the amount counted in income and liability accounts, and a credit increases the amount counted in income and liability accounts. For example, a credit of R2 000 in the sales, fees, interest, bank(ABC Bank) or Finance House (XYZ Finance) accounts could indicate, for example, that

- 1 There have been additional sales of R2 000;
- 1 Additional fees of R2 000 have been charged;
- 1 Additional interest of R2 000 has been earned;
- 1 ABC Bank is owed an additional R2 000; or
- 1 XYZ Finance is owed an additional R2 000.

A debit of R2 000 in those same accounts could indicate that

- 1 Sales have been reduced by R2 000 because, for example, R2 000's worth of goods were returned;
- 1 Fees charged have been reduced by R2 000 because, for example, a quick-payment discount of R2 000 was given to a client;
- 1 Interest received has been reduced by R2 000 because of an overpayment of R2 000 interest;
- 1 ABC Bank was paid R2 000; or
- 1 XYZ Finance gave you a discount of R2 000 on the amount previously charged.

## **6.3 The equity account**

The equity account records how much the clinic owes its owner (or owners, if there are more than one). As such, it is really the same as a liability account and operates in exactly the same way: for example, debits decrease the account while credits increase it.

For example, if an owner increased her equity in her business by paying in R20 000, her equity account (also referred to as her capital account) would be increased (or credited) with R20 000. If she drew out R600 for her personal use, her equity account would be debited and,

therefore, decreased by R600.

## 6.4 The double-entry system

As previously indicated, accounting records transactions in which

- 1 Money goes into or out of the clinic; or
- 2 Money is owed to or by the clinic.

More than 200 years ago, accountants developed the double-entry system, in terms of which

Every transaction has a debit and an equal credit entry

Each and every transaction affects two accounts, and each transaction comprises a debit entry and a credit entry: for every debit entry there is a matching credit entry (this is the essence of the double-entry system of accounting). Where one account is debited, another account is credited with the same amount.

So, for example, if Ben is charged fees of R600 by your clinic:

- 1 The 'Ben' account will be debited with R600; and
- 1 The Fees account will be credited with R600.

If a second transaction occurs, for example, Ben pays R400 of the account:

- 1 The 'Ben' account is credited with R400; and
- 1 Cash account is debited with R400.

### Memory aid for the double entry system

If one knows one of the accounts to debit or credit, it is often easy to work out the other account, which must have the corresponding (and equal) credit or debit.

A simple way of remembering one of the accounts to debit or credit is the following:

- 1 All money coming in must be *deposited* and *debited*.
- 1 All money paid is usually done by *cheque* and is always *credited*.

If one remembers that *money owed* is always *credited* to the person who is owed the money, and that *sales, fees* or *commission* earned is always credited in the *sales, fees* or *commission account*, one can often work out the corresponding debit or credit account.

## 6.5 The trial balance

The balance of an account refers to the amount by which the total of the debits exceeds the total of all the credits in that account or vice versa. For example, if, in an account, you had two credits in an account of R3 000 and R4 000 and three debits of R2 000 each, the credits would exceed the debits by R1 000 (that is,  $(R3\ 000 + R4\ 000) - R6\ 000 = R1\ 000$ ) and the account would have a credit balance of R1 000.

As a result of every transaction's having both a debit and a credit, the total of all the debit balances will equal that of all the credit balances. A list of all the accounts showing their debit or credit balance is called the trial balance. In the trial balance, the total debits will equal the total credits. When these two amounts are made equal, the books are said to balance.

### 6.5.1 Getting started: Source documents

All transactions have a source. The source of any transaction is essentially a piece of paper that, for accounting purposes, is called the source document. Examples of such source documents are:

- 1 Cheque books;
- 1 Receipt books;
- 1 Bank statements;
- 1 Invoices.

#### (a) *The cheque book*



#### *General layout of a cheque*

The cheque is given as payment, and the details of the transaction are entered on the stub. The stub details are then inserted in the credit side of the *cash book* (which could also be called the *bank account*). From the cash book, the cheque entries are “posted” (entered in their corresponding opposite accounts).

For example, if a computer was bought for R5 000 and paid for in cash, it is the same as exchanging a cheque in the amount of R5 000 for the computer. The details on the cheque stub are entered in the credit side of the cash book. From there, the details are “posted” to the debit side of the computer account.

#### (b) *The receipt book*

Every clinic must have a receipt book. A receipt is given to anyone paying money to the clinic. Details from the receipt – for example, the amount paid, the name of the person, the date of the transaction, and so on – are entered in the debit side of the cash book and, from there, they are posted to the credit side of the client’s ledger.

#### (c) *Bank statements*

Bank statements record bank fees charged, interest paid, errors in deposits, all deposits into and all withdrawals from the bank account, and so on. These details are entered in the cash book.

#### (d) *Invoices*

Invoices are accounts given to persons who owe the clinic money for services rendered. The details of each invoice are entered in the sales or fees accounts and, thereafter, posted to the individual client’s accounts.

There are other source documents, such as bank-deposit slips, showing bank deposits, cash-sales slips, showing cash sales, and so on.

Source documents are the pieces of paper by means of which all entries come into existence. From the source documents, entries are recorded in the *books of prime entry*.

### 6.5.2 Books of prime entry

The books of prime entry are the journals and the cash book. The journal is like a diary, or an instruction book, and simply instructs the bookkeeper or accountant as to which ledger account must be debited and which must be credited.

For example, if a computer to the value of R5 000 is bought, on credit, from Morkels, the journal could look like this:

Date	Journal	Ref	Debit	Credit
3 Mar 2002	Dr Computer Account	C1	R5 000	
	Cr Morkels Account	M3		R5 000
	Being computer purchased on credit			

For easy reference, a clinic should have more than one journal. It may have several specialised journals dealing with, for example, fees, sales, cash payments, or cash receipts.

The cash book is a ledger account, like any other, that records cash transactions. Because there are so many cash transactions, the cash book is designed so that a lot of information can be obtained from it. Thus, the cash book usually has many columns showing items paid for or received.

Another way of keeping a cash book is to keep it in the form of two journals: a cash-receipts journal and a cash-payments journal. et.

### 6.5.3 Specialised journals

Once a transaction has taken place and is recorded on a source document, it can be recorded in a specialised journal (or book of prime entry). Specialised journals help accountants to group all the similar transactions together in one place.

There are four main Specialised Journals (that are used in this example):

- 1 Cash Receipts Journal, containing all transactions involving receipts of cash;
- 1 Cash Payments Journal, containing all transactions involving payment of cash;
- 1 Sales Journal/Debtors Journal, containing all credit sales;
- 1 Purchases Journal/Creditors Journal, containing all credit purchases.

Journals are usually totalled at the end of the month.

### 6.5.4 General ledger

Once the journals have been totalled at the end of the month, the accountant can transfer these totals to the General Ledger. The transfer of the totals of the journals to the General Ledger is known as *posting*.

The General Ledger contains T-shaped accounts that represent a debit side (the left-hand column) and a credit side (the right-hand column). There is no limit to the number of General Ledger accounts.

The General Ledger is cumulative. This means that the same General Ledger is used for the whole financial year. The following month's posting will be recorded after the previous month's closing balances.

### **6.5.5 Trial balance**

Once the General Ledger has been balanced, a trial balance can be drawn up. The trial balance is simply a list of the total of each account in the General Ledger. If the accountant has followed the double-entry system, the trial balance should balance because for every debit there must be a matching credit entry. The trial balance helps the accountant to pick up posting errors in the General Ledger.

## **6.6 Income statement and balance sheet**

The financial statements of a business are usually prepared annually, and form part of the annual report. However, there is no reason why they cannot be prepared more often.

### **6.6.1 Income statement**

The income statement shows the income of the business. It also shows the expenses incurred by the business during the period. The difference between the income and expenses is the net profit/loss.

Before preparing the balance sheet, and after preparing the income statement, the accountant must add the profit made (or deduct the loss incurred) from the owner's capital (or equity). This is also a convenient time to deduct any amount the owner has taken out (or drawn out) from the capital.

### **6.6.2 Balance sheet**

The balance sheet depicts the financial position of the business at a given moment in time. It is an illustration of the accounting equation,  $\text{Assets} = \text{Equity} + \text{Liabilities}$ .

## ANNEXURE O

The main components of a law clinic's constitution

1.     **NAME**  
The full and abbreviated name of the law clinic.
2.     **AIMS AND OBJECTIVES**  
The law clinic's short-term and long-term goals.
3.     **MEMBERSHIP**  
The staff and students who form part of the law clinic.
4.     **MANAGEMENT STRUCTURE**  
Setting out the management structure and members who act as office bearers.
5.     **MEETINGS**  
Number and types of meetings, including the annual general meeting (AGM), agendas, voting procedure, and minute-keeping.
6.     **APPOINTMENTS AND ELECTIONS**  
Methodology whereby office bearers of the clinic are appointed or elected, including the appointment of the head of the clinic.
7.     **STAFFING MATTERS**  
The appointment and duties of staff members, including disciplinary procedures.
8.     **FINANCIAL CONTROLS**  
Rules for maintaining financial records; signing of cheques; and financial statements and reports.
9.     **AMENDMENTS AND DISSOLUTION**  
The methodology and percentages required for the amending of the constitution, and regulations for the dissolution of the law clinic.

## BUDGETS

### *WHAT IS A BUDGET?*

Income is the money an organisation receives.

Expenses are the amounts of money an organisation pays out.

A budget sets out the amounts the organisation expects its income and expenses to be for a fixed period of time, such as a year. In other words, the budget tells you how much money the organisation thinks it will need to do its work in the next months or year, where it hopes some of the money will come from, and how much money it still needs to find.

The Management Committee must decide what should be included in the budget. Someone – usually the treasurer – must be given the job of drawing up the draft budget. The Management Committee – or the highest decision-making body – then has to approve this.

Once the budget has been prepared, it needs to be checked and discussed by other members of the executive. Then it must be approved by the trustees, management committee or whoever has authority in the organisation.

- The budget should be presented to the membership, either at the Annual General Meeting or in the Annual Report, and it should be used regularly as a way of monitoring the spending of the organisation.
- Budgets are also an important part of trying to raise money from funders. You cannot fool funders with made-up amounts. Amounts must be properly motivated, either in the funding proposal or in a note with the budget. An example of such a note is 'A motor vehicle is essential for the fieldworker because the settlements are, on average, 150 kilometres apart, and there is no public transport.'

### *WHAT PERIOD OF TIME SHOULD A BUDGET COVER?*

There is no fixed rule about this. A budget can cover any time from months to years. With an overall budget for an organisation, you need to budget for at least two years. This shows a sense of commitment and continuity.

If you are preparing a budget for more than one year, you must remember to add on a percentage to cover the cost of living increase for each year. This is called 'inflation'. So, if salaries cost R60 000 in 2004, they should cost R66 000 in 2005 if the cost of living goes up 10%. Find out what the cost of living is by reading the financial section of the newspapers or by asking an accountant.

When preparing a budget for more than a year, you need to remember that some projects could expand. The office may also set up new projects, bring out a new publication, get new staff and new equipment.

### *HOW TO CALCULATE EXPECTED EXPENSES AND INCOME*

Before you can work out what your organisation's expenses will be, and how much money you will need, you must be clear about the organisation's objectives, and how you plan to achieve them in the period for which you are preparing a budget.

### *ANALYSE WHAT THE ORGANISATION SPENDS MONEY ON*

Once you are clear about what work the organisation will do for the time the budget covers, you must write down everything that costs the organisation money. Start off with a list of everything you can think of. Afterwards you can put the items into groups or categories.

So your final list could look like this:

#### STAFF:

salaries  
medical aid  
pension fund  
UIF

#### ACCOMMODATION:

rent  
electricity, water

#### ADMINISTRATION:

stationery  
telephone, fax  
postage  
bank charges  
groceries

#### TRAINING DEPARTMENT:

transport  
food  
cost of venues  
accommodation for participants

#### EQUIPMENT:

rent / purchase  
repair and maintenance

#### PUBLICATIONS:

printing costs  
distribution costs

When you have worked out what you plan to spend money on, you can work out how much each item and each category costs. You can use your own records to work out the costs.

Stationery cost R550 per month in the past year in the Ezikweni Advice centre.

$$R500 + 10\% \text{ inflation} = R550 \text{ per month}$$

$$R550 \times 12 \text{ months} = R6\ 600 \text{ per annum}$$

But the records show that the number of clients who came to the Advice centre over the past six months increased by 10% every month. This means there will be an increase in spending of approximately 10% on stationery.

The calculation will then look like this:

$$R500 + 10\% \text{ inflation} = R550 \text{ per month}$$

$$R550 + 10\% \text{ increase in spending due to increase in clients} = R550 + R55 = R605 \text{ per month}$$

$$R605 \times 12 \text{ months} = R7\ 260 \text{ per annum}$$

### *DOING AN INITIAL BUDGET FOR AN ORGANISATION*

If this is the first time that your organisation is preparing a budget, you should make a list of the items and categories you think you will need to spend money on.

Remember to include those items which you will need in the beginning, but that you will not have to buy again, such as desks, chairs, kettle, filing cabinets, rent deposit, telephone installation, advertising jobs, computer and printer. This is called **capital outlay**.

**Running costs** are those costs that you spend on a regular basis to keep the organisation going.

It is important to include a section in your budget on **expected income**. This means the income that you expect to get from your own fundraising, or membership fees and so on.

You are then telling the funder what your needs are, and also how you expect to pay for these needs.

### *WRITING THE BUDGET*

When you have calculated your expected expenses and income, the next step is to write your budget down in a way that is useful for the organisation and for funders.

For the organisation's own use it should be possible to understand, at any time, how amounts were decided upon and what they are.

Motivations for particular items in the budget do not have to be written into the budget, but they can be part of the written proposal, or they can be attached to the budget as notes.

Where you think that something in the budget may be unclear to the reader, it is worth including a note to explain it. For example, when in the first year of the budget you have a fairly small amount, but in the second year it is much bigger, you should have a note explaining the big increase.

## WHAT SHOULD YOU SEND WITH YOUR BUDGET TO THE FUNDERS?

If you are preparing a budget to send to funders, you will have to send certain other documents with it. These could include:

- overall funding proposal
- project proposal
- annual report
- programme of action for the year to come
- audited statement
- copies of publications (if available)
- copies of newsletters (if available)

### A SIMPLE BUDGET FOR AN ADVICE CENTRE

EXPECTED EXPENDITURE (IN RANDS)		PER MONTH	2005/2006
Administration:	Auditors	250	3 000
	Bank charges	100	1 200
	Travel (work related)	1000	12 000
	Equipment and repairs	500	6 000
	Rent	1 200	14 400
	Stationery	300	3 600
	Telephone and postage	600	7 200
SUBTOTAL		3950	47 400
Staff:	Salaries (1 person)	3000	36 000
	Staff training	500	6 000
	SUBTOTAL		3 500
Publications	Printing	1250	15 000
	SUBTOTAL		1250
Training	Trainer's fee	600	7 200
	Travelling and sundries	300	3 600
	SUBTOTAL		900
OVERALL EXPENDITURE	TOTAL	9 600	115 200
EXPECTED INCOME (IN RANDS)		2005/2006	
Income generated:	Raffle		3 500
	Evening function * 3		6 000
Donations:	Membership fees		20 000
OVERALL INCOME	TOTAL		29 500

DATED: 1 March 2005



CAMPUS LAW CLINIC: STUDENT TIMETABLE

<u>MONDAY</u>	8:30 a.m.	-	Return Saturday Clinic Files
	9.30 - 10.30	-	Lecture (Moot Court)
	3.00 p.m.	-	Collect files for Tuesday file consultation
	3:15 - 4.30	-	Firm group meetings and action form completion and preparation for Tuesday's consultation
<u>TUESDAY</u>	Morning		Complete preparation for file consultation.
	12:10 - 1:05	-	Seminar Room A (FC)* Group 1 (Firms A,B,C)
	12.10 - 1:05	-	Seminar Room B (FC) Group 2 (firms D, E, F)
	1:05 - 1:50	-	Seminar Room A (FC) Group 3 (Firms G, H, I)
	1:05 - 1:50	-	Seminar Room B (FC) Group 4 (Firms J, K, L)
	12:10 - 1:05	-	Senior Seminar Room (FC) Group 5 (Firms M, N, O)
	1:05 - 1:50	-	Senior Seminar Room (FC) Group 6 (Firms P, Q, R)
	2:00 - 4:30	-	Students work on files in Clinic/Library, phone calls etc (unsupervised - own time)
<u>WEDNESDAY</u>	09:30 - 10:30	-	Lecture (Moot Court)
	10:35 - 11:25	-	Seminar Room A (FC) Group 9 LL.M
	12:10 - 1.05	-	Seminar Room A (FC) Group 7 (Firms S, T, U)
	12:10 - 1:05	-	Seminar Room B (FC) Group 8 (Firms V, W, X)
	3:00	-	DEADLINE FOR RETURN OF FILES
<u>FRIDAY</u>	11:25 - 12:10	-	Seminar (Moot Court) LL.B & LL.M's
	12:10 - 3:30	-	CAMPUS CLINIC - New Clients
<u>SATURDAY</u>	09:30 - 12:00	-	City Clinic - Ecumenical Centre Umlazi Clinic - Mangosuthu Technikon Austerville Clinic - Austerville Community Centre

\* FC = FILE CONSULTATION

LEGAL AID CLINIC: WEEKLY TIMETABLE

1994

TIME	<u>MONDAY</u>	ACTION
8:30 a.m.	Return of Saturday Clinic files - allocation to typing, etc.	
9:30 - 10:30 a.m.	LECTURE - (MOOT COURT)	Mr Palmer
11:00 a.m.	Financial Report	Miss Hansraj
GENERAL	Files for 3 p.m. allocation to students prepared.	Mr Kharwa
AFTER 3:00 p.m.	<u>All students must pick up their files for Tuesday file consultations and have their firm meetings.</u>	All students must personally fetch files and attend firm meetings.
3:15 - 4:30 p.m.	Firm group meetings and action form completion	All students
3:00 - 4:30 p.m.	Staff available for consultation	Ms Cohen
	<p align="center"><u>NOTES</u></p> <p>1. NO NEW OR RETURNING CLIENTS SEEN (EXCEPT FOR EMERGENCIES).</p> <p>2. STUDENTS MUST SIGN OUT EACH FILE LEAVING THE OFFICE.</p>	

LEGAL AID CLINIC: WEEKLY TIMETABLE

1994

TIME	<u>TUESDAY</u>	ACTION
8:30 a.m.	Files entered into Group Supervisor's record books	Mr Kharwa
12:10 - 1:05 p.m.	<u>SEMINAR ROOM A :</u> <u>FILE CONSULTATION</u>  Group 1 (Firms A, B, C)	Ms Cohen
12:10 - 1:05 p.m.	<u>SEMINAR ROOM B :</u> <u>FILE CONSULTATION</u>  Group 2 (Firms D, E, F)	Mr Van Dokkum
1:05 - 1:50 p.m.	<u>SEMINAR ROOM A:</u> <u>FILE CONSULTATION</u>  Group 3 (Firms G, H, I)	Mrs Padayachee
1:05 - 1:50 p.m.	<u>SEMINAR ROOM B:</u> <u>FILE CONSULTATION</u>  Group 4 (Firms J, K, L)	Mr Louw
12.10 - 1:05 p.m.	<u>SENIOR SEMINAR ROOM</u> <u>FILE CONSULTATION</u>  Group 5 (Firms M, N, O)	Ms Bacus
1.05 - 1.50	<u>SENIOR SEMINAR ROOM</u> <u>FILE CONSULTATION</u>  Group 6 (Firms P, Q, R)	Ms Bacus
2:00 - 4:30 p.m.	Students work on files in Clinic/Library, phone calls, letters etc.	All students
3:00 p.m.	L.L.M Students (Group 9 ) collect files personally	LL.M Students

NOTES

1. RETURNING CLIENTS SEEN ALL DAY - NEW CLIENTS ONLY IN EMERGENCIES

LEGAL AID CLINIC: WEEKLY TIMETABLE

1994

TIME	WEDNESDAY	ACTION
8:30 a.m.	Students work on files - all files to be handed in by 3:00 p.m.	All Students
9:30 - 10:30	<u>LECTURE</u> (MOOT COURT)	Mr Palmer
10:35 - 11:25	<u>FILE CONSULTATION</u> <u>SEMINAR ROOM A</u>  Group 9 - LL.M students	Mr Palmer
12:10 - 1:05	<u>SEMINAR ROOM A</u> <u>FILE CONSULTATION</u>  Group 7 (Firms S, T, U)	Ms Cohen
	<u>SEMINAR ROOM B</u> <u>FILE CONSULTATION</u>  Group 8 (Firms V, W, X)	Mrs Gcabashe
3:00 p.m.	<u>DEADLINE FOR RETURN OF</u> <u>TUESDAY FILES</u>  Students to return all files - no exceptions	All LL.B students
4:00 - 4:30	Files sorted out and delivered to Supervisors	Mr Kharwa
	Supervisors check and sign off files - to be returned by Thursday 12:00 p.m.	Mr Kharwa

NOTES

RETURNING CLIENTS SEEN ALL DAY.  
NO NEW CLIENTS SEEN

LEGAL AID CLINIC: WEEKLY TIMETABLE

1994

TIME	<u>THURSDAY</u>	ACTION
8:30 ONWARDS		
	Allocated Student files and Supervisors' files to be returned by 12:00 p.m. - LLM students (Group 9) also hand in their files by 12:00 p.m.	
12:00 p.m.	1. <u>DEADLINE FOR WEDNESDAY FILES</u> 2. All Tuesday files in for typing from Supervisors and LL.M's	All Supervisors
	- New post entered/messages - diarizing/other action	Mr Kharwa
11:10 a.m.	STAFF MEETING & Court dates/ prescription dates check	All Clinic Staff
2:00 p.m.	Files for typing: - Groups 1, 2, 6, 8, 9 - Groups 3, 4, 5, 7	Mrs Melville Miss Hansraj
3:00 - 4:30 p.m.	- General consultation for students - Letters/process on files signed	

NOTES

1. NO CLIENTS SEEN - UNLESS EMERGENCY

LEGAL AID CLINIC: WEEKLY TIMETABLE

1994

TIME		ACTION
<u>FRIDAY</u>		
8:30 a.m.	Typing of files continued - for completion by 12.00 p.m.	Mrs Melville Miss Hansraj
8:30 - 11:30	Returning Clients seen	Ms Cohen Mr Masikane
11:25 - 12:10	<u>SEMINAR: (MOOT COURT)</u> LL.B & LL.M Students	Mr Palmer
12:10 - 3:30	<u>CAMPUS CLINIC ("C" FILES)</u> New Clients	All students (see roster)
4:00 - 4:30	Files for Saturday Clinics to be collected	Mr Kharwa Mr Palmer Ms Bacus LL.M Students Ms Cohen
<u>SATURDAY</u>		
9:00 - 11:30	<u>CITY CLINIC ("M" FILES)</u> ECUMENICAL CENTRE HALL 20 St Andrews Street (off Russel Street, Durban)	All Students (see roster)
9:00 - 11.30	<u>AUSTERVILLE LAW CLINIC</u> Cnr Silvertree & Amora Rds	All Students (see Roster)
9:00 - 11.30	<u>UMLAZI LAW CLINIC</u> Mangosuthu Technikon Spinal Road	All Students (see Roster)

NOTE

1. Returning Saturday Clinic clients appointments must be arranged only for Saturday Mornings at the Saturday Clinics.
2. No Campus appointments for Saturday files must be made.

1994 CLINIC DUTIES IN GROUP ORDER

GROUP ONE

MARCH	5	SATURDAY	AUSTERVILLE
APRIL	8	FRIDAY	CAMPUS
MAY	14	SATURDAY	AUSTERVILLE
SEPTEMBER	17	SATURDAY	AUSTERVILLE
OCTOBER	21	FRIDAY	CAMPUS

GROUP TWO

MARCH	4	FRIDAY	CAMPUS
APRIL	16	SATURDAY	AUSTERVILLE
AUGUST	6	SATURDAY	AUSTERVILLE
SEPTEMBER	16	FRIDAY	CAMPUS
OCTOBER	15	SATURDAY	AUSTERVILLE

GROUP 3

MARCH	12	SATURDAY	UMLAZI
MAY	6	FRIDAY	CAMPUS
MAY	28	SATURDAY	UMLAZI
AUGUST	12	FRIDAY	CAMPUS
OCTOBER	1	SATURDAY	UMLAZI

GROUP 4

MARCH	11	FRIDAY	CAMPUS
MAY	7	SATURDAY	UMLAZI
AUGUST	20	SATURDAY	UMLAZI
SEPTEMBER	23	FRIDAY	CAMPUS
OCTOBER	22	SATURDAY	UMLAZI

GROUP 5

MARCH	26	SATURDAY	ECUMENICAL CENTRE
MAY	27	FRIDAY	CAMPUS
JULY	29	FRIDAY	CAMPUS
AUGUST	13	SATURDAY	ECUMENICAL CENTRE
OCTOBER	7	FRIDAY	CAMPUS

GROUP 6

APRIL	9	SATURDAY	ECUMENICAL CENTRE
MAY	13	FRIDAY	CAMPUS
AUGUST	5	FRIDAY	CAMPUS
AUGUST	27	SATURDAY	ECUMENICAL CENTRE
SEPTEMBER	30	FRIDAY	CAMPUS

GROUP 7

MARCH	25	FRIDAY	CAMPUS
MAY	21	SATURDAY	ECUMENICAL CENTRE
AUGUST	19	FRIDAY	CAMPUS
SEPTEMBER	24	SATURDAY	ECUMENICAL CENTRE
OCTOBER	14	FRIDAY	CAMPUS

GROUP 8

APRIL	15	FRIDAY	CAMPUS
MAY	20	FRIDAY	CAMPUS
JULY	30	SATURDAY	ECUMENICAL CENTRE
AUGUST	26	FRIDAY	CAMPUS
OCTOBER	8	SATURDAY	ECUMENICAL CENTRE

**GUIDELINES FOR GRANT SEEKERS: FORD FOUNDATION**

- The Ford Foundation requires the following in the initial letter of inquiry:
- The purpose of the project for which fund are being requested
- Problems and issues the proposed project will address
- Information about the organisation conducting the project
- Estimated overall budget for the project
- Period of time for which funds are requested
- Qualifications of those who will be engaged in the project
- They require the following information in the formal grant application:
- The organisation's current budget
- A description of the proposed work and how it will be conducted
- The names and curricula vitae of those engaged in the project
- A detailed project budget
- Present means of support and status of applications to other funding sources
- Legal and tax status
- (For these guidelines and further information, see the website of the Ford Foundation at [www.fordfound.org](http://www.fordfound.org))

# ANNEXURE S

## TEACHING MATERIALS STREET LAW MATERIALS

### 1.1.1 MOCK TRIAL MATERIALS

The case of *S v Jozini* is a mock trial involving a murder charge where self-defence is raised as a defence.

### ***S v JOZINI***

#### **PROSECUTION TEAM**

1. Prosecutor: Opening statement.
2. Witness: Jermaine Jones
3. Witness: Sgt Jean Naidoo
4. Witness: Dr Silver Khoza, Pathologist
5. Prosecutor: Examination in chief of Jermaine Jones
6. Prosecutor: Examination in chief of Sgt Jean Naidoo
7. Prosecutor: Examination in chief of Dr Silver Khoza
8. Prosecutor: Cross-examination of Jay Jozini, Accused
9. Prosecutor: Cross-examination of Johannes van Wyk
10. Prosecutor: Cross-examination of Pat Wung
11. Prosecutor: Closing argument.

#### **DEFENCE TEAM**

1. Defence lawyer: Opening statement.
2. Witness: Jay Jozini, Accused
3. Witness: Johannes van Wyk
4. Witness: Pat Wung
5. Defence lawyer: Examination in chief of Jay Jozini, Accused
6. Defence lawyer: Examination in chief of Johannes van Wyk
7. Defence lawyer: Examination in chief of Pat Wung
8. Defence lawyer: Cross-examination of Jermaine Jones
9. Defence lawyer: Cross-examination of Sgt Jean Naidoo
10. Defence lawyer: Cross-examination of Dr Silver Khoza
11. Defence lawyer: Closing argument.

#### **COURT OFFICIALS**

1. Judge
2. First assessor
3. Second assessor
4. Court orderly
5. Time-keeper

### **Stipulated Facts**

The case involves a shooting that occurred on 15th June 2006 on the corner of Musgrave and Fountain Streets.

The accused Jay Jozini and the victim Frank Williams were in the Choices Club that evening. Around 23h00 they became involved in an argument which was broken up by the barman. The accused then left the club followed by Williams. The shooting occurred in the street a short while later.

The State has indicted the accused for murder and he has entered a plea of not guilty on the basis of self-defence.

### **Witnesses:**

The prosecution may call the following witnesses:

1. Jermaine Jones
2. Sgt. Jean Naidoo
3. Dr Silver Khoza, Pathologist

The defence may call the following witnesses:

1. The accused, Jay Jozini
2. Johannes Van Wyk
3. Pat Wung

Exhibits and Materials: The following may be available:

1. Gun
2. Box containing five cartridges and one empty cartridge case.
3. Diagram
4. Medico-legal post-mortem examination report

**IN THE HIGH COURT  
DURBAN AND LOCAL COASTAL DIVISION**

**THE STATE**

**vs**

**JAY JOZINI**

A male aged 30 years  
hereinafter called the Accused

---

**INDICTMENT**

---

The Director of Public Prosecutions for the Province of KwaZulu Natal presents and gives the Court to be informed that the Accused is guilty of the crime of:

**MURDER**

IN THAT upon or about 15 June 2006 at or near the Choices Club in the district of Durban, PROVINCE OF KWAZULU NATAL, the accused did unlawfully and intentionally kill FRANK WILLIAMS by shooting him in the chest with a firearm.

**N Padayachee**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

**IN THE HIGH COURT OF SOUTH AFRICA  
DURBAN AND COAST LOCAL DIVISION**

**THE STATE**

**vs**

**JAY JOZINI**

---

**LIST OF WITNESSES**

---

1. JERMAINE JONES  
300 MANOR DRIVE  
MANOR GARDENS  
DURBAN
2. DETECTIVE WARRANT OFFICER JEAN NAIDOO  
MURDER AND ROBBERY UNIT  
SA POLICE SERVICES  
DURBAN
3. DR SILVER KHOZA  
SA MEDICO-LEGAL LABORATORIES  
86 GALE STREET  
DURBAN
4. JAY JOZINI  
500 MUSGRAVE STREET  
DURBAN
5. JOHANNES VAN WYK  
6 BERIA CRESCENT  
DURBAN
6. PAT WUNG  
ST GEORGES HOTEL  
ST GEORGES STREET  
DURBAN

**1. STATEMENT OF JERMAINE JONES : PROSECUTION WITNESS**

My name is Jermaine Jones. I am a bank manager. I live at 300 Manor Drive in Manor Gardens. On the evening of the 15th June 2006 at approximately 23h05 as I was walking along Musgrave Street towards Fountain Street I heard shouting. I saw that about 30 metres in front of me, opposite the entrance to the Choices Club, two men were arguing. I could not hear what they were saying but they were obviously angry. The short thin man (the accused) had his back towards me, and the tall man (Williams) appeared to be moving towards him. They seemed to be about 3 metres apart. I did not want to become involved so I stopped where I was. Because of the light and distance I am not sure how far apart they were, but I would say it was about 3 metres. They seemed to get closer, almost a metre or two apart when a shot rang out and the tall man fell to the ground. The short man just stood there. People rushed out of the Choices Club. The short man dropped his gun and tried to run up the street, but they grabbed him and took him back to where the tall man had fallen. They held him until the police arrived.

I was able to see what happened because there is a floodlight outside the Choices Club. There is also a street light on the corner of Musgrave and Fountain Streets, as well as another street light between where I was standing and the two men.

**2. STATEMENT BY DETECTIVE WARRANT OFFICER JEAN NAIDOO:**

**PROSECUTION WITNESS**

My name is Jean Naidoo. I live at 400 Lighthouse Road on the Bluff in the district of Durban. I joined the SAPS in 1985.

On the 15th June 2006 at about 23h10 I was on a routine motor patrol when I received a radio message that a man had been shot on the corner of Musgrave and Fountain Streets. I proceeded to the scene and observed several people holding a man, the accused, Jay Jozini. Another man, Frank Williams, was lying on the pavement with an apparent bullet wound in his chest. I called an ambulance and Williams was taken to Addington Hospital.

The corner of Musgrave and Fountain Streets is a business and residential area for people living in private houses. Fountain Street is a one-way street with five traffic lanes and two parking lanes. Fountain Street is approximately 25 metres wide and Musgrave Street is 12 metres wide. The street lighting is typical for a residential area.

I searched the area and found a .38 calibre Smith and Wesson revolver, approximately one metre from Williams's head containing five unspent cartridges and one spent cartridge case. There was the smell of fresh gun powder. No other weapons were found in the area. Williams's body was lying on the pavement almost in front of the entrance to the Choices Club. No other weapons were found on or near Williams. The revolver was labelled, sealed and sent off as an exhibit.

I handcuffed the accused and put him in the rear of my squad car. I asked him what had happened and he said that he and Williams had got into an argument in the club but refused to say what the argument was about. He said that Williams had wanted to go outside and fight and that he, the accused, had acted in self-defence.

The accused said nothing further until at the police station. When he was being charged

he said: "You know, Williams threatened me last week too". When asked to make a further statement he refused to do so.

**3. STATEMENT OF DR SILVER KHOZA, SENIOR GOVERNMENT PATHOLOGIST: PROSECUTION WITNESS**

My name is Dr Silver Khoza and I am a Senior Government Pathologist in Durban. I hold the MBCh (For Path) (UCT) degree. I live at 100 Northway, Durban North. On 16 June 2006 at 13h45 at the SAPS Medico-Legal Laboratory, Gale Street, Durban I examined the body of Frank Williams, a deceased adult male. I completed a medico-legal post mortem examination report in which I showed that death was caused by a single gun-shot wound through the heart and left lung.

My pathological findings were:

- (1) A gunshot entry wound, at nipple level of chest, two centimetres to the right of the left nipple, perforating the chest muscles and thorax.
- (2) A gunshot exit wound, at the third lumbar vertebrae (L3) level, 2cm to the left of the spine, perforating the back muscles.

The bullet had caused gunshot wounds to the following:

The heart, by perforating the left ventricle;

The lower lobes of the left lung; and

The left side of the diaphragm.

My additional findings and observations were the following :

- (1) After analysis the blood showed the presence of 0.12g/100 ml alcohol.
- (2) Around the area of the bullet entrance wound there were propellant (gunpowder) deposits causing tattooing.
- (3) The right-hand knuckles of the deceased had clear bruises.

**4. STATEMENT OF JAY JOZINI: ACCUSED**

My name is Jay Jozini and I live at 500 Musgrave Street in Durban. I am 30 years old and am employed as a Investment Broker by Simunye Investment Corporation. I have worked for them for the past eight years.

On 15 June 2006 I got off work late at 21h30 pm. After work I went home and changed and then walked down to the Choices Club which is not very far from where I live.

At the bar I met Frank Williams, whom I had seen a week earlier when we were involved in an argument involving an import-export business deal. This was on the 8 June 2006. I had gone down to the club at about 22h00. Williams was already there and I had sat

down on a bar stool not far away. He accused me of embezzling \$25 000 that he had invested in a business deal involving our firm. I told him that the business deal had gone bad and there was nothing that I could do to retrieve his investment. He went into a rage calling me a liar and grabbed my arm and told me to give him back his money. Again I told him that there was nothing that I could do. The bar man Pat Hung told him to knock it off. He eventually went back to his stool. Later that night said that he was going to "make me pay for this".

On the night of 15 June 2006 I again arrived at the club at about 22h00 and had a couple of drinks. Williams was there again. He kept saying things like "When are you going to pay me back?" and "Let's settle this outside". I got tired of his nonsense and left at about 23h00.

I had just walked out of the club and was leaving the entrance when I heard the door open and Williams walked out. He shouted at me. "Let us settle this you lousy crook" and "You've had it coming". I told him that I did not want to fight and backed away. He kept coming closer and closer. He then punched me and lunged at me with his hands. I thought he had a knife, so I pulled out my pistol and shot him. I had seen him with a knife before. Williams was a game hunter who often bragged about his exploits in the wild. He often used to demonstrate his hunting technique with a hunting knife. I honestly thought that he was going to stab me. That was the reason why I shot at him. He is known to become quite aggressive and brutish whenever he has been drinking. I once saw him beat up a guy outside the Choices Club a few months before I had had trouble with him

I was once convicted of drunk driving when I was twenty years old and was put on one year probation. I have never been convicted of any other crimes.

## **5. STATEMENT OF JOHANNES VAN WYK : DEFENCE WITNESS**

My name is Johannes Van Wyk and I live at 6 Berea Crescent, Durban. I have known both Jozini and Williams for about two years. I am a social friend of Jozini and see him about once a week on average. I usually see him at the Choices Club because we are both regular patrons. Jozini works for Simunye Investment Corporation. I also knew Williams, but only because he was a regular at the Choices Club. I used to see Williams about once a month. He was an Abattoir owner.

I know about the reputations of both Jozini and Williams. Jozini is a small slender man with a reputation at the Choices Club, and elsewhere, as being a quite soft-spoken retiring type of person who "would not hurt a fly". My opinion of Jozini is the same. Williams was a huge muscular guy with a reputation at the club of being very aggressive. He became involved in arguments particularly when he had drunk a lot. My experience of Williams was the same.

I have never seen Williams with a knife, nor have I ever been told that Williams had a knife. I was in the Choices Club the previous week 8 June 2006 when Jozini and Williams got into an argument over money involving an investment deal. Williams walked over to Jozini, leaned over towards him and told him to give back the money he had invested in a deal. Jozini said that he could not give back the money and the barman eventually intervened to break up the argument. I never saw Williams grab Jozini but he looked very threatening.

On the night of 15 June 2006 I was in the club when Williams again began to pick on Jozini. This was at about 23h00. It was another argument concerning the investment deal. Jozini again denied that he had stolen any money and the barman had to tell them to calm down. Soon afterwards Jozini left and he was immediately followed by Williams. After a couple of minutes I heard a loud bang. We all ran outside and saw Williams lying on the pavement and Jozini standing over him with a gun. When he saw us Jozini ran away. He was caught by some of the patrons and held until the police came.

It is a shame that Jozini is being prosecuted because he is a quiet, decent person.

## **6. STATEMENT BY PAT WUNG : DEFENCE WITNESS**

My name is Pat Wung. I am the Barman for the Choices Club and live at the St. Georges Hotel, St Georges Street, Durban. I was in the Choices Club from about 21h00 on the evening of the 15th June 2006. The usual crowd comes in from the neighbourhood. The club is quite smart and has snooker tables in the back. It serves cocktails and exotic foods like caviar and other delicacies.

When I arrived Jozini and Williams were already there as were several other people. Everyone was drinking socially. Jozini and Williams were mixing their drinks. I served them about four drinks each between 21h00 and 23h00. Around 23h00 Jozini and Williams got into an argument. I did not hear what they were saying, but they were definitely arguing about something. I went over and told them to knock it off which they did. Things returned to normal. The previous week on 8<sup>th</sup> June 2006 I had had to break up a similar argument between them.

After a minute or two Jozini left, followed two or three minutes later by Williams. About a minute later I heard a loud bang. We all ran outside and I saw Jozini standing over Williams holding a gun. He looked at us, dropped the gun and started running up the street towards the parking garage. A few of the guys chased him and brought him back. He just stood there until the police arrived and did not try to resist. He never said anything except "I didn't want to fight him".

## **APPLICABLE LAW**

### **PRIVATE DEFENCE**

Private defence includes self-defence, defence of property or defence of other people. A person who is unlawfully attacked by another man can use reasonable force in self-defence. The force used in private defence must be reasonable and must stop once the attack ends. If there is a way for the threatened person to flee instead of fighting he or she should do so. In exceptional cases if killing the attacker is the only way of protecting oneself, then deadly force may be used. The Courts, however, are very strict on the use of deadly force.

## STREET LAW LESSONS

### 1.2.1. Lesson 1 Introducing human rights

#### 1.2.1.1 *Lesson plan*

Outcomes: At the end of this lesson you will be able to:

Explain what rights should be in a bill of rights  
Decide what are the most important human rights  
Explain which rights are in the Universal Declaration of Human Rights (UDHR)

Content: Small group work: listing rights (10 minutes)  
Small group work: Ranking human rights (5 minutes)  
Reports back from groups (20 minutes)  
Comparing students' lists with the UDHR (10 minutes)  
Discussion (5 minutes)

Resources: Photocopy of UDHR  
Blackboard/flipchart

Checking questions: Question and answer on UDHR

## 1.2.2 Lesson 2 Why we need laws: The "Pen Game" .

[See above para 13.9]

Aim: The objective of the game is for participants to be able to explain why we need laws in society and what kinds of laws exist in a democratic society.

Procedure: The game is played as follows:

- Step 1:* The educator announces that the need for some sort of legal system will be illustrated playing the "pen game".
- Step 2:* The educator divides the participants into teams. The educator designates the first participant in each row on the left as a team captain and makes sure that each participant has a pen (or pencil or any other suitable object). Once the captain in each row has a pen or similar object the participants are told to begin playing.
- Step 3:* Participants get confused by the lack of directions and soon some may become angry. After a minute or two the educator stops them and tells them that they are not playing the game properly.
- Step 4:* The instructor tells the participants that the rules of the game require the team captains to pass the pens or other objects to the team members on their right. The participants begin playing again but the educator stops the game and tells them that they are still not playing it properly.
- Step 5:* The instructor tells the captains to hold the pen or other object in their left hand and then pass it to the person on their right. The instructor again stops the game and tells the participants that they are still not playing the game properly.
- Step 6:* The instructor tells the captains to hold the pen or other object in their left hands; then to put it into their right hands; and then to pass it to the person on their right. The instructor again stops the game and tells the participants that they are still not playing the game properly.
- Step 7:* The instructor tells the captains to hold the pen or other object in their left hands; then put it into their right hands; and then to put it into the left hand of the person on their right. The instructor again stops the game and tells the participants that they are still not playing the game properly.
- Step 8:* The instructor tells the captains to hold the pen or other object in their left hands; then put it into their right hands; then to put it into the left hand of the person on their right; and then to leave out people who are not wearing rings. The instructor then points to one team and declares them the winner.
- Step 9:* When the "winners" are announced, most of the remaining participants are likely to be angry about how the game was played. This anger is used as a basis for discussion. The instructor can begin with the following questions: what made you angry about the way the game was played? Why was it unfair?

*Step 10:* The answers should be directed to emphasize five main elements:

- 10.1 A game cannot be enjoyed without a clear and consistent set of rules announced to all players before it begins. The same applies to laws in society. (for example, the courts will sometimes refuse to enforce laws which are written in an unclear way or are too vague).
- 10.2 The rules cannot be changed in the middle of the game without feelings being hurt. The same applies to laws. (for example, laws cannot be changed to make previously lawful conduct unlawful without warning people about the change beforehand. People cannot be charged with doing something which only became a crime after they did it).
- 10.3 Participants cannot be excluded from games without good reason. For instance, groups of individuals should not be arbitrarily discriminated against on the basis of race, gender, sex, ethnicity, religion, nationality or any other unreasonable reason.
- 10.4 The winners of the game were arbitrarily selected. In a democratic society people have access to impartial, independent courts where judges listen to the arguments of both sides and apply the law to the facts to reach a decision.
- 10.5 The participants were not consulted about the rules – they were imposed and the instructor behaved like a dictator. In democratic societies people elect representatives who make the laws that govern them.

Time frames:

1. Introduction to game: 3 minutes.
  2. Play the game: 7 minutes.
  3. Debrief the game: 10 minutes.
  4. General discussion: 5 minutes.
- Total: 25 minutes

Answers:

1. The participants should be encouraged to see the relationship between the rules of the pen game and laws in a society. Before leaving the game, the instructor should try to develop a definition of what law should be, based on the experience of the participants in the game. Obviously the theory of what the law *should be* is not always what *it actually is* in practice. The difference between theory and practice will often come up when using interactive teaching methods.
2. A definition of law may read as follows: *the set of rules a group or community uses to control the conduct of the people within it. These rules should be clear, consistent, fair, should not change without notice, and should treat people equally*).

### 1.2.3            Lesson 3            Taking a stand: Capital punishment

“Taking a stand” requires students to stand up for their point of view by physically standing up and verbally justifying their position. A controversial topic should be chosen.

As an example, students might be asked who are in favour and who are against the death penalty. Students would then have to take a stand under a placard stating “in favour”, “against” or “undecided”, and would have to articulate their opinions on the death penalty.

The following procedure can be followed:

*Step 1:* Prepare placards with headings: “in favour”, “against” and “undecided” or other suitable headings.

*Step 2:* Introduce the topic of the death penalty. Tell students that they may move their position if they hear a particularly good or bad argument.

*Step 3:* Request students to take a stand under the placard that reflects their point of view.

*Step 4:* Get students to justify their position by making a single argument – alternatively giving students under each placard an opportunity to express their point of view.

*Step 5:* Get any students who moved their position to give their reasons for doing so.

*Step 6:* Test the consistency of the student’s positions by introducing questions involving extreme examples (e.g. in a death penalty debate check whether those against would say that even Adolf Hitler who was responsible for killing millions of people should not be given the death penalty – had he been caught alive).

*Step 7:* Summarize the discussion and conclude.

To assist the students in articulating their viewpoints in a logical manner they may be required to use a formula like the pres formula (see para13.17).

“Taking a stand” not only teaches students the skill of articulating an argument but also requires them to clarify their values.

### 1.2.4            Lesson 4            Thinking on your feet – the ‘PRES’ formula

The Pres formula has been developed to help students, particularly law students, to construct a logical argument when asked to think on their feet.

## 1.2.5 Lesson 5

### The case of the kidney patient

Soobramoney suffers from a serious kidney disease which requires regular kidney dialysis treatment for his survival. If he is not given treatment he will die. Soobramoney cannot afford treatment from private clinics and approaches a state hospital for dialysis treatment. The hospital refuses to treat him because dialysis treatment is very expensive and it has limited resources to provide such treatment. The hospital says that he does not meet its criteria for treatment.

The hospital only has a limited number of kidney dialysis machines. The hospital's policy states that patients suffering from irreversible chronic kidney disease will only qualify for dialysis if the patient is a good candidate for a kidney transplant. However, in order to be eligible for a transplant the patient must not have other significant diseases. Unfortunately Soobramoney suffers from other significant diseases.

Soobramoney brings an urgent application in the South African high court for an order directing the hospital to provide dialysis treatment for him. He bases his application on three provisions of the bill of rights in the South African constitution:

Article 11                      Everyone has the right to life.

Article 27(1)(a) Everyone has the right to health care services, within the available resources of the state.

Article 27(3)                      No one may be refused emergency medical treatment.

The state opposes Soobramoney's application on the grounds of three provisions of the Bill of Rights:

Article 27(1)(a) As set out above.

Article 27(3)                      As set out above.

Article 36(1)                      Any right in the bill of rights may be limited if the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

The hospital also argues that Soobramoney's case does not qualify as 'emergency' medical treatment.

### **Questions**

1. If you were the lawyers for Soobramoney what arguments would you make?
2. If you were the lawyers for the hospital what arguments would you make?
3. If you were the judges what would your decision be?

#### *1.2.5.1 Lesson plan: The case of the kidney patient*

Outcomes: At the end of this lesson students will:

- 1.1 Be able to explain why it may be difficult for citizens to enforce socio-economic rights in a country with scarce resources.
- 1.2 Have participated in a case study and observed or experienced how lawyers construct and present arguments.

- 1.3 Have participated in a case study and observed or experienced how judges make their decisions.
- 1.4 Be able to explain how arguments are presented in a court of law.

Content:

- 2.1 Instructor to introduce facts of *Soobramoney v Minister of Health, KwaZulu-Natal* and ensure that everyone understands them (5 minutes).
- 2.2 Divide the participants into three large groups: one to act as lawyers for the applicant; one to act as lawyers for the state; and one to act as the judges (2 minutes).
- 2.3 Participants in large groups to be subdivided into smaller groups of not more than five per group (3 minutes).
- 2.4 Small groups to prepare arguments for their side of the case. The judges will consider possible judgements but will have to listen to the arguments before passing a judgement (10 minutes).
- 2.5 Groups divided into mini-moot triads: set up groups of three in mini-courts with a lawyer for the applicant, a lawyer for the state, and a judge in each (5 minutes).
- 2.6 Judges conduct mini-courts in triads (three min for lawyers for applicant, three min for lawyers for the state, one min reply by applicant, three minutes for judges to give judgements (10 minutes).
- 2.7 Judges report back on their decisions (5 minutes).
- 2.8 Debrief the lesson by asking the participants what they thought of the judgements and what they experienced in their different roles (5 minutes).

Resources: Photocopy of *Soobramoney v Minister of Health, KwaZulu-Natal*.

Checklist: Questions and answers on access to health care and limited resources.



1.2.7            Lesson 7            The second-hand clothes arrest

A man in plain clothes stops Mr. Soni while he is walking down the street with a box full of second-hand clothes that had been given to him by his employer. The man says he is a policeman and asks Mr. Soni to give him his full name and address. He also asks Mr. Soni where he obtained the clothes. Unless the policeman identifies himself Mr. Soni refuses to give his name and address. The policeman gets angry with Mr. Soni and takes him to the police station for questioning.

1. Role-play the incident between the policeman and Mr. Soni in the street, and at the police station.
2. Is Mr. Soni required by law to answer any questions? Why might he decide to answer questions? Give reasons for your answer.
3. If you were Mr. Soni what would you have done?
4. Should people have the right to refuse to answer questions by the police? Why or why not? If people have the right to keep quiet should the police tell them about it? Why or why not?

*1.2.7.1 Lesson plan: The second-hand clothes arrest*

Aim: The objective of the exercise is for participants to be able to explain the powers of the police and the rights of citizens during arrest and for participants to know what to do if they are arrested.

Procedure:

- 1.1 Introduction: ask participants has been, or seen someone, arrested.
- 1.2 Divide participants into groups of police officers and Mr Sonis.
- 1.3 Preparation for role play: Participants prepare in groups of police officers and Mr Sonis for second-hand clothes arrest role play.
- 1.4 Conduct role play: Role play conducted by two participants chosen from groups.
- 1.5 Debrief role play.
- 1.6 Small group discussions on question.
- 1.7 Reports back.
- 1.8 General discussion.

Time frames:

- 2.1 Introduction: 5 minutes.
- 2.2 Divide into groups: 3 minutes.
- 2.2 Preparations for role play: 10 minutes.
- 2.3 Conduct of role play: 7 minutes.
- 2.4 Small group discussions: 5 minutes.
- 2.5 Reports back: 10 minutes.
- 2.6 General discussion: 5 minutes.

Answers: For example, see *South Africa Street Law: Educator's Manual* 97-99.

## 1.2.8 Lesson 8      The case of the complaining accused

Conduct the following simulation:

[Commentator: Professor Ojo and five fellow accused appear before the high court for a court hearing. The prosecution was not ready for trial and the case is adjourned once again for six weeks. After the adjournment the following exchanges took place between the defence lawyer, the court and Professor Ojo]:

### Scene 1

Defence lawyer: 'Yesterday I went to the prison and requested to talk to my client in private. However, the officials turned down my request. As my client wants to make an appeal to the court, I pray that the court will hear my client's appeal'.

Presiding judge: 'We are tired of repeatedly hearing his complaints. We don't want to hear anymore'.

Professor Ojo: 'If I can't complain about my grievances to this court, then who can i complain to? After all, it is this court which ordered my detention. When a person who is put in prison by the court is mistreated, shouldn't the court listen to his grievances and take action to stop his suffering?'

Presiding judge: 'We have finished. You can sue the person who has wronged you. Policemen, move them out!'

[Two policemen begin to move Professor Ojo and his fellow accused out]

Professor Ojo: 'Who shall I appeal to? Where shall I sue?'

[As professor Ojo reaches the courtroom door]

Presiding judge: 'Policemen, take the other defendants out but bring back Professor Ojo!'

Presiding judge [to Professor Ojo]: 'Sit down! You don't deserve respect. Policemen, make him sit down'.

[Professor Ojo sits down].

### Scene 2

[Commentator: The court continues to hear the other cases. After a while the presiding judge turns to Professor Ojo and the following exchanges and events occur]:

Presiding judge [to Professor Ojo]: 'Why are you not behaving yourself like the other prisoners? Why don't the others complain like you?'

Professor Ojo: 'How can you say this when you have not even heard my complaint?'

Second judge: 'Do you know the procedure followed by the court?'

Professor Ojo: 'I have not come here to take an exam, but to get justice'.

Second judge: 'Why are you ranting here?'

Professor Ojo: 'I only appealed for justice. Is appealing for justice ranting?'

Presiding judge: 'Policemen, handcuff him and put him in leg irons'.

[Two policemen handcuff professor Ojo's hands].

Presiding judge: 'Let him stay in this condition until the court gives a different order'.

[Professor Ojo is led out of court in handcuffs and leg irons by two policemen].

Simulate the exchanges between the presiding judge, second judge, defence lawyer and Professor Ojo; role play the policemen; and answer the following questions:

### Questions

1. Were any of Professor Ojo's human rights violated by the court? If so which?
2. Were any international human rights conventions violated by the court?
3. Were any human rights provisions in the constitution violated by the court?
4. Was the conduct of the court in accordance with the provisions of international human rights law?
5. Did Professor Ojo violate any rights of the judges?

#### *1.2.8.1 Lesson plan: The complaining accused*

Outcomes: At the end of this lesson you will be able to:

- 1.1 Explain how judges should deal with complaining accused persons.
- 1.2 Have participated in a role play illustrating the problems that may be experienced by a complaining accused person who appears in court for a case to be adjourned.
- 1.3 Identify from a role play which international and constitutional human rights of an accused person have been violated.
- 1.4 Explain what judges should do if an accused alleges that he has been mistreated by the prison authorities.

Content:

- 2.1 Brainstorm meaning of contempt of court (5 minutes).
- 2.2 Preparation for role play: ask for volunteers to simulate and play the roles of the presiding judge, second judge, the defence lawyer, Professor Ojo and the two police officers (5 minutes).
- 2.3 Simulation and role play: Conduct the simulation and role play using the volunteers (5 minutes).
- 2.4 Debrief simulation and role play: questions on feelings of various players (5 minutes).
- 2.5 Small group discussions: each group to discuss one question concerning the simulation and role play (10 minutes)
- 2.6 Reports back: groups report back on their discussions and say what judges should have done (10 minutes).
- 2.7 General discussion (5 minutes)

Resources: 'The case of the complaining accused'

Checklist: Question and answer on the rights of an accused.

### 1.2.9 Lesson Plan: A parliamentary committee hearing on the banning of cigarette advertising

Aim: The object of this exercise is to enable participants to understand how a legislative hearing is conducted.

Procedure:

- 1.1 The instructor must prepare the clause of a proposed law banning cigarette advertisements.
- 1.2 Brainstorming: who would support and oppose the proposed ban on cigarette advertising – select 2 in favour and 2 against? (5 minutes).
- 1.3 Participants are divided into two groups in favour of banning cigarette advertising, two groups against and a group of parliamentary committee members ('home groups') (5 minutes).
- 1.4 Home groups meet to discuss the arguments they will make to the parliamentary committee. (parliamentary committee discusses issues and questions for groups) (10 minutes).
- 1.5 Home groups are subdivided into multi-interest groups and meet with representatives from each home group to hear each other's viewpoints. (parliamentary committee continues discussions) (15 minutes).
- 1.6 Multi-interest group members return to home groups, report back, refine the group's arguments for the parliamentary committee, and elect representatives to present their arguments (parliamentary committee continues discussions) (10 minutes).
- 1.7 Home groups have two minutes each to present arguments to the committee. (the committee has one minute per home group for questions) (12 minutes).
- 1.8 Parliamentary committee has two minutes to consider its decision and one minute to present it (3 minutes).

Time frames:

- 2.1 Brainstorming: 5 minutes.
- 2.3 Division into groups: 5 minutes.
- 2.4 Meetings of home groups: 10 minutes.
- 2.5 Meetings of multi-interest groups: 15 minutes.
- 2.6 Report back to home groups: 10 minutes.
- 2.7 Presentation of arguments: 12 minutes.
- 2.8 Decision by parliamentary committee : 3 minutes.

Resources: Copy of the proposed law to ban cigarette advertisements

Checking questions: Questions to check that participants understand how parliamentary committee hearings may be conducted

- 1.2 Ethics materials
- 1.3 Interviewing and counselling materials
- 1.4 Legal writing materials
- 1.5 Case analysis and trial preparation materials

# ANNEXURE U

## ALTERNATIVE DISPUTE RESOLUTION MATERIALS

[For short introductory lessons]

### Contents:

1.6.1 Negotiation materials

1.6.2 Mediation materials

### 1.6.1 *NEGOTIATION MATERIALS*

#### 1.6.1.1 GENERAL NEGOTIATION LESSON PLAN

1. Topic: Introduction to negotiation
2. Outcomes: At the end of this lesson you will be able to:
  - 2.1 explain the guidelines for negotiation
  - 2.2 conduct a negotiation
  - 2.3 appreciate the value of negotiation
3. Content:
  - 3.1 The instructor needs to know the guidelines for negotiation
  - 3.2 The instructor should divide the participants into pairs to play the roles of the different parties
  - 3.3 The instructor must hand out the scenarios to the parties so that they can prepare for their roles
  - 3.5 The instructor should invite the parties to conduct the negotiation
  - 3.6 The instructor should debrief the negotiation
  - 3.7 Reference: see above para 20.1.
4. Format:
  - 4.1 Focuser: 5 minutes
  - 4.2 Explanation of negotiation guidelines: 10 minutes
  - 4.3 Preparation for negotiation: 10 minutes
  - 4.4 Conducting the negotiation: 15 minutes
  - 4.5 Debrief: 5 minutes
5. Activities:
  - 5.1 Focuser: picnic exercise
  - 5.2 The instructor explains the negotiation guidelines
  - 5.3 The instructor divides participants into pairs to prepare for the negotiation
  - 5.4 The participants conduct the negotiation in pairs
  - 5.5 The instructor debriefs the participants
6. Resources:
  - 6.1 Case study handouts on Annie Achebe

6.2 Overhead projector for negotiation guidelines

6.3 flip chart and pens for debrief

7. Check list questions:

Checking questions:

7.1 What is negotiation?

7.2 What are the negotiation guidelines?

7.3 What is the value of negotiation?

### 1.6.1.2 NEGOTIATION GUIDELINES

1. Preparing for the negotiation

- Understand the facts and issues
- Decide what is the least and most you can expect
- What is not negotiable?
- What does the other side care about?
- What is in both your interests?

2. The negotiation process

- Try to build a good relationship with the other side
- Be friendly and cordial
- Speak about what you would like (e.g. I think, I feel)
- Find out what the other side would like
- Brainstorm solutions or options to solve the problem
- Do not make unfair or unrealistic demands
- Do not become abusive, over-emotional or threatening
- Offer to give something away in exchange for something from the other side

3. Moving and reaching an agreement

- Identify your common interests
- Try to move the process if the other side does not
- Consider offering a compromise
- Try to make the agreement as fair as possible
- Use objective criteria to measure compliance with the agreement

### 1.6.1.3 NEGOTIATION EXERCISE: THE CASE OF ANNIE ACHEBE

1. Facts for Annie Achebe

Annie Achebe is a 46-year old woman who lives in Kwa Mashu Township, north of Durban. She is employed as a teacher in Kwa Mashu. She is married to Ben Achebe, forty nine, whose occupation is that of a long-distance truck driver. They have been married for twenty years, and have three children: a boy, Thabo - 17, a girl, Lungile - 15, and the youngest child, also a boy, Siphon - 11. On the 24<sup>th</sup> of September 2004, Annie receives a telephone call from a woman who identifies herself only as Clarissa. Clarissa tells Annie that she has been Ben's girlfriend for the past three years, and has just been told that she is HIV-positive. She further tells Annie that she has seen no other men during these three years, and that the source of the infection must be her husband, Ben.

On his return home that evening, Ben reeks of alcohol and it is obvious that he has been drinking heavily. Annie then confronts Ben with this information, and tells him that she will not have sexual

intercourse with him again until he has an HIV/AIDS test, and also agrees not to consort with Clarissa or any other woman outside their marriage in the future. On hearing this Ben flies into a rage and assaults Annie by striking her with his fists on her face and body, causing severe bruising to her eyes, and bloodying her nose. In the course of this assault, the three children come to the aid of their mother and try to pull their father away from Annie. Ben then assaulted his three children as well, resulting in all three children receiving cuts and bruises. Annie tries to leave the house to go to her family home in Umlazi, but is prevented from doing so by her husband who locks her in his bedroom. Later that evening Ben forces Annie to have unprotected sex with him, and again assaults her when she tries to object.

Early the next morning, 25<sup>th</sup> of September, while Ben is still asleep, Annie sneaks out of the house with her three children, and takes them to a shelter for abused women in Durban. On the same day the shelter arranges for Annie to be examined by the District Surgeon, and for the three children to receive medical treatment. The shelter staff bring Annie to your Law Clinic for advice on the options open to her. Annie says she still loves her husband and wants to go back to him. She tells you it is Ben's day off and asks you to call him and negotiate to ensure that she and the children can return to a safe environment. You telephone Ben and he agrees to meet with you.

## 2. Facts for Ben Achebe

Ben Achebe is a 49-year old man who lives in Kwa Mashu Township, north of Durban. He is employed as a long-distance truck driver. He is married to Annie Achebe, 46, whose occupation is that of a school teacher. They have been married for twenty years, and have three children: a boy, Thabo - 17, a girl, Lungile - 15, and the youngest child, also a boy, Siphon - 11.

On the 24<sup>th</sup> of September 2004, after returning from a strenuous drive to and from Johannesburg, Ben has a few drinks at a local tavern in order to relax before returning home. Ben returns home in the evening and looks forward to a quiet time with his family. When he enters the house Annie immediately starts shouting at him and says that she has just received a telephone call from a woman called Clarissa who had told her that she had been Ben's girlfriend for the past three years. Clarissa was very distressed and had mentioned that she had just been told that she is HIV-positive. She told Annie that she had seen no other men during these three years, and that the source of the infection must have been Ben. Annie is very angry and tells Ben that she will not have sexual intercourse with him again until he has an HIV/AIDS test, and also agrees not to consort with Clarissa or any other woman outside their marriage in the future.

Ben also becomes very angry. He is very upset at being accused of being HIV positive, and that instead of welcoming home as a loving wife, Annie has also accused him of being unfaithful. His anger is aggravated by the alcohol he has consumed, and in his rage he assaults Annie by striking her with his fists on her face and body, causing severe bruising to her eyes, and bloodying her nose. In the course of this assault, the three children come to the aid of Annie and try to pull Ben away from her. In his rage Ben also assaults the three children, resulting in all three receiving cuts and bruises. Annie tries to leave the house to go to her family home in Umlazi, but Ben tells her that he is sorry and that he loves her and the children. He decides to lock the bedroom door so that they can talk things over because he does not wish to lose his wife and children. Later that evening when they are in bed Ben tries to have sex with Annie. In the past they have always had unprotected sex because Annie respects his belief that if you really love someone sex should be 'skin against skin'. However, this time Annie objects and says that Ben must first give her an undertaking not to sleep with other women (including Clarissa), and must use a condom if he wishes to have sex with her. Still under the influence of alcohol Ben gets angry and assaults her again.

When Ben wakes up the next morning, 25<sup>th</sup> of September, he discovers that Annie and the three children have left him. It is his day off and at about midday he receives a telephone call from a

University Law Clinic. The Clinic staff member says that Annie still loves him and had asked the Clinic to assist her in negotiating with him so that she and the children can return home to a safe environment. Ben agrees to meet with the Clinic staff member.

## 1.6.2 MEDIATION MATERIALS

### 1.6.2.1 GENERAL MEDIATION LESSON PLAN

1. Topic: Introduction to mediation
2. Outcomes: At the end of this lesson you will be able to:
  - 2.1 Explain the steps in a mediation
  - 2.2 Conduct a mediation
  - 2.3 Appreciate the value of mediation
3. Content:
  - 3.1 The instructor needs to know the different steps in a mediation
  - 3.2 The instructor should divide the participants into triads (groups of three) with two participants playing the roles of the parties and the third the role of the mediator
  - 3.3 The instructor must hand out the scenarios to the parties so that they can prepare for their roles
  - 3.4 The instructor should take the mediators outside and brief them as to their roles by checking that they understand the steps in a mediation
  - 3.5 The instructor should invite the mediators to rejoin the parties in triads to conduct the mediation
  - 3.6 The instructor should debrief the mediation
4. Format:
  - 4.1 Focuser roleplay: 5 minutes
  - 4.2 Explanation of steps in mediation: 10 minutes
  - 4.3 Preparation for mediation: 10 minutes
  - 4.4 Conducting the mediation: 15 minutes
  - 4.5 Debrief: 5 minutes
5. Activities:
  - 5.1 Focuser: Three students roleplay a lawyer and a mediator interviewing a client
  - 5.2 The instructor explains the steps in a mediation
  - 5.3 The instructor divides participants into triads to prepare the mediation
  - 5.4 The participants conduct the mediation in triads
  - 5.5 The instructor debriefs the participants
6. Resources:
  - 6.1 Case study handouts on Annie Achebe
  - 6.2 Overhead projector for steps in a mediation
  - 6.3 Flip chart and pens for debrief
7. Check list questions:

Checking questions:

  - 7.1 What is mediation?
  - 7.2 What are the steps in a mediation?
  - 7.3 What is the value of mediation?

### 1.6.2.2 STEPS IN A MEDIATION

#### Step 1: Introduction

The mediator makes the parties relax and explains the rules. The mediator's role is not to make a decision but to help the parties reach an agreement. The mediator explains that he or she will not take sides.

#### Step 2: Telling the story

Each party tells what happened. The person bringing the complaint tells his or her side of the story first. No interruptions are allowed. Then the other party explains his or her version of the facts.

#### Step 3: Identifying the facts and issues

The mediator attempts to identify the facts and issues agreed upon by the parties. This is done by listening to each side, summarizing each party's views, and asking if these are the facts and issues as each party understands them.

#### Step 4: Identifying alternative solutions

Everyone thinks of possible solutions to the problem. The mediator makes a list and asks each party to explain his or her feelings about each solution.

#### Step 5: Revising and discussing solutions

Based on the expressed feelings of the parties, the mediator revises possible solutions and helps the parties to identify a solution to which both parties can agree.

#### Step 6: Reaching agreement

The mediator helps the parties reach an agreement with which both can live. The agreement should be written down. The parties should also discuss what will happen if either of them breaks the agreement.

### 1.6.2.3 MEDIATION EXERCISE: THE CASE OF ANNIE ACHEBE

#### 1. Facts for Annie Achebe:

Annie Achebe is a 46-year old woman who lives in Kwa Mashu Township, north of Durban. She is employed as a teacher in Kwa Mashu. She is married to Ben Achebe, forty nine, whose occupation is that of a long-distance truck driver. They have been married for twenty years, and have three children: a boy, Thabo - 17, a girl, Lungile - 15, and the youngest child, also a boy, Siphon - 11. On the 24<sup>th</sup> of September 2004, Annie receives a telephone call from a woman who identifies herself only as Clarissa. Clarissa tells Annie that she has been Ben's girlfriend for the past three years, and has just been told that she is HIV-positive. She further tells Annie that she has seen no other men during these three years, and that the source of the infection must be her husband, Ben.

On his return home that evening, Ben reeks of alcohol and it is obvious that he has been drinking heavily. Annie then confronts Ben with this information, and tells him that she will not have sexual intercourse with him again until he has an HIV/AIDS test, and also agrees not to consort with Clarissa or any other woman outside their marriage in the future. On hearing this Ben flies into a rage and assaults Annie by striking her with his fists on her face and body, causing severe bruising to her eyes, and bloodying her nose. In the course of this assault, the three children come to the aid of their mother and try to pull their father away from Annie. Ben then assaulted his three children as well, resulting in all three children receiving cuts and bruises. Annie tries to leave the house to go to her family home in Umlazi, but is prevented from doing so by her husband who locks her in his bedroom. Later that evening Ben forces Annie to have unprotected sex with him, and again assaults her when she tries to object.

Early the next morning, 25<sup>th</sup> of September, while Ben is still asleep, Annie sneaks out of the house with her three children, and takes them to a shelter for abused women in Durban. On the same day the

shelter arranges for Annie to be examined by the District Surgeon, and for the three children to receive medical treatment. The shelter staff bring Annie to your Law Clinic for advice on the options open to her. Annie says she still loves her husband and wants to go back to him. She tells you it is Ben's day off and asks you to call him and negotiate to ensure that she and the children can return to a safe environment. You telephone Ben and he agrees to meet with you. Your negotiations fail and Ben agrees that a mediator should be called in to assist him and Annie reach an agreement.

## 2. Facts for Ben Achebe:

Ben Achebe is a 49-year old man who lives in Kwa Mashu Township, north of Durban. He is employed as a long-distance truck driver. He is married to Annie Achebe, 46, whose occupation is that of a school teacher. They have been married for twenty years, and have three children: a boy, Thabo - 17, a girl, Lungile - 15, and the youngest child, also a boy, Siphon - 11.

On the 24<sup>th</sup> of September 2004, after returning from a strenuous drive to and from Johannesburg, Ben has a few drinks at a local tavern in order to relax before returning home. Ben returns home in the evening and looks forward to a quiet time with his family. When he enters the house Annie immediately starts shouting at him and says that she has just received a telephone call from a woman called Clarissa who had told her that she had been Ben's girlfriend for the past three years. Clarissa was very distressed and had mentioned that she had just been told that she is HIV-positive. She told Annie that she had seen no other men during these three years, and that the source of the infection must have been Ben. Annie is very angry and tells Ben that she will not have sexual intercourse with him again until he has an HIV/AIDS test, and also agrees not to consort with Clarissa or any other woman outside their marriage in the future.

Ben also becomes very angry. He is very upset at being accused of being HIV positive, and that instead of welcoming home as a loving wife, Annie has also accused him of being unfaithful. His anger is aggravated by the alcohol he has consumed, and in his rage he assaults Annie by striking her with his fists on her face and body, causing severe bruising to her eyes, and bloodying her nose. In the course of this assault, the three children come to the aid of Annie and try to pull Ben away from her. In his rage Ben also assaults the three children, resulting in all three receiving cuts and bruises. Annie tries to leave the house to go to her family home in Umlazi, but Ben tells her that he is sorry and that he loves her and the children. He decides to lock the bedroom door so that they can talk things over because he does not wish to lose his wife and children. Later that evening when they are in bed Ben tries to have sex with Annie. In the past they have always had unprotected sex because Annie respects his belief that if you really love someone sex should be 'skin against skin'. However, this time Annie objects and says that Ben must first give her an undertaking not to sleep with other women (including Clarissa), and must use a condom if he wishes to have sex with her. Still under the influence of alcohol Ben gets angry and assaults her again.

When Ben wakes up the next morning, 25<sup>th</sup> of September, he discovers that Annie and the three children have left him. It is his day off and at about midday he receives a telephone call from a University Law Clinic. The Clinic staff member says that Annie still loves him and had asked the Clinic to assist her in negotiating with him so that she and the children can return home to a safe environment. Ben agrees to meet with the Clinic staff member. The negotiations fail and Ben asks that he and Annie meet with a mediator from your Clinic to try and reach an agreement.

# ANNEXURE V

## STREET LAW PROGRAMME STANDARDS

The following standards were suggested at the Final Street Law Conference for Eastern And Central Europe and the Former Soviet Union, sponsored in Budapest, Hungary by the Open Society Institute in 2000.

1. Requirements for curriculum and lesson content
  - The topic is appropriate (i.e., close to the interest, culture, and mentality of the target groups).
  - The topic is substantive and relates to important ideas.
  - The topic is current.
  - The ordering of topics/lessons is coherent and meaningful.
  - The teaching methods are interactive, engaging and support the topic.
  - The curriculum builds skills.
  - The lessons/curriculum outlining the required human and materials resources.
2. Requirement for teachers/trainers
  - The teacher/trainer has an understanding of the street law mission.
  - The teacher/trainer understands and can use interactive methods.
  - Training materials are available and the teacher/trainer has experience using them.
  - The teacher/trainer has participated in trainings focusing on communication skills.
  - The teacher/trainer has the necessary legal knowledge.
  - The teacher/trainer has a psychological disposition appropriate for street law.
3. Requirements for teaching methods, including supervision
  - Teaching methodologies are all-inclusive, interactive and varied.
  - Teaching methods are clear and understandable.
  - Teaching methods are student-oriented and engage students in active work.
  - Teaching methods are appropriate to the learner group.
  - Teaching methods initiate interest in the topic.
  - Teaching methods help to maintain an engaging pace of activities.
  - Teaching methods foster both skills and knowledge development in learners.
  - Teaching methods involve ongoing monitoring and feedback of learner experiences.
4. Requirements for law students
  - Law school students participating in a street law-type clinic are no younger than in their second year of law school.
  - Law students are trained for a minimum of four hours in the use of interactive teaching methodologies.
  - Law students are trained to organize mock trials and special events with learners.
  - Law students are trained in the preparation of lesson plans.
  - Law students participate in regular meetings and debriefings with their trainer or supervisor (recommended once a week).
  - Law school seminars for law students include a practical component.
  - Law students teach a minimum of ten lessons in a community setting over the course of the street law-type clinic. A total of 20 lessons is recommended.
  - Law students teach the same students within these community settings over the course of the clinic.
  - Law students' work is supervised within the community setting a minimum of twice during the semester.
  - Law students participate in an evaluative process of their work.

## 5. Requirements for student assessment

- Law student and pupil assessment is regular.
- Assessment methods used on law students and pupils are complementary and holistic. Law student assessment includes individual work, preparation for giving lessons, participation in the law school seminar, performing lessons in the community setting.
- Assessment methods are based on the knowledge, skill and attitudes of law students and pupils.

## 6. Requirements for documentation

### 6.1 Documentation should be provide to:

- Administrators of street law-type clinics
- University administrators
- Administrators in community settings, such as principals and prison supervisors

### 6.2 Documentation techniques include:

- Scenarios of individual street law lessons, using written and visual recordings.
- Lists of participating community-based agencies, such as schools, and law student participants.
- Lists of community-based learners, such as high school students.
- Supervision records for law students.
- Letters of communication between street law-type clinics and community-based organizations, donors and others.
- Opinions of the program from participants.

## 7. Requirements for the environment

- Agencies to sponsor the program, should include law schools, law student associations, or NGOs.
- Trainers should be well qualified to teach using interactive methods.
- Teachers interested to receive training in street law-type methods should be accredited.
- Community-based learners, should include secondary school pupils.
- Trainers should have legal knowledge.
- Administrators in community-based agencies should be receptive to the programme.

## 8. Program evaluation

### 8.1 Formative evaluation:

- Involves regular feedback from participants and law students.
- Feedback should be reviewed and discussed by law students and their supervisors.

### 8.2 Summative evaluation:

- Should take place half yearly at the conclusion of a clinic program.
- Should involve input from supervisors, law students and participants.
- Qualitative and quantitative techniques include feedback forms, questionnaires, interviews and focus group discussions.

### 8.3 Independent impact evaluation:

- Should seek to determine outcomes from law students and participants.
- Should involve public opinion surveys.
- Should be conducted by an independent evaluator or researcher.

[Note: Participants refers to the recipients of the programme, such as school children, prisoners, community people etc.]

## ANNEXURE W

Statement: Ace Khumalo

I am a professional soccer player and I live in Umlazi. On 1 April 1992, a Sunday afternoon at about 2 o'clock, I was walking in End Street going south towards Yengeni Street. I was coming from a soccer practice which had finished at 1.30 pm.

As I was passing house number 3 End Street I noticed Baby Khuse sitting under a big tree in the yard. I smiled at her and waved and greeted her by saying "How you doing, Baby". After I had proceeded about 30 paces further I heard a shout behind me.

On turning I noticed David Mbele coming towards me. He was very angry and shouting incoherently. He came towards me in an aggressive manner and was almost running. When he came right up to me I turned around to face him. He shouted at me and asked me why I was talking to his girlfriend without his permission. While I was arguing with David Mbele I noticed his sister Clarissa Mbele standing at the gate of the house about 30 metres away together with Baby Khuse. They appeared to be watching us. I could add that when I passed the house I noticed three people sitting under the tree and the male appeared to be lying down looking towards the house away from the road.

I explained to David, who appeared to be fairly drunk, that I was merely greeting Baby in a friendly fashion and I greeted only her because I had not seen who the other people were. This did not appear to satisfy him and he made a movement towards his pants and pulled out a home-made knife. As he did this I pulled my own knife out and opened it and stabbed him once in the chest before he could stab me.

He fell down and I immediately started to run away. As I was running I noticed a number of men pursuing me from the direction of number 3 End Street. I threw my knife into the bushes and ran to the Umlazi railway station where I hid until nightfall.

Later that night I caught a train to Durban Central and went to my father who was living at Dalton Hostel. I explained to my father what had happened and early the next morning, my father took me to the CR Swart Police Station where I was taken into custody.

I did not mean to kill David Mbele and have not had any problems with him in the past. I knew that Baby Khuse was David's girlfriend, and had no intention of flirting with her.

---

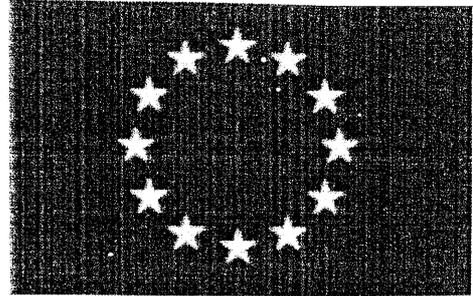
**Trial Plan: Ace Khumalo**

	<b>(1) Elements of Crime (Murder)</b>	<b>(2) Witnesses (State)</b>	<b>(3) Witnesses (Defence)</b>	<b>(4) Other Evidence</b>	<b>(5) Possible Defences</b>	<b>Notes</b>
1	UNLAWFUL ACT	1. Clarissa Mbele 2. Baby Khuse	1. Ace Khumalo 2. Mr B Khumalo (Father)	Other witnesses for State?	Self-defence	Reason knife thrown away  No attempt to escape-handed himself over
2	INTENTION (dolus directus)	1. Clarissa Mbele 2. Baby Khuse	1. Ace Khumalo	Knife- Ace? Knife- David Mbele?	Do not admit	Fall back position if no acquittal = culpable homicide
3	CAUSATION	1. Clarissa Mbele 2. Baby Khuse 3. Dr Pillay	Own expert?	1. Post-mortem report 2. Chain of evidence	Novus causa?	1. Consult with expert (pathologist) Re: PM Report  2. Alcohol content D's blood
4	HUMAN BEING	N/A	N/A	N/A	N/A	Admission in terms of s220 of Criminal Procedure Act, 1977





The Government of the Republic of Malawi  
Ministry of Justice and Constitutional Affairs



European Union  
THE DEMOCRATIC GOVERNANCE PROGRAMME (DGP)



OSISA  
OPEN SOCIETY INSTITUTE FOR SOUTHERN AFRICA



OPEN SOCIETY  
FOUNDATIONS

**FINAL REPORT: AN OVERVIEW OF THE LAW  
RELATING TO PRE-TRIAL DETENTION  
IN MALAWI**

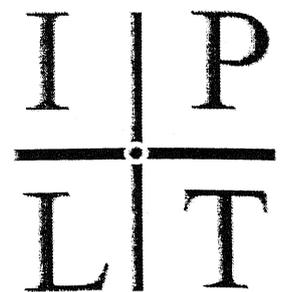
LILONGWE • BLANTYRE • MZUZU

JUNE 2012

SOUTHERN AFRICA  
LITIGATION CENTRE



UNIVERSITY OF  
KWAZULU-NATAL  
INYUVESI  
YAKWAZULU-NATALI



INSTITUTE FOR  
PROFESSIONAL LEGAL  
TRAINING



## 1. EXECUTIVE SUMMARY:

In 2011, a range of problems and concerns regarding pre-trial detention in Malawi was identified, which led to this initiative to address the most serious of these shortcomings.

Three training sessions in three centres in Malawi – Lilongwe, Blantyre and Mzuzu – were conducted for prosecutors, magistrates and allied legal officials covering various pre-trial aspects, such as section 20 of the CPEC; the 48-hour rule; pre-trial custody time limits, prosecution time limits, and aspects of the Child Justice and Legal Aid Act were covered, focusing especially on various amendments to relevant legislation that took effect in 2010. The three training workshops consisting of three days in each of the centres, were held from 13-23 June 2012, and the feedback received from participants was overwhelmingly positive.

The feedback received was categorised to provide informed input to address future resource and training needs.

## 2. TERMS OF REFERENCE

*2.1 Introduction:* In an effort to more fully understand the situation in respect of the use of pre-trial detention in Malawi, the Open Society Initiative for Southern Africa (OSISA) commissioned an audit of police stations, court/s and prison precincts to gather information on both the legal status of awaiting trial detainees, and issues pertaining to conditions of incarceration.

At a seminar to launch the results of the Audit in July 2011, stakeholders identified a range of interventions which could potentially reduce the pre-trial population and the length of time in custody persons spend pre-trial.

As part of the process of taking these recommendations forward, OSISA in partnership with the Democratic Governance Programme (DGP) of the European Union wishes to implement a three-day training course for prosecutors, magistrates and paralegals, aimed at informing them of all relevant law relating to the management of pre-trial detainees. Three training sessions are to be conducted-in Lilongwe, Blantyre and Mzuzu respectively- of three days each, for approximately 90 participants in total (approximately 30 per group – prosecutors, paralegals and magistrates combined).

*2.2 Training topics:* The training covered the following topics, and the general objective of the training was to ensure that the participants achieved basic levels of competencies in knowledge, skills and values in the areas referred to below:

- The Criminal Procedure and Evidence Code (CPEC) – Sec.20:
- CPEC – the 48 hour rule in general, scope and implications.
- CPEC – Sec. 161(a) Pre-trial custody time limits.
- CPEC – Sec.303 Pre-trial and directions hearing (High Court only).
- CPEC – Sec. 261 Prosecution time limits.
- CPEC – Sec. 113 Search without warrant, r.w.s 35 of the Police Act.
- CPEC – Sec.161 Diversion and other non-custodial remedies.
- The scope of the trial – Sec.42 of the Const.
- Trial within a reasonable time - Sec.42 of the Const.
- Child Justice Act (Awaiting Commencement).
- Local Court Act (Awaiting Commencement).
- Legal Aid Act (Awaiting Commencement).
- Police Act (Operational already).

### 3 TRAINING MATERIALS:

The participants were provided with a comprehensive training manual of 184 pages, which included relevant statutes and statute- extracts. (See Annexures A [cover page] and B [manual]).

### 4 TRAINING:

4.1 *Centres:* A total of 87 participants – magistrates, prosecutors, prison officials and justice administration officials were trained in the following centres:

- Blantyre: 13, 14 and 15 June 2012;
- Lilongwe: 18, 19 and 20 June 2012;
- Mzuzu: 21, 22 and 23 June 2012.

4.2 *Presenters:* The course presenters at each of the venues were:

- Blantyre: Dr M Nkhata (UNIMA) & Adv Robin Palmer (IPLT).
- Lilongwe: Mr S Madise (UNIMA) & Adv Robin Palmer (IPLT).
- Mzuzu: Mr C Amuli (UNIMA) & Adv Robin Palmer (IPLT).

4.3 *Programme*: The training programme followed at each centre was as follows:

DAY 1:

08h30: Introduction & The Constitutional Dimension.

09h30: 1. Arrest & Detention.

10h30: TEA

10h45: 2. The 48-hour Rule.

12h00: 3. Pre-Trial Custody time-limits.

13h00: LUNCH

14h00: 4. High Court Pre-Trial & Directions.

15h15: TEA

15h30: 5. Prosecution time-limits.

16h30: CLOSE

DAY 2:

08h30: 6. Search Warrants.

09h30: 7. Diversion and other non-custodial remedies.

10h30: TEA

10h45: 8. Scope of the Trial.

12h00: 9. Trial within a reasonable time.

13h00: LUNCH

14h00: 10. Bail.

15h15: TEA

15h30: 10. Bail [continued].

16h30: Close.

DAY 3:

08h30: 11. Child Care, Protection & Justice.

10h30: TEA

10h45: 11. Child Care, Protection & Justice [continued].

12h00: 12. Legal Aid.

13h00: LUNCH

14h00: Close.

\*\*\*

#### 4.4. *Feedback and Evaluation:*

- Feedback forms: An example of the Feedback and Evaluation form completed by each participant is attached as Annexure C.
- Actual Feedback forms: The complete feedback forms of each of the participants is included in Annexure D.
- Categorised summary of comments: A summary of the feedback comments of the participants (extracted from the evaluation and feedback forms) are set out below- categorised in three sections: (1) Training, (2) Resources and (3) General:

##### (1) COMMENTS ON THE TRAINING

The comments on the training were positive and many participants found the training to be beneficial. Participants already had knowledge of the materials covered; however found the refresher course in procedure and new legislation very useful.

There was a lot of material covered over the three days and many participants felt that more time was needed to adequately cover that volume of information.

There was a general consensus in the comments that more of these courses should be held, especially when new laws are promulgated and all relevant stakeholders should be trained in the new law. More departments in the criminal justice system, especially those in rural areas, should be exposed to this sort of training.

The presenters were considered excellent and helpful. The participants found the method of comparing Malawian law to other countries was helpful for identifying gaps in the Malawian law.

The course materials were found to be comprehensive and easy to understand, well researched and articulated. One participant felt that the manual should have contained questions in an essay form for participants to practice with once they have left the course. The manual would be useful in the day-to-day duties of some of the participants.

## (2) COMMENTS ON THE NEED FOR RESOURCES

Many of the participants found accessing legislation difficult. This is seen as a problem, especially in rural areas, because, if they do not have access to new or amended legislation, the courts may still be applying outdated legislation.

One participant noted that it is a general problem in rural courts whenever there is new legislation, because they are only supplied if they attend a seminar on that Act. However, this is not always done to all rural courts and they are always behind with accessing new law.

There is a need to provide referral resources e.g. cases, reports (law), new amendments to legislation to rural courts and police centres.

The specific legislation that was unavailable were: the Criminal Procedure and Evidence Code, the Child Care, Protection and Justice Act and the Constitution of Malawi.

## (3) GENERAL COMMENTS

There were several participants who felt that allowances were not properly distributed. One noted that allowances were not distributed uniformly as some did not get an allowance for the three days and some did if they were from Blantyre.

One participant commented that the organisers did not take into account the devaluation of Malawi currency and resorted to the old rate, which affected the allowances.

A few noted that they experienced problems with transport over the three days. Several participants felt that they should have been given a certificate of attendance of their participation in the course\* [\*to be forwarded].

Participants made several comments about the law of Malawi and its application. These included:

- that there is a need for better adherence to time limits in the criminal justice system; there is a need for better integration between stake-holders;
- to reevaluate allowing paralegals the ability to represent clients who would otherwise be unrepresented and a greater emphasis on diversion for children in conflict with the law.

## 5. FINANCIAL REPORT:

The final financial report will follow on receipt of final tranche of funding.

## 6. RECOMMENDATIONS:

The following recommendations are made for consideration:

- 6.1 *Statutes and materials audit:* An audit of the content and availability of key Malawian pre-trial statutes, documents and materials be done, with a view to assisting to update relevant materials to include all latest amendments, and also to annotate selected guides and statutes for the guidance of practitioners, paralegals, NGOs, magistrates, judges, justice officials, prosecutors, police and prison officials.
- 6.2 *Best-Practice Guidelines:* Best-practice guidelines in key areas be developed to ensure consistent and uniform practices across Malawi, including detailed guides to relevant legislation (the Constitution; the Criminal Law and Evidence Code; the Prisons bill; the Penal code; the Legal Aid Act; the Child Care, Protection and Justice Act ; etc); relevant policy documents (the Draft Prisons Policy; Bail Guidelines; etc) and established, but unlegislated and unpublished, practices.
- 6.3 *Extension of training to Judges and Paralegals:* This training course be adapted and presented (in two separate courses) judges, on the one hand, and to paralegals and Legal Aid officers, on the other, in Blantyre, Lilongwe and Mzuzu (see, too, the recommendations contained in the final report of the OSISA project: 'Paralegals: Malawi Criminal Justice Reform Legislation Review', by Prof R W Palmer [23 October 2011]-annexed hereto as Annexure E).



---

**Robin Palmer,**  
*IPLT*

(signed- pp)

---

**Dr F E Kanyongolo**  
*University of Malawi.*

UNIVERSITY OF [DELETED] LAW CLINICBALANCE SHEET AT 31 DECEMBER 2011

<u>FUNDS AND LIABILITIES</u>	<u>R</u>	<u>R</u>
ACCUMMULATED FUNDS		
BALANCE AT 1 JANUARY 2011	302 586	
SURPLUS: 2011	<u>173 678</u>	476 264
RESERVE FUNDS		<u>169 987</u>
		646 251
LIABILITIES		<u>35 957</u>
		<u><b>682 208</b></u>
 <u>REPRESENTED BY:</u>		
 <u>ASSETS</u>		
FUNDS HELD BY THE UNIVERSITY ON BEHALF OF THE LAW CLINIC		
OPERATIONAL COST CENTRES	332 117	
INVESTMENT COST CENTRES	169 987	
FUNDS HELD IN TRUST	<u>22 757</u>	524 861
DEBTORS		<u>157 347</u>
		<u><b>682 208</b></u>

**UNIVERSITY OF [DELETED] LAW CLINIC**

**INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 31 DECEMBER 2011**

<b><u>INCOME</u></b>	<b><u>NOTES</u></b>	<b><u>R</u></b>	<b><u>R</u></b>
AULAI: ADMINISTRATION FEE	1.	26 400	
ATTORNEYS FIDELITY FUND	2.	210 000	
DEPARTMENT OF JUSTICE	3.	496 055	
INTEREST	4.	3 896	
LEGAL SERVICE FEES: RECOUPMENTS	5.	4 044	
SALE OF VEHICLE	6.	<u>26 847</u>	767 242
<b><u>EXPENDITURE</u></b>			
AFFILIATION FEE		750	
COURIER SERVICES		1 317	
EQUIPMENT HIRE: PHOTOCOPIER		7 151	
LEGAL SERVICE FEES	5.	17 253	
MULTICOPY		833	
PHOTOCOPIES		4 912	
POSTAGE		2 501	
SALARIES	7.	511 693	
STATIONERY AND TEAS		8 495	
TELEPHONE AND FAX		36 257	
TRAVEL AND SUBSISTENCE: STAFF		<u>2 402</u>	593 564
<b>SURPLUS FOR THE YEAR</b>			<b><u>173 678</u></b>

NOTES: 1. Comprises contribution to the Clinic by AULAI for use of the Clinic's premises and facilities.

2. Comprises grants to the Clinic from the Attorney's Fidelity Fund

3. Comprises contributions by the Department of Justice towards salaries of Clinic staff (R477,955) and tuition fees paid to the School for Legal Practice for two Candidate Attorneys (R18,100).

4. Comprises interest received from the University of R12,305 less interest paid to the University of R8,409.

5. Comprises expenditure (R17,253) and recoupments (R4,044) of legal service fees (mainly Sheriff fees) disbursed on behalf of clients of the Clinic.

6. Comprises proceeds received from the sale of the Clinic's motor vehicle.

7. Comprises salaries paid to Candidate Attorneys (R316,350), a Principle Attorney (R182,143) and fees paid to the School of Legal Practice for two Candidate Attorneys (R13,200).

# A GUIDE TO FUNDRAISING

by Ernest Hayes, M.B.A.,B.Sc., Fadumo Alin, M.A.,B.A.,  
Lia van Ginneken, B.A. R.N.



## **1 The process of professionalism**

- 1.1 Being clear about your own identity.
- 1.2 Starting the practical work
- 1.3 Assembling the necessary documents
- 1.4 Chronicling and making known your NGO's activities and achievements
- 1.5 Establishing a long-term fundraising mechanism

## **2 The planning of a project**

- 2.1 Developing a good idea into a draft project proposal
- 2.2 Making the project proposal good enough for consideration
- 2.3 Getting the NGO ready to start work

## **3 Finding money for a project**

- 3.1 Accepting the mindset that will help you succeed
- 3.2 Finding the agencies with funds
- 3.3 How to apply for funds
- 3.4 Co-operating with funding organisations

## **3 The Realities of Fundraising**

## **4 Further reading**

- 5 Amsterdam May 2008, 3<sup>rd</sup> edition. First published 2004. [www.networklearning.org](http://www.networklearning.org)

## **Introduction**

Non-profit organisations in the South are steadily becoming more professional. But there are still vast differences between organisations and their levels of capacity. To help in the process of professionalisation this guide for local NGOs has been put together, based on fundraising checklists developed by Ernie Hayes.

With fundraising, there are no quick fixes, no magic shortcuts. Instead, the steady, regular work of your organisation – board members as well as the staff responsible for funding – will develop an effective strategy through many small steps. Community-based groups can become stronger as they plan and work together to raise money for projects.

There are three processes involved:

- 1 The process of professionalism**
- 2 The planning of a project**
- 3 Finding money for the project** (and, ideally, a longer term relationship with its funder).

Note: These processes overlap in time.

## **1 The process of professionalism**

This process is wider than the issues covered here. For an overview of the whole process, download *How to Build a Good Small NGO* from [www.networklearning.org](http://www.networklearning.org) and look through it. Look also at the *Management Skills* page on the website. And think about capacity assessment and capacity building.

Some aspects of this process of professionalisation are especially important for fundraising:

### **1.1 Being clear about your own identity**

Each NGO is in its own way unique and special. You need to make that uniqueness clear in your NGO documents. Is your Mission Statement enthusiastic, imaginative and creative? Can you answer the following questions clearly and directly?

- What is the unique purpose of your NGO?
- What are the basic needs that this NGO fills? What target group does it serve and how does it meet the needs of the beneficiaries?

### **1.2 Starting the practical work**

Some new NGOs look for funding and until they get it do very little. But you need to start working. You need it for your own sakes, to get experience in your field. And when you apply for funding you need to make it clear that you have experience and can carry out your plan. So if you wish to work with teenagers you can immediately start volunteering at the nearest Youth Club or start a Youth football league. If you can get bus fare from family members, you can volunteer

### **1.3 Assembling the basic documents of your NGO**

As the activities of your NGO start being successful, you will be required to have legal documents that indicate your registration with the government. This is true for all NGOs.

There are situations where the NGO is connected to a different organization that assists or is responsible for the administration of the NGO's affairs. In such a situation the second organisation must make copies of relevant documents for the NGO's folder of essential documents.

This folder of essential documents should always be available for inspection by community members, potential board members or possible funders. It would include:

- A document of registration with the government
- Letters of certification from relevant ministries
- The most recent financial audit of the NGO
- A financial statement made by the accountant
- The NGO's mission statement, aims and objectives
- An organogram of the NGO; list of the names of the members of the Board of Trustees etc.
- Letters of support from current/past donors and partner organisations in the same field

#### 1.4 **Chronicling and making known your NGO activities and achievements**

You can do this in the following ways:

- By writing up and circulating the NGO's mission statement, aims and objectives. Then, as projects are implemented, the NGO can start circulating accounts of its successes and failures, case studies, lessons learnt etc. This kind of information can be distributed among local businesses and the donor community.
- By sending NGO workers to meetings, seminars etc to make presentations, and by networking with people and organisations in the same field;
- By setting up a website – providing a cheap deal can be found.

#### 1.5 **Establishing a long-term fund-raising mechanism**

Here are the steps you could consider taking:

- Work out approximately how much funding will be needed for the next two to three years.
- Develop a fundraising policy and regulations. This could involve a concept paper for circulation and discussion within the NGO and Board of Trustees. There are fundamental considerations to be made about the type of funding you want. If you have many small local contributors it means that you are growing local roots and a local constituency; in return for contributions these people would wish for a voice in policy making. Or, at the other extreme, you might look for one or two big international funders – a policy that can make you dependent on people and decisions made in another country.

If you have members or supporters, you could decide to look for funds for small concrete activities, e.g. the salary of a counsellor, money for visual aids, or money for a workshop.

To attract donors, you might decide to look for short-term projects with clear objectives, which contribute to the independence of the NGO.

Another strategy is to look for money sources from within the NGO itself, e.g. income generating activities. With health care projects, patient charges can be made for consultations and treatment (allowing for the financial capacity of the patients). Schools can charge fees. Other projects can produce income from saleable articles like water, handicrafts or agricultural products. Although these funds will never cover all project expenses, they are important in your planning and also in building the self-sustainability of your projects.

**EXAMPLE:** *An NGO in East Africa, in a country with a lot of AIDS, has purchased a hearse that is hired by neighbours for funerals. The income is small but steady.*

- Set up a fundraising committee, with clear job descriptions (responsibilities, tasks).
- Hold a funding workshop.

**EXAMPLE:** *A WORKSHOP ON FUNDRAISING FOR A HUMAN RIGHTS NGO IN LESOTHO*

*This NGO (CLRAC) organised a Workshop on Fundraising for both staff and Board Members. Together, over three days, the participants worked through the following:*

- *a brief evaluation of fundraising by CLRAC in the past years plus conclusions;*
- *how to plan the funding needs for CLRAC and set realistic objectives for the following two years;*
- *development of a fundraising strategy, including: planning/timing of projects and CLRAC organisational costs in need of funding;*
- *capacity assessment in CLRAC to conduct fundraising; how to build in fundraising capacity; human resources development and organisational development;*
- *how to target donors, both local and international – and what their requirements are;*
- *how to write a proposal for project funding;*
- *an outline for financial reporting;*
- *a plan to write a Strategic Planning document for implementation of fundraising by CLRAC;*
- *meeting with a Maseru-based donor representative.*

*Because the Board members and staff followed the Workshop together, a feeling of commitment and co-working also developed; the Strategic Planning Document got written and some money has been raised.*

- Periodically monitor all fundraising activities.

## **2 The planning of a project**

There is more information about planning a project – the first stage of the project cycle – in Chapters 3 and 4 of *How to Build A Good Small NGO*.

### **2.1 Developing a good idea into a draft project proposal**

Here are the steps:

- 1) Someone suggests that there is a need for a certain project. The idea is discussed with all key players – the NGO staff, the board, community members, other NGOs in the neighbourhood and in the same field.
- 2) A group is formed within the NGO to develop the idea into a concept paper.
- 3) A Google search is done to see who else is doing similar work in your country. For example, you might be an NGO in Nepal wanting to help girls forced into prostitution and now HIV+. You put into the Google slot “Nepal HIV girls” and find a number of entries. You would then make contact with organisations running projects to learn about best practice, to visit and co-ordinate.
- 4) A possible location for the project is identified.
- 5) A Needs Assessment is designed and carried out. This will make sure that the need is there and is more serious than other problems in the location.
- 6) The group developing the project produce a project proposal and circulate it. It would include a rough budget.
- 7) At this point, the Director and Board of Trustees would need to commit to the development of this project and finding the funds.
- 8) If a fundraising committee already exists, it is now asked to start working to find the money for this particular project

### **2.2 Making the project proposal good enough for consideration – good enough to start work**

At the same time as the fundraisers go to work, the planners in your NGO keep working on the project proposal, perhaps with a modified smaller version that can be started even if major funding does not come through. Steps to take include:

- 1) Collecting and organising the information gathered in the Needs Assessment.
- 2) Circulating the findings of the Needs Assessment within the NGO.
- 3) The planning group discuss with the Advisory Committee the findings of the Needs Assessment and the notes of its previous meetings.
- 4) A preliminary programme design is made that answers the following essential questions: what? where? why? how? when? how much? The design describes why the project is needed, the goal, the objectives, its location, the beneficiaries, its duration, construction /renovation, expected results against a schedule of activities, job descriptions and reporting.
- 5) The design includes an appropriate form of monitoring with a schedule.
- 6) An evaluation is designed as an internal or external assignment.
- 7) The tasks of writing the various parts of the proposal are assigned.
- 8) An itemised budget is drafted; it reflects each activity and administrative expenditure.
- 9) A monthly projected distribution of costs is written, reflecting each activity including administration.
- 10) The preliminary proposal is completed and edited.
- 11) The completed proposal is given to all those involved, read and commented upon and the comments discussed.
- 12) The proposal is approved by the Board of Trustees.

### **2.3 Getting the NGO ready to start work**

Once the project proposal is as good as it can be, the NGO has to gear itself up by re-assessing the plan. This is done through the following 13 steps:

- 1) The planning group meet with the head of the institution and other collaborating institutions to review how far the planning has advanced.
- 2) The group outlines a plan for organising and implementing the proposed project.
- 3) The need for and use of staff for the proposed project is analysed.
- 4) The priorities of the project in terms of its purpose and services are discussed and agreed on.
- 5) The condition and use(s) of the proposed location are re-assessed.
- 6) The procedures for purchase, maintenance and preservation of materials/commodities for the proposed project are discussed and agreed on.
- 7) A plan for the recruiting and keeping of staff and community participants is outlined.
- 8) Staff and community support systems are discussed.
- 9) Reference materials are identified and assembled.
- 10) Procedures for paying staff, their Conditions of Service and tax payment are agreed on.
- 11) Candidates for leadership position(s) are identified.
- 12) The responsibilities of the project's management office are agreed upon:
  - a) location
  - b) office operations
  - c) personnel
  - d) staff training
  - e) management and financial accountability
  - f) medical benefits

- 13) The accountability to the funder and/or to any parent organisation, in terms of project and finances, is agreed upon.

### **3 Finding money for a project**

#### **3.1 Accepting the mind-set that will help you succeed**

Your NGO has to accept that there are no quick fixes, no magic shortcuts. If the unique and special nature of your NGO is reflected in your Mission Statement, this will help.

#### **3.2 Finding the agencies with funds**

Research on any funder's stated programme interests is essential. Do not attempt a scatter approach, sending requests to a wide group of organisations. It can damage your organisation's credibility. You are trying to identify the few funders that have interests that are in line with your organisational and project objectives. If you do not qualify, do not apply. Many funding agencies now have web sites so look them up and see what they say.

Funder research is a two-step process. The first step aims to develop an initial 'prospect' list of some ten to fifteen funders who have general interests in the subject area of your organisation or project. The second step involves further research and refines this list to the three or four funders you may approach.

Sources for funding can be found within your country as well as abroad. As stated earlier, a choice for many small local contributors means that you are growing local roots and a local constituency; in return for contributions these people would wish for a voice in policy making. Funding from local organisations has a number of advantages. The procedures are often easier to follow. And international donors want to know that local sources have been tried first. When applying for funds from abroad, the national registration of your NGO and formal approval of your project by your government is often necessary.

**Locally**, the main institutions to apply to for funds are:

- Local organisations – think of Rotary or Lions clubs, churches, temples, mosques, hospitals, local business associations, the 'rich' in your community etc.
- Government or District institutions

Funds are often available, especially if working in co-operation in the same field of interest. Think also of secondment of staff, use of their logistics etc.

**From abroad**, possible sources include:

- Voluntary funding organisations

These include missions, aid agencies and other groups, both religious and secular. Most of them are based in the North, in Europe, North America and Australia. Such groups are often interested in supporting smaller-scale development and health projects. A list of names can be obtained from national and voluntary organisations and from embassies.

- Using your contacts

You previously contacted other NGOs working in the same field. Where do they get their funding? Can you write to the same organisation?

- Searching the web

Go to the websites of the big international organisations that cover the groups you are trying to help. For example, you might be an NGO in Nepal. Now you want to help girls who were forced into the sex trade and have become HIV positive. The organisations that care for children might

help (UNICEF), or the organisations that care for women (ILO, UNIFEM). For example, with UNIFEM, if you type into the 'search' slot "Nepal HIV women" the site tells you there are several projects like the one in your proposal. If you then look for Contact Information you will find the address of the regional office and an email address.

Then you might want to Google again, writing "girls HIV Nepal" into the search slot. There may be organisations you have not previously dealt with. In Nepal you could add World Education to your list.

- International Aid organisations.

These include the United Nations Agencies such as WHO, UNICEF, UNDP, FAO, the European Commission (EC), the World Bank (WB), and Asian Development Bank (ADB). However, they do not often support small-scale projects directly. Funds from these sources are more likely to be available via national umbrella organisations. It is worth finding out what their contributions to the government and to bigger NGOs in your country are. This information will be available from your government (ministry) or from local UN and EC delegations etc.

- Foreign Embassies.

They often have funds available for small-scale projects. (For example, Dutch Embassies have special funding sources for so called KAP projects. From these sources they can give direct support to projects with sums up to \$20,000. Special procedures/criteria need to be followed).

### **3.3 How to apply for funds**

a. Make a list of possible funding sources. Try to get as much information as possible about the ins and outs of each organisation, its procedures for application and so on. If you can, find out which person to approach within the organisation, so you can address them personally. This works best via mutual contacts.

2) Write a letter that can be posted or sent by email. Use your personal title. If you know them, write to the person dealing with funds. Introduce yourselves in the letter and give a brief explanation of your organisation, its objectives, and your intentions with respect to funds. Ask if their organisation could consider a project proposal. Ask for details of any format they use for project proposals and the procedures you need to follow. If the email is addressed to a general target like "contact us" or "info", ask for an email address for the person who looks at proposals. This email or letter should normally not be longer than two-thirds of a page

Always make a copy of your letter to keep. If your source is local, give the person you addressed a phone call about one week after you mailed the letter and ask if it was received. This is not only to make sure that the post is working, but it is also an excuse for exchanging more information. Personal relationships are very important in fundraising. By making a phone call, you get a chance to find out the kind of person they are and to show your own involvement and motivation.

If you are approaching an international donor, follow your letter up with another e-mail message if possible, just to make sure that your application has been received and again to show your own motivation.

3) While waiting to find out the procedures to follow, you can prepare the information the donor will likely want to know. Most will expect brief details of the following:

- Aims and objectives of your organisation.

- Details of the target population
- Number of people/villages you want to reach
- Social structure of the communities, including details of local employment, income levels, high-risk groups etc.
- Details of the project area, its location, terrain and climate.
- Your relationship with other organisations e.g. other NGOs and the Government and your intended co-operation with them.
- Names and qualifications of your staff members
- General plan of the implementations of your activities.
- Budget:
  - Include a budget for the first year.
  - Estimate expected funds from other sources.
  - Be concrete about the funds you are asking for.
  - Include in your budget items that are essential, but do not ask for expensive or unnecessary equipment.

Donors are in general more interested in project costs (implementation of activities) than in organisational costs (overhead costs – costs for telephone/fax, e-mail, postage, electricity bill, etc.). For that reason, always include an item line for overhead costs when submitting a project proposal. UNICEF admits to 14%, but 10% is more reasonable for a very small organisation. However some donors do not like paying much towards this line. In that case, find out the donor's policy on overheads and adjust the proposal accordingly.

You also need to discuss a contingency line with the donor. This means allowing some money for the possibility of plans going wrong. A post-disaster project, for example, may face inflation, fluctuating exchange rates, hikes in the prices of essential raw materials etc. The project can soon be way over budget. An allowance of 'unforeseen' of 5 to 6% is normal in every proposal.

- 4) If you follow all the guidelines and still your organisation does not get the grant it needs, remember that the funding agency has a hundred applications for every slice of money. Citizens Associations are increasingly turning to the independent funding community to assist their work and consequently the number and quality of projects – and their accompanying grant proposals – are increasing. So do not take the rejection personally. Around 90% of all proposals fail so do not be put off: you can learn from failure! Write a brief letter or email to the funder asking the reasons for the rejection. The answer may suggest how to improve the proposal, or even request an improved resubmission.

### **3.4 Co-operating with funding organisations**

Building a good, trusted relationship with your donor is very important. Often, co-operation is not easy. The donor asks for long and complex reports, and transfers of funds are often delayed. Communication problems are common due to misunderstandings on both sides and because of postal delays. Don't forget that donors are dependent on their own supporters, who in turn will expect reassurance that their money is being well spent.

Ways to improve co-operation are:

- After receiving funds, write a letter of acknowledgement and thanks.
- Send regular reports as requested by the donor.
- Prepare accurate budgets, and keep costs as low as possible.
- If two or more donors are supporting your project, then the area of support should be clearly defined and communicated.

- Encourage the donors to share a single global report and accept each others' tour reports to reduce the amount of time you spend on their requirements.
- Always give feedback to the donor on how the money was spent.
- Always stick clearly to the objectives of your NGO.
- If there are any major changes of plan, inform your donor.
- Welcome visitors from your donor agencies.
- Try to reply promptly to letters from your donor.
- **BUILD A RELATIONSHIP OF TRUST**

#### 4 The Realities of Fundraising

How can the process we describe here work out in practice?

One of the authors of this manual is Mrs Fadumo Alin, who runs an NGO in Somaliland – Doses of Hope. The country is post-civil war so has a lot of landmines. The Foundation runs a micro-finance project (see her Case Study: [www.networklearning.org/online-case-studies/somaliland-micro-finance.html](http://www.networklearning.org/online-case-studies/somaliland-micro-finance.html)), a Braille school for blind children and young people – and a rehabilitation centre for people who need prostheses, physiotherapy, wheelchairs etc. Fadumo has successfully raised money to run these programmes in the medium-term. Long-term is more difficult.

A small group of boys and young men are now seeking help because they have lost their eyesight and their hands through landmines. So we started looking for funds for this small group. With a lot of discussion with the field office we wrote a project proposal – and this took time and effort.

Then we wrote a half-page email for each possible funding source; this explained the problem, made clear that the organisation was already running projects effectively, and asked if the funding agency could seriously consider the proposal if we sent it to them. The funding agencies were found through a Google search of the web, using keywords such as "multiple disability" and "landmines". We then looked at the websites of each to see if they worked in Somaliland – many do not. We found about thirty possible funders to whom we sent the email.

Most did not reply. Some said they were not able to consider our proposal for various reasons. Two expressed interest and we sent them the proposal. So far we have not heard whether we are successful or not.

Meanwhile we are exploring other ways to raise money. These include:

- whether items could be manufactured in Somaliland and shipped to Europe for sale. We have identified a possible sales outlet for specific leather goods;
- sponsorship of individual boys. We have so far found one definite sponsor and will be putting fliers up in the local Mosques in the hope of finding more;
- ways of using the web to raise funds from expatriate Somali Communities; This process has taken about eight months so far. It is frustrating and energy consuming for everyone involved. But on the other hand, Fadumo went through the same thing several times, found the money for her existing projects and is helping her community every day;

So – we wish you a lot of energy, determination and good luck – you will need it! So will we!

#### 5 Further Reading & Resources

On this link are a number of other guides:

[www.ngomanager.org/dcd/4\\_Managing\\_Finances/Fundraising/](http://www.ngomanager.org/dcd/4_Managing_Finances/Fundraising/)

*“Basic Tips for Fundraising for Small NGOs”* has some good links to funding organisations.

*“A Guide to Proposal Planning and Writing”* has a good section on writing the proposal itself.

# Fundraising from US Foundations – A Short Guide

## Introduction

Fundsforngos.org receives many inquiries about US foundation donors: specifically, where to find them and how to apply. This short guide will guide you in successfully applying for US foundation funding – it provides basic tips and provides links to resources that will help give direction to your efforts.

## The US Foundation Landscape

The nearly 100,000 foundations in the United States provided almost US\$50 billion to NGOs in 2011 alone. About 25% of this amount is allocated for international causes, of which almost half finds its way to NGOs in other countries.

International funding by US Foundations has grown significantly over the past decade – with over 100% growth from 2002 to 2008. This growth can, for some part, be attributed to the Bill and Melinda Gates Foundation, accounting for more about half of the increase in funding.

Despite the recent economic difficulties in the US and the heavy competition for US foundation dollars there are significant opportunities for well-prepared NGOs to succeed.

## Am I Eligible?

US Foundations are legally allowed to give to non-US NGOs (with very limited restrictions). The specific goals of the US Foundations will determine if they are interested in doing so. NGOs should critically review the eligibility requirements of each specific foundation to check whether they qualify.

If you do qualify under their eligibility guidelines, you often need to be legally registered in your home country. US Foundations often require proof of registration (such as a certificate of registration; a list of board members; a copy of the statutes/bylaws of the organization). If certain documents are not a legal requirement in your country you can explain such in your application. Exceptions can also sometimes be made for organizations that cannot legally register, or are barred from doing so, in the country where they work (e.g. some human rights organizations).

## How Do I Find Foundations?

There are several main ways to research and identify likely funders to your project:

- Identify like-minded organizations (similar to your own) and check the names of foundations that fund them. Many US NGOs frequently have a section in their annual report or on their website where they list their donors
- Check US Foundation Websites for details on programs and eligibility requirements. Some US Foundation list previous grants got NGOs
- Search US Foundation databases. There are several databases which you can search (in some cases for a fee) to identify donors. Well known ones include:
  - Noza Search ([www.nozasearch.com/](http://www.nozasearch.com/)) is a free database of charitable donations.
  - Foundation Center Map of Direct Grants to Non-US Recipients, (<http://fconline.foundationcenter.org/maps/>) which offers a free map detailing recent grants from US foundations to non-US organizations.
  - The Foundation Directory, (<http://fconline.foundationcenter.org/>) which offers a paid searchable database of US foundations and grants. (<http://grantspace.org/Find-Us>)
  - Check the tools available, and sign up for free email alerts on: Funds for NGOs, (<http://www.fundsforngos.org/>) for the best online source of information on donor funding.

### **How Do I Apply?**

A good first step is to network with the organization and find an opportunity to meet (in person or on the phone) to ask them about their priorities and explain why your NGOs work fits with those priorities. In some case if they like what they hear they will request a proposal, and in this way a discussion can help move your application forward.

Many foundations will have their own proposal format, but it sometimes still pays to prepare a short concept note yourself. It would be 1-4 pages long and typically summarize the program justification, objective, strategy, activities, and budget. Make sure that you adapt your concept note or proposal to the requirements and goals of the foundation. US foundations like to know that you have researched them, know what they want, and have put a bit of effort into preparing an application just for them.

### **To Learn More**

Fundsforngos.org has a range of tools and resources available that will help you raise funding from US-based foundations. If you are interested in honing your US Foundation fundraising skills we also suggest you sign up for one of our webinars.

**CONSTITUTION OF THE CAMPUS LAW CLINIC**

**SECTION 1: NAME**

The name of the association is the Campus Law Clinic (hereinafter referred to as the association)

**SECTION 2: LEGAL PERSONALITY**

The association is a legal person that may in its own name acquire rights and obligations, sue and be sued. The legal liability of the association is limited to its own assets from time to time.

**SECTION 3: OBJECTS**

The objects of the association are:

1. the promotion of legal aid in South Africa through the provision of free legal services to indigent people;
2. the encouragement and promotion of practical legal education of law students through teaching and developing appropriate curriculum and methodology; and
3. the fostering, maintaining and extending of the public confidence in the law and the administration of justice.

**SECTION 4: POWERS**

The association is empowered to do anything legal in order to promote its objects, and without derogating from the generality of the foregoing, the association may;

1. negotiate, liaise and co-operate with the organised legal profession in all its branches, government institutions and institutions in the private sector;
2. raise funds and receive donations;
3. convene general meetings, annual meetings, simposia, congresses, information meetings or any other gathering whereby the objects of the association may be promoted.
4. Publish publications; and
5. indicate, stimulate and finance research related to the objectives mentioned above.

## **SECTION 5: MEMBERSHIP**

1. Full membership of the association is limited to the Dean of law faculty of the University of Natal - Durban and at least two other members of the law faculty.
2. Membership of the association can be terminated as follows:-
  - a. by written notice to the secretary of the association;
  - b. by the management on failure of a member to pay any outstanding fees to the association after two written demands;
  - c. by the management taking into consideration the provisions of any regulation in this regard, when a member acts contrary to the objects of the association.
3.
  - a. Associated membership of the association may be granted by the management to an institution that does not qualify for full membership.
  - b. An associated member may participate in the activities of the association but shall not be entitled to vote at meetings of the association.
  - c. The rights and obligations of associated members shall be laid down by the general meetings of the association.

## **SECTION 6: MEETINGS**

1. Apart from any other meeting of the association which the management may convene or which shall be convened by the management on the written request of at least two members of the association, a general meeting of the association shall be held annually.
2. The general meeting shall be at a time and place as determined by the management.
3. The chairman or vice-chairman of the association shall chair all meetings of the association. In the event of the unavoidable absence of both the chairman and the vice-chairman the meeting shall elect a chairman for the particular meeting from the members present at the meeting.

4. At least one third of the members of the association shall form a quorum for any meeting.
5. Except otherwise stipulated in this constitution, all resolutions at meetings of the association shall be taken by an ordinary majority vote.
6. At all meetings of the association each member is entitled to one vote, to be recorded by a delegate.
7. In his capacity as chairman, the chairman shall only have a casting vote.
8. Each delegate of a member to meetings of the association shall be duly authorized.

#### **SECTION 7: MANAGEMENT**

1. The management of the association shall consist of not more than three persons elected at the first meeting of each year.
2. The meeting shall elect a chairman, a vice-chairman and secretary/treasurer of the management.
3. The management shall meet as often as the chairman may deem necessary.
4. All resolutions of the management shall be taken by a majority vote.
5. Three members of the management shall constitute a quorum.
6. The chairman, vice-chairman and secretary/treasurer of the association shall constitute the executive committee of the association.
7. The management and the executive committee shall between general meetings of the association be entitled and obliged to conduct all affairs of the association, provided that the management or the executive committee shall inform members of the association within fourteen days of any important resolution and other matter which affects the interests rights and duties of members.
8. Should a vacancy arise in the management it shall be filled by the management from the ranks of the delegates at the last general annual meeting.

## **SECTION 8: FINANCES**

1. The association shall be entitled to receive donations and to impose financial obligations on members.
2. Financial obligations of whatever nature shall only be imposed on members by resolution of a general meeting of the association.
3. All funds of the association shall be deposited in one or more accounts with registered financial institutions.
4. All documents for the handling of funds for which signatures are required, shall be signed by at least two authorized members of the management.
5. The fact that the association shall be entitled to receive donations shall not disentitle any member to raise, receive or handle funds on his own initiative.

## **SECTION 9: REPORTS**

1. At the annual general meeting of the association the following reports shall be submitted:
  - a. Chairman's report;
  - b. Financial report.

## **SECTION 11: RULES AND REGULATIONS**

The management may frame rules and regulations for the better functioning of the association which shall require approval by the general meeting.

## **SECTION 12: AMENDMENTS**

Amendments to the constitution of the association of which written notice has been given and provided that full details of the proposed amendment have reached members at least two weeks before the meeting concerned.

## **SECTION 13: DISSOLUTION**

1. The association may be dissolved by the adoption of a resolution to that effect by a majority vote of all the members of the association at a general meeting specially convened for such purpose and of which notice has been given.

2. If there are not enough members present at a meeting convened for the dissolution of the association to adopt a valid resolution to that effect the management shall act as the liquidators of the association.
3. On dissolution of the association its assets shall be divided equally among its members.

**FOUNDING MEMBERS OF THE ASSOCIATION**

Professors A. Rycroft, K. Govender, D. Mcquoid-Mason, Ms A. Ramgobin, Ms M. Osman and Mr. G Howard.

APPROVED ON 8 MARCH 1999 AT DURBAN.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## REFERENCE MATERIALS

### 1. Books

Aggarwal N. *Handbook on Lok Adalat*. Interest Publications. (1991)

Agjee H. *A Guide to the New Companies Act and Non-profit Organisations*. Durban: Turning Point Consultants (2012)

Alexander J. *Client Care* (1997)

Ateneo (2006) *Human Rights Centre*

Beauchamp TL and Childress JF *Principles of Biomedical Ethics* 2 ed (1994).

Bodenstein J, Boniface A, de Klerk W, Haupt F, Kok A, Mahomed SH, Steenhuisen E, Stilwell P, Wimpey D.(2004) *Clinical Law in South Africa* LexisNexis Butterworths.

Brayne Hugh, Duncan Nigel and Grimes Richard, *Clinical Legal Education: Active Learning in the Law School* (1998)

Burley-Allen Madelyn, *Listening: The Forgotten Skill* (1982)

Centre for Socio-Legal Studies *HIV/AIDS, the Law and Human Rights* (2003).

Chapman J, *Interviewing and Counselling* (1993)

Davis D, Cassim F, Geach W (ed) (2010) *Companies and other Business Structures in South Africa* (2ed) . Oxford University Press.

Du Cann Richard *The Art of the Advocate* (1980)

Fisher M E, Maope K and Brother Michael Meteka *Street Law A Course in Practical Law for Lesotho: Student Manual* (1987) unpublished

Fisher R and Ury W, *Getting to Yes: Negotiating Agreement without Giving In* (1981)

H Twist *Effective Interviewing* (1992)

Hoosen Agjee (2012) *A Guide to the New Companies Act and Non-profit Organisations*. Durban: Turning Point Consultants.

IPLT, *Governance and Operation Manual for Non-Governmental Organisations Manual* (2012)

Iya PF , Rembe NS and Baloro J (eds) *Transforming South African Universities: Capacity Building for Historically Black Universities* (2000) 89-203.

Kirchoff GF, Kosovski E and Schneider HJ (eds) *International Debates of Victimology* (1994)

Lee S and Fox M *Learning Legal Skills* 2 ed (1994)

Legal Research and Resource Development Centre *Book 1: Street Law: Law, the Nigerian Legal System and Human Rights* (1996).

McQuoid-Mason David (ed) *Legal Aid and Law Clinics in South Africa* (1985)

McQuoid-Mason David, *An Outline of Legal Aid in South Africa* (1981)

McQuoid-Mason David, Lloyd Lotz, Lindi Coetzee, Usha Jivan, Sibonile Khoza and Tammy Cohen *Street Law: Practical Law for South African Students* 2ed (2004)

McQuoid-Mason David, Lloyd Lotz, Lindi Coetzee, Usha Jivan, Sibonile Khoza and Tammy Cohen, *Street Law: Practical Law for South African Students: Educator's Manual* 2ed (2005)

McQuoid-Mason David, Mandla Mchunu, Karthy Govender, Edward L O'Brien and Mary Curd Larkin *Democracy for All: Education Towards a Democratic Culture* (1994), together with an *Instructor's Manual*.

Muralidhar S, *Law, Poverty and Legal Aid: Access to Criminal Justice* (2004) 121-122.

Palmer R and Crocker A, *Becoming a Lawyer: Fundamental Skills for Law Students* (2ed- 2007), Durban: LexisNexis.

Palmer R and McQuoid-Mason D, *Basic Trial Advocacy Skills* (2000)

Rahman Mizanur (ed) *Combating the Khosi Uprooting: Humanity Cries* (2004).

Rekosh et al 'Access to Justice' in *Access to Justice in Central and Eastern Europe*

Reyntjens F in Zemans FA (ed) *Perspectives on Legal Aid* (1979)

Rogers NH & Salem RA, *A Student's Guide to Mediation and the Law* (1987)

Salem RA *Considerations when Planning and Preparing for a Negotiation* (1991) Conflict Management Initiatives, Chicago

Salem RA *Negotiating Values* Conflict Management Initiatives (1990)

Salem RA, *Procedure for Opening the Mediation* Conflict Management Initiatives, Chicago (1990)

Stilwell Pat, *Cross-Examination* (1997)

Swart Nic, *Entry into the Profession : What about Articles?* (1994) 1 (unpublished memorandum for the Law Society of South Africa).

Thomas Kenneth W and Kilmann Ralph H, *Thomas-Kilmann Conflict Mode Instrument* (1974)

University of Botswana *Department of Law Handbook 2000/2001*(2000) 3.

Williams Gerald, *Legal Negotiations* (1989)

## 2. Articles

Amoo Sam K, Dean and Coordinator of the Legal Aid Clinic, in *OSJI Survey of Clinical Programs in Africa Questionnaire* (2006).

Barnheizer D 'The University Ideal and Clinical Legal Education' (1990) 35 *New York Law School Law Report* 87

Bhagwati PN 'Human Rights as Evolved by the Jurisprudence of the Supreme Court of India' 1987 *Commonwealth Legal Bulletin* 236.

Golub Stephen 'Non-lawyers as Legal Resources for their Communities' in Ford Foundation *Many Roads to Justice* (2000) 299 at 303-304

Golub Stephen "Battling Apartheid, Building a New South Africa" in Ford Foundation *Many Roads to Justice* at 38.

Hayes and van Ginneken, 'A Guide to Fundraising' (2004)

Honore AM 'Social Justice' in R Summers (ed) *Essays in Legal Philosophy* (1968) 68;

Iya PF 'Fighting Africa's Poverty and Ignorance through Clinical Legal Education: Shared Experiences with New Initiatives for the 21<sup>st</sup> Century' (2000) 1 *International J of Clinical Legal Education* 13, 22.

Iya PF 'Strategies for Skills Development: The Fort Hare Experience in Curriculum Design for the New LLB'

Iya PF, Rembe NS and Baloro J (eds) "Transforming South African Universities" (2000) 62, 67.

Letsika Qhalehang A "The Future of Clinical Legal Education in Lesotho: A Study of the National University of Lesotho's Legal Education and its Relevance to the Needs of the Administration of Justice in Lesotho" (2002) unpublished LLM Thesis (University of Natal) 2.

McCutcheon 'University Legal Aid Clinics' in *Many Roads to Justice*

McCutcheon, A 'University Legal Aid Clinics: A Growing International Presence with Manifold Benefits' in Ford Foundation *Many Roads to Justice* (2000)

McQuoid-Mason David 'The Organisation, Administration and Funding of Legal Aid Clinics in South Africa' (1986) 1 *NULSR* 189

McQuoid-Mason David "Access to Justice in South Africa" (1999) 17 *Windsor Yearbook of Access to Justice* 230

McQuoid-Mason David "Incorporating Justice and Ethical Issues into First Year Undergraduate Law Courses: A South African Experience" (2002) 1 *Journal of Commonwealth Law and Legal Education*

McQuoid-Mason David "Teaching Social Justice to Law Students through Community Service: The South African Experience"

McQuoid-Mason David Jan "Reducing Violence in South Africa through Street Law Education of Citizens"

Minister of Justice and Department of Justice *Enhancing Access to Justice through Legal Aid: Position Paper for National Legal Aid Forum* (unpublished) (15-17 January 1998) 25

Nguru Labaran Ibrahim, Clinic Coordinator in *OSJI Survey of Clinical Programs in Africa Questionnaire* (2006).

Open Society Justice Initiative *Report on First All Africa Colloquium on Clinical Legal Education 23-28 June 2003* (2004)

Pincus William 'Legal Clinics in the Law Schools' in Faculty of Law, University of Natal *Legal Aid in South Africa* (1974) 123.

Ramgobin Asha "Fundraising towards self-sufficiency and sustainability" (Conference paper; 2006)

Smith F 'The Legal Aid Clinic, University of Zimbabwe, Harare' in David McQuoid-Mason (ed) *Legal Aid and Law Clinics in South Africa* (1985) 48-53.

Udok Uwem Emmanuel, Clinic Coordinator/Supervisor, in *OSJI Survey of Clinical Programs in Africa Questionnaire* (2006).

Vieira Elysa, Coordinator of the Centre for Practical Legal Studies, in *OSJI Survey of Clinical Programs in Africa Questionnaire* (2006).

Webale Theodora, Clinic Manager, in *OSJI Survey of Clinical Programs in Africa Questionnaire* (2006).

### 3. Websites

<http://www.fia.org.au/>

<http://ngomanager.org/>

[www.sangonet.org.za](http://www.sangonet.org.za)

AULAI (Association of university Legal Aid Institutions) [www.aulai.co.za](http://www.aulai.co.za)

NULAI (Network of University Legal Aid Institutions) [www.nulai.org](http://www.nulai.org)

[www.institute-of-fundraising.org.uk](http://www.institute-of-fundraising.org.uk)

## GLOSSARY

**Accounting** is the process by which all the financial transactions of the clinic are recorded, validated, summarized and reported.

**Accused** is a person (private or legal) charged with a crime.

**Acknowledgement of debt** (document) is a signed document in which one party admits a debt owed to another party, and agrees to repay the debt on the terms stated in the document.

**Actus reus** (Latin) is the action of conduct which is a constituent element of the crime.

**Adjectival law** deals with the procedures to enforce legal claims in civil or criminal law. The law of civil procedure and the law of criminal procedure are the two main branches of adjectival law. Adjectival law is also called procedural law.

**Administration of justice** this is a reference to various persons who, and bodies that, administer justice like the police, courts, legal profession, correctional services and the prosecuting authority.

**ADR** stands for Alternative Dispute Resolution.

**Adultery** is voluntary sexual intercourse between a married person and someone other than their lawful spouse.

**Adversarial system** is a court system characterised by a passive judge, and where the litigants, or lawyers on their behalf, lead and cross-examine witnesses. The judge is effectively a referee of the dispute but has the power to intervene in prescribed circumstances (a power that is sparingly exercised). (see inquisitorial system)

**Advisory board** consists of selected people who have expertise in all aspects of law clinic management and policy.

**Affidavit** a written statement that is sworn to or affirmed by the person making it before a Commissioner of Oaths; it is written evidence; it is the primary means of placing evidence before a court in application proceedings.

**AGM** means Annual General Meeting

**Aids** stands for Acquired Immune Deficiency Syndrome and is a serious disease of the immune system caused by the virus HIV. It results in a severely weakened immune system that causes the patient to be susceptible to opportunistic infections (like TB, pneumonia or cancer). It is transmitted by exposure to contaminated body fluids, especially blood and semen.

**Allegation (in pleadings)** is a statement contained in pleadings, in which a fact, as yet unproven, is alleged. Allegations are also called 'averments' or 'material facts'.

**Alternative Dispute Resolution clinics** train students in how to use non-legal methods to resolve disputes.

**Appeal court** is a term used to refer to any higher court, which is legally entitled to hear an appeal from another court (usually a court inferior to it).

**Appellant** is the party appealing a matter to a higher court.

**Application** court proceedings brought by a notice of motion supported by affidavits; oral applications may also be made by counsel from the bar at court.

**Arb-Med-Arb** (also called 'Arb-Med') is an ADR procedure where arbitration is followed by mediation and then a final arbitration award.

**Attorneys Fidelity Fund** is a fund that has accumulated out of the interest paid on monies held in attorneys' trust accounts. It is used to compensate members of the public who have suffered loss as result of fraud by practicing attorneys, but also makes money available for legal education.

**Bail** is security, usually a sum of money that is paid in exchange for the release of an arrested person. If bail cannot be paid or is refused by the court, the arrested person is detained until their next court appearance. Bail is used as a guarantee of that person's appearance for their trial; for it will be refunded to them once they appear at the next court date.

**Balance of probabilities** is the duty/ standard placed upon a civil or criminal defendant to prove or disprove a disputed fact.

**Balance Sheet** shows the values of the clinics funds, assets and liabilities at a specified date.

**Basic trial plan** is a plan that a legal practitioner can draw up to prepare for trial. It should contain: the elements of the charge; possible witnesses for the State and the defence; possible evidence that the State and defence may rely on as well as any possible defenses available to the accused.

**Beneficence** means that clinical law students (and their supervisors) should always 'do good' for their clients. Student practitioners should always take positive steps to act in the best interests of their clients.

**Beyond the scope of cross-examination**- where the lawyer has reserved time to re-examine a witness after cross-examination, the lawyer on re-examination may only ask questions related to topics that the opposing lawyer raised during cross-examination.

**Board of control** is the body ultimately responsible for the clinic's operation and for its financial wellbeing.

**Brainstorming** is a means of encouraging a free flow of ideas from students. It is an important learning technique because it encourages students to generate creative ideas without fear of criticism.

**Budgeting** is a process used by clinics to plan their activities taking account of their current and anticipated future resources.

**Burden of proof** is the duty placed upon a civil or criminal defendant to prove or disprove a disputed fact.

**Campus Law Clinics** operate on university campuses in premises closely linked to a law school or elsewhere on the campus.

**Cash flow management** is the process of ensuring that the clinic has sufficient funds to meet its short and medium-term operational and project needs.

**Certified copies** are photocopies that have been official declared to be true copies of the originals by a Commissioner of Oaths.

**Civil Procedure** the framework of laws, rules, practices and procedures that govern the administration of justice in civil cases, including both civil trial and applications procedures

**Clause** is a small group of words with an independent meaning, which forms part of a sentence, but which is itself not a whole sentence.

**Client Counselling** involves the lawyer advising the client once he or she has helped the client to identify what the issues are.

**Clinical legal education** can be simply defined as experiential learning whereby law students gain practical skills and deliver legal services in a social justice environment.

**Common cause** is when the parties to the litigation have agreed about the issue.

**Common-law** is the law of the land created by custom and judicial decisions but excluding that created by legislation.

**Community law clinics** involve law students living in a community, (usually during a vacation period), in order to identify and record the types of legal problems encountered by the community.

**Complainant** is a person who reports a complaint about the commission of an alleged crime to the police

**Confidentiality** is the principle that the legal and personal information that a lawyer (or law student) receives from a client should not be revealed to a third party without the consent of the client.

**Convicted** is to find or prove someone guilty of an offence or crime, especially by the verdict of a court.

**Counseling** consists of informing the client of the various options available to them flowing from the legal issues. The counseling process involves explaining the advantages and disadvantages of each option, considering non-legal options, advising the client on your opinion of the preferred option given the client's circumstances, and guiding the client to make a choice on one or more of the available options.

**Credit-bearing clinical law course** is a course that credit points have been assigned to and it will be governed by the law school curriculum. Its content, delivery and assessment will have to conform to the requirements of the law degree structure.

**Crime** is every punishable violation of the laws, done willfully and with evil intention.

**Criminal law** (as opposed to civil law) is the body of law that relates to crime.

**Criminal liability** is a comprehensive legal term that describes the condition of being actually or potentially subject to a legal obligation.

**Criminal Procedure** is the framework of laws, rules, practices and procedures that govern the administration of justice in criminal cases, from investigation and arrest through to the conclusion of appeal procedures.

**Critical thinking** requires students not simply to accept what the law is, or what the courts or text books say the law is and encourages students to question the legal principle and solutions offered and to think creatively.

**Cross-examination** it is the questioning of an opposing witness in civil and criminal matters, or any witnesses called by the court.

**Debates** are a discussion on a particular (normally controversial) topic in which opposing arguments are put forward.

**Delict** is a civil wrong giving rise to a claim for civil damages. A person who has suffered loss, caused by the wrongful act of another, which was committed either intentionally or negligently, is entitled to institute a delictual claim for damages against the wrongdoer.

**Democracy** is a system of government in which is run by representatives elected by citizens who are eligible to vote. Leaders are therefore accountable to the electorate.

**Deny** (an allegation): To deny is one of the four possible responses to allegations contained in pleadings. The effect of a denial is that the allegation becomes disputed, and the opposing party is 'put to the proof' and must lead evidence in support of the allegation at the trial stage. A defendant who denies an allegation must ensure that such denial does not amount to a bare denial.

**Dispute of fact** a dispute between parties to litigation regarding a material fact or set of facts.

**Documentary evidence** an item of evidence is considered a "document" if the content of that item is relied upon in court, irrespective of the material out of which the item is made. For example a piece of wood containing writing is considered a document if the court has reference to the writing on the wood and a photograph is a document if evidence is lead about the people or objects depicted on the photographs.

***Dolus* (Latin)** Intention

**Drafting** is the process of writing legal letters and documents such as pleadings, contracts, wills, leases and other legal documents.

**Duly performed basis** means that academic credit is not given for that course, but participating students have satisfactorily to complete the programme in order to fulfil the graduation requirements of the faculty.

**'Each one teach one'** is a technique that requires all the students to become involved in teaching each other about a particular area of the law. Each student teaches another student a section of the law to be covered so that by the end of the exercise all the students would have learned about the whole topic.

**Ethics** refer to the code of professional conduct that should be observed by legal practitioners and clinical law students when interacting with clients, other members of the profession, persons concerned with the administration of justice and the general public.

**Evidence** is any information that has been formally admitted by a court or tribunal in civil or criminal proceedings, or at administrative or quasi-judicial proceedings.

**Expert evidence** is permissible opinion evidence given by an expert, who is legally permitted to do so due to his or her knowledge, education and/or experience in the field of expertise concerned.

**Factum probandum** (pl. facta probanda) (Latin) a fact that is in issue

**Factum probans** (pl. facta probantia) (Latin) a fact relevant to the fact in issue

**Family law** is an area of the [law](#) that deals with [family-related](#) matters and [domestic relations](#), including: divorce, marriage, custody and guardianship of children and child and spousal maintenance.

**Farm-out law clinics** are based on cooperation or partnership agreements between law schools and outside bodies such as NGOs, other private bodies or government departments. They differ from campus clinics, off-campus clinics or mobile clinics in that administrative control of the clinic vests in the host organization.

**FIRAC formula** refers to a formula which can be used to write opinions and to answer problem questions in written examinations. 'FIRAC' stands for: F = Facts, I = Issues, R = Rule of law, A = Application of rule of law to facts, C = Conclusion.

**First-hand knowledge of events** means that witnesses must testify about things that they themselves have seen, heard or experienced.

**Fixed assets** generally comprise vehicles and various items of equipment necessarily acquired by a clinic in order for it to function and deliver its services.

**Fundraising** means procuring the funds necessary to financially sustain the clinic and may include the designated office holders of the law clinic approaching large local and international aid agencies for financial support for the law clinic and its activities.

**Gender-neutral language** are terms that do not denote gender. It is preferable to use these terms (where possible) in legal writing.

**Governance** is the process of decision-making and the implementation of decisions.

**Hearsay evidence** is evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence. Usually statements made by people

who are not going to be called as witnesses in court cannot be used as evidence in the court case. This is because if people are not called to give evidence as witnesses the truth of their evidence cannot be tested by cross-examination in court.

**HIV** stands for Human Immunodeficiency Virus

**Human rights** are rights that are believed to belong justifiably to every person regardless of class, colour and creed.

**Hybrid approach clinics** are integrated with courses but no credits, live client meetings and externships.

**Hypothetical problems** are similar to case studies, except that they are often based on fictitious situations.

**Innocence** is the absence of guilt, blamelessness, free from any wrong.

**Income and expenditure statement** shows the income and expenditure of the clinic for a specified period.

**Inquisitorial system** (also known as the Civil Law system or the Continental system) In this system, trials are presided over by a judge without juries and there are no evidentiary rules preventing the admission of evidence that might prejudice a jury. Trials are inquisitorial not adversarial in nature, thus there is no cross-examination by either party of the other side's witnesses. All questioning of witnesses is done by the presiding judge, the lawyers merely lead the witnesses (see adversarial system.)

**Interviewing** is a conversation between two or more people where questions are asked by the law student to elicit facts or statements from the client.

**Jigsaw method** is useful for introducing students to procedures such as legislative hearings where special parliamentary committees listen to representations from different interest groups regarding proposed changes in the law.

**Judgment** is a decision by a court or other tribunal that resolves a controversy and determines the rights and obligations of the parties.

**Jurisdiction** refers to the power or competence of a particular court to hear and determine an issue between parties brought before it.

**Justice Principle** means that all clients should be treated equally and fairly by clinical law students (and their supervisors).

**Justification** is a reason acceptable to a court as to why the defendant did what he is charged with having done and he will not be criminally liable for the crime.

**Knowledge outcomes** refer to what the students will know by the end of the lesson about the relevant substantive or procedural law principles, skills or values being taught (e.g. "At the end of the lesson students will be able to explain ...").

**Law clinic constitution may be** very formal (prescribed by law), or very informal. A basic constitution should be agreed upon to provide a framework for the management and governance of the clinic.

**Leading questions** are questions which suggest the answer desired by the questioner, usually by stating some facts not previously discussed and asking the witness to give a “yes” or a “no” answer.

**Legal agreements** are contracts drawn up for a wide range of purposes which legally bind a clinic to another party.

**Legislative drafting clinics** train law students in how to draft legislation in important areas of the law.

**Litigate** means to bring or contest a legal action in court.

**Management** is the staff of the clinic who manages the clinic on a day-to-day basis.

**Means test** is a determination of whether an individual is eligible for help by the law clinic normally based on the individual’s income.

**Mixed law clinics** may operate on or off-campus or as mobile clinics. They may combine general practice with specialist clinic work or even public interest litigation.

**Mobile law clinics** are clinics that move away from the campus or off-campus clinics and visit the communities they serve. They often work on a circuit basis in that they may visit a particular community or neighbourhood on a regular day of the month (e.g. the first Saturday of each month).

**Mock trials** are an experiential way of learning that teaches students to understand court procedures. Students may be required to question witnesses, the accused person or experts as there is in mock trial.

**Moots** involve case studies in which students are required to argue an appeal on a point of law.

**Murder** is the unlawful and intention killing of a human being.

**Negotiation** is a skill that all lawyers require as most cases dealt with by them involve attempting to reach an agreement about something.

**NGOs** are Non-Governmental Organizations.

**Non-maleficence** means that clinical law students should never harm their client’s interests – whether intentionally or negligently through acts or omissions.

**NPO** is a Non-Profit Organisation and operates for public benefit.

**Off-campus clinics** operate away from the university campus and the law school.

**Open-ended questions** are questions which the witness cannot answer with “yes” or “no” and normally begin with “Who” “Where” “What” “Why” “When” or “How”.

**Opinion evidence** is not normally permitted as the witness should confine his testimony to the facts as it is the responsibility of the court to draw an opinion from those facts. However, if the evidence is about something that ordinary people know about, an ordinary witness may give an opinion (e.g. whether it was a hot or cold day).

**Party** (plural 'parties') is a term used to describe a person who is directly involved in litigation as a litigant, for example the plaintiff and defendant in actions, the applicant and respondent in applications, and the appellant and respondent in appeals.

**PRES formula /"Thinking on your feet"** is a formula that has been developed to help students, particularly law students, to construct a logical argument when asked to think on their feet. The formula stands for: P- Point of View, R- Reason, E- Evidence and S- Summary.

**Prescription** may take two forms- acquisitive and extinctive. Acquisitive prescription is a mode of acquiring property. Extinctive prescription is a measure by which an action can be repelled on the ground that the time fixed by law, and within which the action should have been raised, has expired.

**Problem-solving** requires students to identify the issues, generate alternative solutions to the issues raised, and develop a plan of action.

**Professional responsibility** refers to the responsibility of lawyers regarding their relationships with society, the courts, their clients and themselves.

**Public interest law clinics** focus on legal issues that impact on large numbers of people within a community.

**Ranking Exercises** involve making choices between competing alternatives.

**Reporting** is the main means for formally communicating information.

**Risk** may be defined as the likelihood of occurrence of an event or events which would adversely affect the normal functions and operations of a clinic.

**Role plays** are a learning activity where students draw on their own experience to act out a particular situation.

**Sentence** is the punishment for an offender, handed down by a magistrate or judge after an accused person has been convicted. Sentences include imprisonment, correctional supervision, fines etc.

**Service delivery** is the delivery of services (including water services, sanitation and health services) to citizens by the state.

**Simulated law clinics** are a model for developing legal skills, however have little direct impact on the community unless they are linked to a live client clinic or students are farmed out to legal aid agencies, or some other government or non-governmental organizations that provide access to justice.

**Simulations** require students to act out a role by following a script. They are not open-ended like role plays, and are carefully scripted to ensure that the objectives of the exercise are achieved.

**Skills outcomes** refer to what the students will be able to do by the end of the lesson (e.g. "At the end of this lesson students will be able to conduct ...").

**Social justice** refers to the fair distribution of health, housing, welfare, education and legal resources in society.

**Socio-economic rights** are rights that include the right to housing, the right to water and the right to an education. Economic, social and cultural rights are recognised and protected in international and regional human rights instruments. Member states have a legal obligation to respect, protect and fulfill economic, social and cultural rights and are expected to take progressive action towards their fulfillment.

**Steering Committee** is formed by the initiator of a law clinic to take the planning process leading to the set-up of the clinic forward.

**Street law-type clinics** are clinics that train law students to teach people legal literacy using interactive teaching methods.

***Sui generis*** is a Latin expression meaning 'of its own kind or class'.

**Summons** is a document issued by the plaintiff in an action which informs the defendant that legal proceedings are to be instituted against him (the defendant).

**Taking a stand** is an activity which requires students to stand up for their point of view by physically standing up and verbally justifying their position. A controversial topic is normally chosen.

**Teaching legal skills clinics** have been used in South Africa to train senior law students how to teach first year law students about the law using interactive teaching methods.

**Trial advocacy skills for law clinics** require law students to be trained in case analysis, trial preparation and oral and written skills necessary to prepare for, and conduct, preliminary hearings in court.

**Trial-within-a-trial** a hearing held within a trial (i.e. the trial proceedings are interrupted and suspended until the trial-within-a trial has been completed).The purpose of the trial-within-a trial hearing is to determine the admissibility of information alleged to be inadmissible, such as statements containing alleged confessions or informal admissions, disputed pointings-out and alleged unconstitutionally obtained information.

**Urgent application** is an application which is brought urgently. In a case of urgency the judge may dispense with the forms and service provided for in the rules and may hear the matter at such time and place and in such a manner and according to such procedure as the circumstances require.

**VAT** stands for Value Added Tax.

**Values outcomes** refer to what the students will appreciate by the end of the lesson (e.g. "At the end of this lesson students will appreciate the importance of ...").

**Visual aids** are items used to illustrate a lesson and can take the form of photographs, cartoons, pictures, drawings, posters, videos and films.

**Weight** (of evidence) a determination made by the court after evaluating evidence in order to decide whether the case has been proved or not

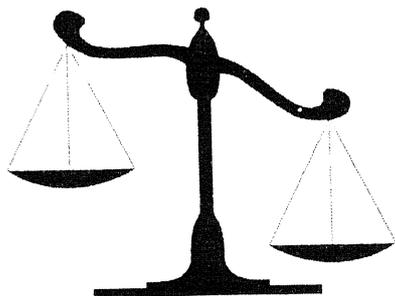
**Word** is a collection of letters that has a meaning, thus: cat; house; eat; run; justice; happy.

**Wrongful dismissals** is when an employee's contract of employment has been terminated by the employer in circumstances where the termination breaches one or more terms of the contract of employment or a statute provision in employment law.



**SHARING KNOWLEDGE:** Seated (l-r) James Masumbu (Malawi), Prof Robin Palmer (South Africa), Theodora Bltutare (Uganda), Prof David McQuoid-Mason (South Africa), Nancy Sesay (Sierra Leone), and Thulisile Mhlungu (South Africa).

Standing (l-r) Joy Asiema (Kenya), Moses Unegbu (Nigeria), Kiture Kindiki, (Kenya), Yemi Akinseye-George (Nigeria), Ernest Ojukwu (Nigeria), Lewis Bande (Malawi), Munirah Osman-Hyder (South Africa), Isa Chiroma (Nigeria), and Olughenga Oke-Samuel (Nigeria).



## Lawyers hone skills

**L**AW faculties need to produce law graduates who not only know the law in theory, but are skilled to practice law.

Clinical legal education (CLE) is one way of introducing skills training into LLB curricula. Law clinics based at universities allow students to experience real-life situations and problems. Law graduates and candidate attorneys are also given the opportunity to serve articles of clerkship at the various law clinics around the country. Community members who cannot afford to go to a private lawyer receive legal assistance free of charge.

CLE is a popular educational method throughout Africa. In June 2003 the Law Clinic at the Howard College campus, together with the Open Society Justice Initiative, Ford Foundation, Foundation for Human Rights, the Kenyan Section of the International Commission of Jurists and the AULAI (Association of University Legal Aid Institutions) Trust hosted the First All Africa CLE Colloquium. The gathering agreed that the first priority is the need to develop skills among clinicians to be able to develop, maintain and sustain CLE programmes.

The First All African Training Workshop was held at the Institute for Professional Legal Training (IPLT) at UKZN from 4-9 October. The committee planning and facilitating the workshop comprised: Professor David McQuoid-Mason

(Lecturer), Professor Robin Palmer (Lecturer), Ms. Munirah Osman (Director – Law Clinic) and Mrs Thulisile Mhlungu (Supervising Attorney – Law Clinic), all of whom are based at the Howard College campus.

The comprehensive programme covered theoretical concepts of teaching and learning (skills integration, teaching methodology, assessment methods and supervision techniques). Four skills – Interviewing and Counselling; Writing; Mediation and Negotiation; and Case Analysis and Trial Planning were identified. Participants had to plan how they would teach such a lesson and to present their lesson plans and teaching methods. The lessons were recorded on video to provide opportunities for the participants to learn and improve through reflection.

On the last day, participants shared information on administration and management of law clinics. The workshop ended with a commitment to strengthen CLE programmes in the different countries represented at the conference.

At the closing dinner, participants received Certificates of Attendance.

The Second All Africa CLE Colloquium is scheduled to take place in January 2005 in Nigeria and it is intended that some training will be incorporated into the programme.

– Munirah Osman-Hyder

ISBN 978-0-6205-6470-0



9 780620 564700