

THE ROLE OF LEGAL CLINICS IN PROMOTING HUMAN RIGHTS: THE EXPERIENCE OF NIGERIA LAW SCHOOL YENAGOA LAW CLINIC AND THE LEGAL SUPPORT AND CARE CENTRE AT GD GOENKA UNIVERSITY SCHOOL OF LAW GURGAON INDIA

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ABSTRACT

Legal clinics are playing a very prominent role in promoting human rights and filling global access to justice gaps through justice education. In turn, they provide access to justice for the poor and marginalized in fulfilment of this social justice mandate. Clinicians realize that human rights and justice education is key to their social justice mission. Apart from adding statements about the importance of justice to their mission statement, clinics have in place programs fundamentally oriented around a vision of justice. Students in clinics play very important roles in achieving their clinics' social justice mission and goals by sensitizing youths, women, children, inmates and citizens to change thought processes and mold the social fabric needed for a just society, promoting a culture of lawfulness through generating solutions to several

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social issues that results in good citizenship, improved policies, good governance, access to justice and effective remedies. Generally, the objective of this paper is to share case studies from the Nigerian Law School Yenagoa Legal Clinic, the Legal Support and Care Centre at GD Goenka University and Legal Aid Society at The NorthCap University, Gurugram, Haryana, India of how legal clinics are promoting human rights, access to justice, a culture of lawfulness and sustainable development through their work in communities, schools and prisons. The first section lays a background on the role of law in shaping society, the second focuses on the conceptual and theoretical frameworks. The third section examines the framework that provides the mandate education for justice and human rights. The fourth section assesses the role of law schools and clinics in promoting education for justice, human rights and a culture of lawfulness while the fifth section deals with conclusions and recommendations.

KEYWORDS: Justice, Lawfulness, Legal Clinics, Rights

1. Introduction

The function of law in Nigerian and Indian societies can be seen from two perspectives, its normative function and its social function. According to Lord Sankey, '... the role of lawyers is a pervasive one, straddling the political, economic as well as

social life of the society'.¹ From the normative perspective, law can be viewed as a beacon towards which social action is directed by society - in that it can either guide to, or dissuade from, certain actions by expressing the desire that at such action being performed, certain undesirable legal consequences may follow. It defines relationships among members of society and defines acceptable behaviour.

In its social function, law protects society in general, ensuring that there is security for all, protects general morals and institutions, protects individual rights and ensures the adjustment of conflicting interest to derive an equilibrium through which society can function optimally. Law defines what society labels as crimes and provides legal sanctions for violators. Conviction and punishment for crime and violation of human rights whether by individuals, corporate entities or the state does not demand that you know you are committing a crime when the action was done.

The aggregate burden of crime borne by Nigeria and India, as a result of activities in Yenagoa and Gurgaon, India is enormous. Thus, it becomes imperative to focus on crime prevention rather than on citizen protection and correction. The cost of crime includes the cost of legal and judicial costs of prosecuting criminal cases, cost of running correction facilities, cost of providing police protection, indirect and indirect losses suffered by victims of crime and the opportunity cost of prisoners serving prison terms and costs posed and borne by those connected to them.

¹ Laurence Gower, 'English Legal Training' (1950) 13 *Modern Law Review* [137], [161]

Yenagoa Local Government Area of Bayelsa State has been identified as one of the major local government areas that had high cases of crime and human rights violation. A study conducted in Yenagoa revealed that theft and other stealing were the most common types of crime in the area accounting for 40.03%, assault accounted for 22.59%, while false pretences and cheating accounted for 9.63% and armed robbery for 6.82%. Murder had 4.47% while burglary and rape, indecent assault and house breaking was 4.02%, 3.71% and 3.64% respectively.² Another report states that the absence of police personnel and other security operatives in some hotspots for crime and gang-related crises in Yenagoa, has made residents vulnerable to attacks by cultists and armed robbers. Lives have been lost to cult-related violence, several cars have been hijacked and many persons sustained different degrees of injuries at the time of report.³

The Nigerian Law School Yenagoa Law Clinic programme is not only an opportunity for participating students to immediately put to use what they have learnt in class, it also enables students to strategize and identify social justice problems in the communities around the institutions so they can intervene, using the instruments of advocacy, training and legal counselling. Students have identified human rights

² Ekpo Effiong, Felix Iyiola, Isaac A. Gbiri, and Daukere Bitrus Eniyekenimi, 'GIS Approach in Analysis of Crime Mapping in Yenagoa Local Government Area of Bayelsa State, Nigeria' (2016) 5(10) *The International Journal of Innovative Research and Development*, <https://internationaljournalcorner.com/index.php/ijird_ojs/article/view/136427> accessed 13 March 2023

³ Ebiowei Lawal, 'Crime Rate Increases In Bayelsa, As Police Abandon Duty Posts' *Tribune* (Lagos 13 Nov 2020) <<https://tribuneonlineng.com/crime-rate-increases-in-bayelsa-as-police-abandon-duty-posts/>> Accessed 02 November 2022

abuses and high crime rates as problems that could be addressed through education on human rights, justice and a culture of lawfulness and had over years developed strategies to achieve same. Education as a strategy for behavioural change has also been identified by several entities as being capable of creating change in levels of human rights abuses and high crime rate in Yenagoa. Recently, it was reported thus:

Nigeria's youthful population, particularly in the Niger Delta region, are facing multiple challenges that include low level and quality of education and health care, poverty, and unemployment, which makes them more vulnerable to drug use, gang violence, cultism, piracy, riverine and other maritime crimes, all of which are prevalent in the Niger Delta region and are adversely affecting the life and safety of young people as well as the local communities and pose security risks.⁴

In August 2022, the United Nations Office on Drug and Crime organized a workshop on "Building youth resilience to violence and crime through social developmental approaches to crime prevention" aimed at enabling the development of the Crime Prevention strategy for Bayelsa State and building local capacity to effectively address violence and crime at the community level.

⁴ United Nations Office on Drug and Crime, 'Building youth resilience to violence and crime through social developmental approaches to crime prevention' (August 2022)
< <https://www.unodc.org/nigeria/en/building-youth-resilience-to-violence-and-crime-through-social-developmental-approaches-to-crime-prevention.html> >

Human rights violation and crime rate in crime rates in Gurgaon, India is classified as high. According to statistics level of crime is about 64.31%, people using or dealing in drugs is moderate at 42.93%, incidence of property crime is moderate at about 55.73%, problem of assault and armed robbery is moderate at about 56.74% while the problem of corruption is high at about 76.03%. As in most parts of India, human rights violations is high in in Gurgaon. According to a 2016 report:

... the most significant human rights problems involved instances of police and security force abuses, including extrajudicial killings, torture, and rape; corruption, which remained widespread and contributed to ineffective responses to crimes, including those against women, children, and members of Scheduled Castes (SCs) or Scheduled Tribes (STs); and societal violence based on gender, religious affiliation, and caste or tribe. Other human rights problems included disappearances, hazardous prison conditions, arbitrary arrest and detention, and lengthy pre-trial detention. Court backlogs delayed or denied justice, including through lengthy pre-trial detention and denial of due process.⁵

The impact, effect and cost of crime and human rights violations in Yenagoa and Gurgaon can and have been minimized through human rights and justice education aimed at promoting understanding of human rights, respect for human rights and a

⁵ United States Department of State, '2016 Country Reports on Human Rights Practices' (2017) <<https://www.refworld.org/docid/58ec8a2613.html>> Accessed 26 October 2022

culture of lawfulness. This is premised on the understanding that the more people know about their rights and the limits to their rights as a result of other people's rights, the more likely they are to keep within the boundaries of law. Also, they are able to understand that following every act of breach is an ensuing sanction. This influences the decision on whether to respect rights, violate rights or to seek redress when their rights are violated.

Kaunda quoting the then president of Gambia stated that, 'I consider law to be perhaps the most important of all instruments of social order because without it the whole structure of society can but inevitably collapse.'⁶ In African countries, legal education and its relation to community goals have often been insufficiently appreciated. However, in the last decade the unique role of law clinics has become prominent through the successful work of law students as they perform the social justice mission of law clinics and take strategic action, including education for justice as their contribution to engendering a symbiotic relationship between human rights and justice, and building values through justice education.

Education is the hallmark of a civilised society, the engine of social justice and economic growth, the foundation of our culture and the best investment we can make in the future of our country. The better educated our society, the fairer, more cohesive,

⁶ Kenneth Kaunda, 'The Functions of a Lawyer in Zambia Today' 1[1971-1972] 3-4 ZLJ
<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/zambia3&div=4&id=&page>>
Accessed 15 March 2021

productive and innovative it can be.⁷ Globally it is widely believed that the quality of legal education and the legal profession is important to justice delivery.

Under the Doha Declaration, member states emphasize that education for all children and youth, including the eradication of illiteracy, is fundamental to the prevention of crime and corruption and to the promotion of a culture of lawfulness that supports the rule of law and human rights while respecting cultural identities. Also, Goal 4 of the Sustainable Development Goals, promotes commitment to promoting lifelong learning opportunities for all as key to sustainable development.

In the words of Lon Fuller, 'lawyers have a central role to play in the ordering of society.'⁸ Many viewed law as a critical instrument in Africa's development.⁹ This perspective is well articulated by Hon. Justice M. O. Onolaja in the following statement:

... lawyers are instrumental to whatever situation any country may find itself.

Lawyers, as judges, in private or corporate practice, in the academics or in government, shape the society and the lives of their fellow human beings...

However, a lawyer can only be as good as the system of legal education that produced him. Legal education - academic as well as vocational - is a vital

⁷ Charlotte Dean, 'Key Issues in Emma Smith , Education and Social Justice' [2018] SAGE https://www.researchgate.net/publication/309227876_Seeking_Educational_Excellence_Everywhere_a_n_exploration_into_the_impact_of_academisation_on_alternative_education_provision_in_England > Accessed 15 March 2021

⁸ Robert Summers, 'Fuller on Legal Education' (1984) 34(1) *Journal of Legal Education*, 8

⁹ Samuel Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need', (2016) 39(4) *McGeorge Law Review*. <<https://scholarlycommons.pacific.edu/mlr/vol39/iss4/1>> Accessed 15 March 2021

ingredient that affects the quality of our justice system and the role of lawyers in the political, economic and social development of our country.’¹⁰

Globally states have made a commitment to promoting access to education and justice for all, as well as promoting lifelong learning skills. Examples include the Doha Declaration and the Sustainable Development Goals as a strategy for crime prevention, promoting human rights and achieving sustainable development. However, Goal 16,¹¹ ensuring public access to information and seeking the protection of fundamental freedoms in accordance with national legislation and international agreements, as key targets, have not being popularized. Neither has governmental action reflected a commitment to ensuring same. Also, it has become glaringly obvious that advances in promoting the rule of law and access to justice are uneven.

In this article we articulate the role of legal clinics in promoting human rights and how the Nigerian Law School Yenagoa Legal Clinic and the Legal Support and Care Centre at GD Goenka University use justice education and the provision of legal awareness and access to justice options to promote human rights, access to justice, a culture of lawfulness, and sustainable development through their work in communities, schools and prison.

¹⁰ Morokenji Onolaja, ‘Problem of Legal Education In Nigeria’ < <https://alimiandco.com/wp-content/uploads/2021/10/ACCREDITATION-AND-LEGAL-EDUCATION-IN-NIGERIA.pdf> > Accessed 13 March 2023

¹¹ Focuses on peace, justice and strong institutions

2. Conceptual and Theoretical Framework

2.1 Conceptual Framework

Justice has been differently defined by authors. Justice can be used to mean any number of things, like the importance of having rights, fairness, and equality. People will think it is unjust to have their rights violated (like being thrown in prison without being found guilty in a court of law); or being *unfairly* harmed by someone unwilling to pay compensation for the harm done; or being unfairly treated as an inferior (*unequal*) who is not hired for a job despite being the most qualified person for the job.¹²

Implicit in several definitions are that it influences the way fundamental rights and duties are distributed by major institutions and how those institutions determine the division of advantages from social cooperation.¹³ It influences the ability to discern right from wrong, the willingness to uphold and reward right and condemn and punish wrong;¹⁴ as opposed to injury or wrong it gives to every man what is due and embraces the justice of decisions, actions, law and institutions made or established to society as they apply to individuals and groups. Finally it may be distributive or

¹² John Gray, 'Ethical Realism: Three Theories of Justice', [2011]

<<https://ethicalrealism.wordpress.com/2011/04/26/three-theories-of-justice/>> Accessed 13 March 2023

¹³ Rawlings, J. 'A theory of Justice' in Donald Abel (ed) *Fifty Readings in Philosophy* (McGraw-Hill Publishers 2012)

¹⁴ Chukwudifu Oputa, 'Judicial Ethics, Law Justice and the Judiciary' (1990) 5(3) *JUS* 43

cumulative.¹⁵ John Rawlings perceived Justice as the first virtue every social institution ought to have.

The proper relationship between law and justice has been argued for decades. Dakas opines that

... the interface of law and justice should ordinarily be a mutually reinforcing one... however as is sometimes ...the outcome of a case sometimes occasions what one might call legal injustice... As law teachers we have a critical role to play in engendering a symbiotic relationship between law and justice through... mentoring of students.¹⁶

Clinical legal education refers to a method of teaching that is concerned with getting law students to be involved in the practical application of legal knowledge and the acquisition of legal skills while also discharging some justice function. Clinics promote experiential learning and create a learning environment where students undertake practical work and are able to apply their knowledge, observation and experience to solve real life problems. According to Kolb, learning refers to the 'transformation of experience into effective learning.'¹⁷ Healey and Alan in their review of Kolb's experiential learning cycle describes it as complete and effective when a student in the

¹⁵ Ibid, 43

¹⁶ Clement Dakas, 'Beyond Legal Shenanigans: Towards Engendering a Symbiotic Relationship Between Law and Justice in Nigeria' in *Law, Justice and Society: Proceedings of 51st Conference of the Nigerian Association of Law Teachers*, (National Association of Law Teachers 111 Abuja, 2017)

¹⁷ David Kolb (1984). *Experiential Learning: Experience as the Source of Learning and Development*. Englewood Cliffs, NJ: Prentice Hall

learning process undertakes concrete experience, reflective observation, abstract conceptualization and active experimentation.¹⁸ Joan Neal more explicitly described experiential learning thus:

You could have students read about drafting contracts or listen to me talk about drafting contracts all year long, and they're not necessarily going to be better at doing it... You really do have to roll up your sleeves and do it; you have to make mistakes, find out what those mistakes are, correct those mistakes—and then try it again and do better.¹⁹

Clinical legal education does not only refer to a method of teaching that is concerned with getting law students to be involved in the practical application of legal knowledge and the acquisition of legal skills. It also involves discharging a justice function. Clinics have ensured that communities have access to justice and that they have a voice in issues that concerns them. They serve as a vehicle for protection of human rights, ensuring participation, promoting education for justice, human rights, a culture of lawfulness and sustainable development.

Since it has been proven beyond argument that legal clinics enable students to acquire and develop practical skills needed for legal practice, it is only rational to establish

¹⁸ Mick Healey and Alan Jenkins, Kolb's Experiential Learning Theory and Its Application in Geography in Higher Education, (2000) 99(5) *Journal of Geography*, 185

¹⁹ Becky Beaupre Gillespie, 'The Evolution of Experiential Learning', [2017]

<https://www.law.uchicago.edu/news/evolution-experiential-learning?utm_content=bufferff089&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer> Accessed 13 March 2023

and develop legal clinics within law institutions to enable transformative legal education that benefits the students, the university and the communities around the institution. Lesley Greenbaum identified the need to change the essential character and methodologies of legal education through transformative legal education in order to equip law graduates to participate.²⁰

In our context, clinical legal education is not only a training methodology that is concerned with getting law students to be involved in immediate use of legal knowledge acquired and legal skill developed in a student-centred learning environment, but also opens up space for their identification of injustices and fulfilment of some justice function in education or legal representation with the highest level of integrity and ethics.

Finally, NULAI has described clinical legal education as a ‘multidisciplinary and multipurpose type of education which seeks to develop the skills and competencies needed to strengthen the legal system, providing opportunities for learning social justice concepts.’²¹ One common recommendation identified by reviews conducted in select jurisdictions is the need to integrate skills-based learning through adoption of a clinical legal education curriculum and teaching methodology.

²⁰ Lesley Greenbaum, ‘Re-visioning legal Education in South Africa: Harmonizing the aspirations of transformative constitutionalism with the challenges of our educational legacy’ (2015) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2575289> Accessed April. 5, 2021

²¹ Network of University Legal Aid Institution, ‘The Development of Clinical Legal Education,’ (2015) <<https://namati.org/network/learning/>> Accessed 13 March 2023.

The MacCrate Report of 1989 contributed significantly to the establishments and enhancement of legal clinics in the United States. The Report recommended the integration of clinical legal education pedagogy and methodology to legal education in the United States. Law schools through well-structured clinical programs should help students understand the importance of the skill of organization and management of legal work. The first Nigerian law school clinical law curriculum was introduced in 2008. It included a guiding mission statement: outcome based, learning centred. It focused on knowledge, skills and value. Clear rules for formative assessment. People complained about the curriculum, its impact on learning and ideas for redevelopment. The programme was committed to outcome-based learners, adopting centred learning that impacts knowledge, skills and values.

A review of legal education in Africa in the past decade reveals that one of the weaknesses in African legal education includes a lack of legal clinics to teach skills and sensitize students to local needs and aspirations, providing them with opportunities to attain practical legal skills through their community service programs.²² The positive role being played by legal clinics in the last decade has become prominent. According to the Open Society Justice Initiative:

Clinical legal education provides law students with real-life work experience, develops local legal capacity, and helps protect human rights around the

²² Samuel Manteaw, 'Legal Education in Africa: What Type of Lawyer Does Africa Need' (2016) 39(4) *McGeorge Law Review* <<https://scholarlycommons.pacific.edu/mlr/vol39/iss4/1>> accessed 15 March 2021

world. Law clinics train lawyers and law students in the spirit of social justice and public service, and provide desperately needed legal services in underserved communities. Students working in university based clinics—supervised by a law professor or practicing lawyer—provide legal assistance to poor and marginalized clients, while gaining exposure to the problems faced by these groups. At the same time, law students learn about their professional responsibility for—and develop a personal commitment to—sustaining and supporting the rule of law, human rights, and social justice.²³

One major goal of law schools is to produce law graduates who can contribute to legal, social, economic and political development on both global and local scales by developing their analytical, research and advocacy skills to solve academic and practical social problems. Educating for justice, human rights and a culture of lawfulness emerged as part of the process of incorporating justice into law and training students to have a strong sense of justice and ethics.

It has been observed that to achieve justice through education it is of great importance that citizens have information about their rights, duties and how they can access justice. Justice education and education for justice initiatives teach people how systems of law-making and law enforcement works, helps them access people who

²³ Open Society Justice Initiative, 'Legal Clinics: Serving People, Improving Justice' <<https://www.justiceinitiative.org/publications/legal-clinics-serving-people-improving-justice>> Accessed 02 March 2023

work in the justice system, and build their basic skills needed to manage the legal aspects of everyday problems.

Education for justice is the process of promoting a culture of lawfulness through educational activities at all levels aimed at making citizens understand the law.

Education for justice aims at teaching the next generation about crime prevention, and to better understand and address problems that can²⁴ undermine the rule of law.

In the absence of law, private feud and vengeance supplement the informal social process by which individuals and groups deal with disputes. Law evolved to supplement the informal alternatives and provides an acceptable rationalized and conclusive settlement of disputes which is subject to public scrutiny. Apart from maintaining of public order, law also suppress deviant behaviour through provision of rules prohibiting certain deviant behaviour and the enforcement of such rules.

The Doha Declaration²⁵ of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (Qatar, 2015) prompted the United Nations Office on Drugs and Crime to develop the Education for Justice Initiative, aiming to support the integration of crime prevention and the rule of law into all levels of education. Under

²⁴ Edeh Chukwuemeka, '5 Basic Functions of Law in the Society' 2020 Bschorly LLC <<https://bscholarly.com/5-basic-functions-of-law-in-the-society/>> Accessed 13 March 2023

²⁵ United Nations, 'Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation' <<https://www.unodc.org/dohadecoration/en/index.htm>> Accessed 26 October 2022 (The Doha Declaration)

the Doha Declaration, member states that signed the declaration made a commitment to promote a culture of lawfulness.

The Declaration recognizes the need for education for justice and emphasizes that education for all children and youth, including the eradication of illiteracy, is fundamental to the prevention of crime and corruption, and to the promotion of a culture of lawfulness that supports the rule of law and human rights.²⁶

Human rights and justice education has globally become prominent in the work of several legal clinics, especially clinics within the Global Alliance for Justice Education (GAJE) platform. In this paper justice education includes both education for justice and justice education. The work of the Global Alliance for Justice Education initiative is founded on the reasoning that law students and lawyers in training can themselves be valuable workers for justice during their time of preparation.

On the other hand, the Education for Justice Initiative can be traced to the work of the United Nations Office on Drugs and Crime. Its initial programme was to prevent crime and promote a culture of lawfulness through education activities designed for primary, secondary and tertiary levels. These activities have become integrated in the work of several law clinics working as educators to teach the next generation, women, men and inmates to better understand and address problems that can undermine the

²⁶ United Nations Office on Drugs and Crime, 'About the Global Programme. The Doha Declaration: Promoting a Culture of Lawfulness' <<https://www.unodc.org/dohadeclaration/en/index.html>> Accessed 26 October 2022

rule of law and encourage students to actively engage in their communities and future professions in this regard.²⁷

Although the United Nations Office on Drugs and Crime has developed a series of university modules and other tools to assist academics working on Education for Justice,²⁸ these tools can be and being adapted to suit the broader framework of Justice Education and are being used by legal clinicians to design and implement educational interventions aimed at broadening understanding of human rights, citizenship aimed at equipping citizens with the knowledge and understanding of principles of justice, and the attitude and value needed to live a crime free life. Such endeavours constructively contribute to the development of society thereby enhancing societies' resilience to crime, violence and corruption while also promoting the rule of law and fostering a culture of lawfulness.

Forming the foundation and integral part of the justice education and Education for Justice Initiative undertaken by legal clinics is a desire to promote human rights through broadening understanding on human rights by human rights education. Human rights education can be defined as any learning, education, training and information sharing efforts aimed at building a universal culture of human rights. Human rights education aims at developing an understanding of our common

²⁷ United Nations Office on Drugs and Crime, 'Education for Justice' <<https://www.unodc.org/e4j/>> Accessed 13 March 2023

²⁸ United Nations Office on Drugs and Crime, 'Tertiary Education' <<https://www.unodc.org/e4j/en/tertiary/index.html> > Assessed 13 March 2023

responsibility to make human rights a reality in every community and in society at large. In this sense, it contributes to the long-term prevention of human rights abuses and violent conflicts, the promotion of equality and sustainable development, and the enhancement of participation in decision making processes within a democratic system.²⁹

The need to educate for human rights is one global concern and has been integrated into several human rights documents.³⁰ One area in which there has been encouraging change in most African countries is the increasing attention paid to the teaching of international human rights subjects in law schools. This teaching is aimed at promoting a culture of respect for rights and a protective and responsive legal system that reflects the realization that good governance is a precondition to development.³¹

²⁹ Commission on Human Rights, 'Resolution 2004/7'1 [2004], para 4

³⁰ Universal Declaration of Human Rights, 1948 art. 26; the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 art. 7; International Covenant on Economic, Social and Cultural Rights, 1966 art. 13; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 art. 10; Convention on the Elimination of All Forms of Discrimination against Women, 1979 art. 10; Convention on the Rights of the Child, 1989 art. 29; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 art. 33; Convention on the Rights of Persons with Disabilities, 2006 arts. 4, 8; Vienna Declaration and Programme of Action (I) paras. 33–34 (II) paras. 78–82; Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001 paras. 95–97; Programme of Action, paras. 129–139; Outcome Document of the Durban Review Conference, 2009 paras. 22 and 107; and World Summit Outcome 2005 para. 131.

³¹ Muna Ndulo and Robert Kent, 'Constitutionalism in Zambia: Past, Present and Future' (2002) 40(2) *Journal of African Law*, 256

2.2 Theoretical Framework

2.2.1 John Locke's Natural Law Theory

John Locke³² is of the perspective that natural rights flow from natural law which originates from God. In his work 'Two Treatises of Government'³³ Locke discussed natural rights, identifying them as being 'life, liberty, and property', and argued that such fundamental rights could not be surrendered in the social contract. He further opined that individuals possess natural rights, independently of the political recognition granted them by the state. In sum, the Lockean natural rights theory viewed the individual as an autonomous being capable of exercising choice and that the legitimacy of government depended not only on the will of the people but also upon the government's willingness and ability to protect the peoples' rights.³⁴

Locke argued that the principal purpose of the investiture of political authority in a sovereign state was the provision and protection of individuals' basic natural rights. For Locke, the protection and promotion of individuals' natural rights was the sole justification for the creation of government. The natural rights to life, liberty, and property set clear limits to the authority and jurisdiction of the state. States were presented as existing to serve the interests, the natural rights, of the people, and not of a Monarch or a ruling cadre. Locke went so far as to argue that individuals are

³² 1632–1704

³³ John Locke, *Two Treatises of Government* (1689) < <https://www.britannica.com/biography/John-Locke/Two-Treatises-of-Government> > Accessed 13 March 2023

³⁴ Alison. L. Young, 'In Defence of Due Deference' (2009) 72(4) *Modern Law Review*, 554

morally justified in taking up arms against their government should it systematically and deliberately fail in its duty to secure individuals' possession of natural rights.³⁵

2.2.2 Immanuel Kant Categorical Imperative

Immanuel Kant developed his idea of natural law, which he called categorical imperative. Kant, from the standpoint of a non-empirical perspective, argued that the sole principle of morality is that which treats people as an end and not as a means, and that this principle holds at all times and at all places without exception.

Kant broke entirely new ground by replacing the objective material and ethical problems that had run through the whole doctrine of the natural law by the problem of subjective morality. The moral autonomy of man is elevated into a principle of the moral world. The moral person, i.e. not the empirical individual as a part of the world of the senses, but rather 'humanity reflected in his person,' has become an end in itself and no longer simply a means to attain other ends. Kant answers the question as to the nature of moral conduct with his famous categorical imperative: 'Act in such a way that the maxims of your will may at all times also serve as the principle of a universal law.'³⁶

³⁵ Andrew Fagan, 'Human Rights' Internet Encyclopedia of Philosophy <<http://www.iep.utm.edu/hum-rts>> Accessed 13 March 2023

³⁶ See <<https://effectiviology.com/categorical-imperative/#:~:text=The%20categorical%20imperative%20is%20a,act%20the%20same%20way%20too>> Accessed 13 March 2023

Kant's moral philosophy is based upon an appeal to the formal principles of ethics, rather than, for example, an appeal to a concept of substantive human goods. For Kant, the determination of any such goods can only proceed from a correct determination of the formal properties of human reason and thus do not provide the ultimate means for determining the correct ends, or object, of human reason. Kant's moral philosophy begins with an attempt to correctly identify those principles of reasoning that can be applied equally to all rational persons, irrespective of their own specific desires or partial interests. In this way, Kant attaches a condition of universality to the correct identification of moral principles. For him, the basis of moral reasoning must rest upon a condition that all rational individuals are bound to assent to. Doing the right thing is thus not determined by acting in pursuit of one's own interests or desires, but acting in accordance with a maxim which all rational individuals are bound to accept. Kant terms this the categorical imperative, which he formulates in the following terms, '... act only on that maxim through which you can at the same time will that it should become a universal law.'

The categorical imperative is self-imposed by morally autonomous and formally equal rational persons. It provides the basis for determining the scope and form of those laws which morally autonomous and equally rational individuals will institute in order to secure these very same conditions. For Kant, the capacity for the exercise of reason is the distinguishing characteristic of humanity and the basis for justifying human dignity. As the distinguishing characteristic of humanity, formulating the

principles of the exercise of reason must necessarily satisfy a test of universality; they must be capable of being universally recognized by all equally rational agent, hence, Kant's formulation of the categorical imperative.³⁷

In Kant's theory, the categorical imperatives operates on three levels: first, it specifies universal acts of duty on all individuals; second, it provides systematic rules for determining these duties; and, third, it specifies the relationship between freedom and duties.³⁸ In all, this imposes on every individual a duty to develop his rational capabilities and employment them for the happiness of others. This will result in the emergence of freedoms and rights in the society flowing from the categorical imperative. However, such rights will be non-relational.

Kant's theory is quite commendable for some of its argument. He argues the sole principle of morality is that which treats people as an end all times and at all places, he recognizes that the right thing could be different in the view of other people and therefore should not be determined by acting in pursuits of one's own interest and desire and that the capacity for the exercise of reason is the distinguishing characteristic of humanity and the basis for justifying human dignity. The greatest strength of his argument lies in deviating to issues of formulating the principles of the exercise of reason which must necessarily satisfy a test of universality. His argument would have been stronger and precise if the argument for universality recognized that

³⁷ *ibid*

³⁸ Alison Young (n34)

the ethical underpinnings of what is right can be faulted by codification of certain rights and exclusion of others on the basis of none codification.

2.2.3 Jeremy Bentham Positivist Theory of Utilitarianism.

The Positivist believes that the content of rights can only be derived from the law of a state. The Positivist adopts an empirical method. One of its chief proponents is Jeremy Bentham who proposed the school of positivism known as the Utilitarianism. Utilitarianism is based on the idea that the moral worth of an action is determined solely by its usefulness in maximizing utility/minimizing negative utility. That is, the more happiness the outcome of an action gives, the more its moral worth. In other words, to the Utilitarian what we ought to do is what will produce more total happiness than doing anything else would.

The main message of the Utilitarian is that since pleasure and pain dominate the human existence, increasing pleasure will diminish pain and improve man's life. The aim of utility therefore, was to increase the overall stock of human pleasure, which could be calculated on a mathematical basis. The ultimate test of utility, therefore, was the implementation of rules which gave the greatest happiness to the greatest number of people-the maximization of felicity.³⁹

³⁹ Alison Young (n34)

2.2.4 John Rawls' Theory

According to John Rawls,

... justice is the first virtue of social institutions, as truth is of systems of thoughts. He sees justice from the perspective of the basic structure of society or more exactly the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation...⁴⁰

According to Rawls, justice should be thought about from the perspective that anyone will choose behind a veil of ignorance unaware of status, ethnicity and religion. He argues that in such state which he referred to as the original position, no one will choose to be oppressed or to be a victim of religious persecution or racial discrimination or sacrifice their fundamental rights and liberties for social and economic benefits even if this gives pleasure to the majority. He advocates for the rejection of utilitarianism on that ground and that a principle of equal basic liberties for all citizens, including the right to liberty of conscience and freedom of thought agree to and should take priority over attempts to maximize the general welfare. This reasoning is articulated in the following:

John Rawls theory of the original position imagines men and women with ordinary tastes, talents, ambitions and convictions who though ignorant of the

⁴⁰ John Rawlings, (n13), 494

unique features of their personalities who come together to form a social contract. According to Rawl's theory if these men and women are rational and seek only their self-interest, they would choose one of his two principles of justice. The first provide that every person must have the largest political liberty compatible with a like liberty for all; and second that, inequalities in power, wealth, income and other resources must not exist except in so far as they work to the absolute benefit of the worst members of the society.⁴¹

2.2.5 John Stuart Mill Contribution to Utilitarianism

Mill was primarily influenced by Jeremy Bentham. Mill's major contribution to utilitarianism is his argument for the qualitative separation of pleasures. While Bentham treats all forms of happiness as equal, Mill argues that intellectual and moral pleasures are superior to mere physical forms of pleasure. Mill differentiated between happiness and contentment and concluded that the former was of higher value than the latter, a belief wittily encapsulated in the statement that 'It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, is of a different opinion, it is because they only know their own side of the question.'⁴²

⁴¹ Michael Sandel, *Justice: What's the Right Thing to Do?* (2010) Penguin Publishing, 151-157

⁴² John Stuart Mill, '(1863) Socrates (c. 469BC - 399BC)' Utilitarianism, <<https://www.utilitarianism.com/socrates.html>> Accessed 13 March 2023

Mill defines the difference between higher and lower forms of happiness with the principle that those who have experienced both tend to prefer one over the other. Mill was of the view that it is more imperative upon a society to devote more resources to propagating things that will bring about higher forms of happiness.

Earlier criticism of the utilitarian's argument that utility be determined by actions that bring happiness to the majority totally undermines human rights which are inherent in every individual. It is certainly incorrect to say rights could not exist outside government right precede the government and the legitimacy of government is derived from its protection of human rights. The subjects of rights are clear, every human being. All humans are equal, their equality does not depend on the sustainability of any argument. The determination of whether any right or law is good is determined by its effect on humankind, relations, laws are good were they codify human rights or puts into place standards that are to give direction on what to do with the end of protecting rights and backed with penalties and measures of deterrence from violating rights. For instance, the laws on murder seeks to protect the right to life, the laws of stealing seeks to protect the right to property. Law is therefore a rational human contrivance necessary to protect human rights with the aim of improving social and political life.

2.2.6 Roscoe Pound Sociological Theory of Law

Roscoe Pound, one of the chief theorists of the sociological school Roscoe Pound perceived the law as a means of securing societal ends and meeting social needs. He believes that law will ensure social integration and is an instrument of social engineering. He argues that the success of any society depends on how the law is applied to societal problems.

This article aligns with aspects of Locke's theory of natural law, John Rawl's theory of Justice and the sociological theory of law but postulates for a theory that mixes aspects of the three theories to create a modern natural socio-positivist theory that will advance human rights and justice. The strength of Locke's natural theory is rooted in his ability to trace the origin of natural rights to God, the recognition that individuals possess natural rights, independently of the political recognition granted them by the state is also commendable and also solid is his argument that individuals are morally justified in taking up arms against their government should it systematically and deliberately fail in its duty to secure individuals possession of natural rights. Also, the article aligns with Rawls' justice should be thought about from the perspective that anyone will choose behind a veil of ignorance unaware of status, ethnicity and religion. Human right instruments do not create human rights but recognize already existing rights or at most codify some of them depending on the burning issues and man's progressive reasoning. New human rights instruments will continue to emerge for the continued peaceful coexistence of men as men continue to dominate nature,

but none of these instruments will confer⁴³ human rights on men, they will at best document rights inherent in man and the obligation they place on state, the codification therefore is as much to remind man of the aspect of the other man he must not violate and for the state to remember the obligations it has to respect for the contract between it and individual to continue because its legitimacy flows from respecting the dignity of the individual. In sum, the rights codified by international, regional and national instruments are aspects of human rights but not the totality of rights.

2.3 International Recognition of the Right to Education, Human Rights Education and Education for Justice

Education has been recognized as both a human right in itself and an indispensable means of realizing other human rights. Education plays a vital role in empowering the poor and promotes their participation in governance and decision making in their communities, it empowers women, broadens children understanding of their rights, their recognition of exploitative and forced labour, promotes human rights and democracy, protects the environment, and is key to achieving the sustainable development goals.

⁴³ Universal Declaration of Human Rights (UDHR) 1948

A 15-year-old student resident at Sector 85 of Gurugram was reported to have taken Haryana Human Rights Commission (HHRC) 'for a ride' as he complained of torture by his parents, but later during police inquiry he told that he was just trying to authenticate what was mentioned in his NCERT book on legal recourse to human rights violation.⁴⁴ While not appropriate behaviour and denounced as bad behaviour, the incident showed that children and youths in the region are aware of their rights and understand what action to take when their rights are violated.

The Universal Declaration of Human Rights (UDHR) recognizes that everyone has a right to education which shall be directed to the full development of their human personality and to the strengthening of respect for human rights and fundamental freedoms.⁴⁵ The UDHR also recognizes the role of human rights education in strengthening respect for human rights and states as follows:

... Keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.⁴⁶

⁴⁴ Bhartesh Singh Thakur, '15-yr-old Gurugram student takes Haryana Human Rights Commission for a ride Rights body says the boy is testing their activeness and vigilance' <https://www.tribuneindia.com/news/haryana/15-yr-old-gurugram-student-takes-haryana-human-rights-commission-for-a-ride-182936#google_vignette> Assessed 20 October 2020

⁴⁵ UDHR, art 26

⁴⁶ UDHR, preamble

International Covenant on Economic Social and Cultural Rights

The right to education is also enshrined in the International Covenant on Economic Social and Cultural Rights. Not only does the Convention recognize the right to education, it also articulates the goal for education. The Committee on Economic, Social and Cultural Rights has stated that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13 of the International Covenant on Economic, Social and Cultural which states thus:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace...⁴⁷

⁴⁷ United Nations Economic and Social Council, International Covenant on Economic, Social and Cultural Rights [ESCR] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with art 13 and art 27

Also, in accordance with article 14, actions towards fulfilling the right to education must be geared towards progressive realization of the right to education as stated thus:

Each State Party to the present Covenant ...within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.⁴⁸

Convention on the Rights of the Child

The Convention on the Rights of the Child provides the mandate not only for human rights education for children but also for orientation on human rights as part of ethical and value training from childhood. Article 29 (1) (b) provides that 'the education of a child shall be directed to the development of respect for human rights and fundamental freedom, and for the principles enshrined in the Charter of the United Nations'. Article 2 of the Convention on the Rights of the Child prohibits discrimination in education.

⁴⁸ ESCR, art 14

World Programme for Human Rights Education

The World Programme for Human Rights Education was launched by the United Nations on 10 December 2004. The World Programme for Human Rights Education, a global initiative of the United Nations which, since 2005, has encouraged concrete measures to integrate human rights education in all sectors. The emphasis of the World Programme's first phase (2005–2009) was on the school system. The second phase (2010–2014) focuses on those who further mentor tomorrow's citizens and leaders, such as higher education institutions, as well as on those who have a major responsibility for respecting, protecting and fulfilling the rights of others – from civil servants and law enforcement officials to the women and men serving in the military.

The Human Rights Council in resolution 39/3 of 27 September 2018 made youth the focus group of the fourth phase of the World Programme for Human Rights Education, with special emphasis on education and training in equality, human rights and non-discrimination, and inclusion and respect for diversity with the aim of building inclusive and peaceful societies, and to align the fourth phase with the 2030 Agenda for Sustainable Development and specifically with target 4.7 of the Sustainable Development Goals. OHCHR, in consultation with States, intergovernmental organizations, national human rights institutions and civil society, including youth groups and youth-led networks, elaborated a plan of action for the

fourth phase of the World Programme (A/HRC/42/23), which was subsequently adopted by the Human Rights Council through resolution 42/7 (26 September 2019).⁴⁹

The International Convention on the Elimination of All Forms of Racial Discrimination, 1965

This instrument primarily aims to eliminate racial discrimination. Article 7 of the convention obliges parties to adopt ‘immediate and effective measures’, particularly in education to combat racial prejudice and encourage understanding and tolerance between different racial, ethnic and national groups.⁵⁰

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

Article 10 of the CAT requires States Parties to ensure that education and information regarding the prohibition against torture and other forms of ill-treatment are fully included in the training of law enforcement personnel, civil or military medical personnel, public officials and other persons who may be involved.⁵¹

⁴⁹ Fourth phase (2020-2024) of the World Programme for Human Rights Education

⁵⁰ The International Convention on the Elimination of All Forms of Racial Discrimination (1965) art 7
<<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>>

⁵¹ United Nations, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (art 10)
<<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>>

The Convention on the Rights of Persons with Disabilities, 2006

This Convention identifies and promotes human rights education particularly awareness raising throughout society, including at the family level, regarding persons with disabilities highlighting their capabilities and contributions of persons with disabilities as key strategy to promote respect for the rights and dignity of persons with disabilities.⁵² One notable provision, 8(2) (i) of the Convention, sets out the measures to be undertaken by states to include the following:

... (a) Initiating and maintaining effective public awareness campaigns designed: (i) To nurture receptiveness to the rights of persons with disabilities; (ii) To promote positive perceptions and greater social awareness towards persons with disabilities; (iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market; (b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities....

In the Vienna Declaration and Programme of Action, one of the outcomes of the World Conference on Human Rights, States reaffirmed their duty to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms as set

⁵² United Nations, Convention on the Rights of Persons with Disabilities, 2006 art 8(1)(a)

out in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and other international human rights instruments. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human in rights education programmes and calls upon States to do so.⁵³

The World Conference on Human Rights called on all States and institutions to include human rights in the curricula of all learning institutions in formal and non-formal settings. States are encouraged to strive to eradicate illiteracy by directing education towards the full development of the human personality and strengthening respect for human rights and fundamental freedoms.⁵⁴

Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.⁵⁵

Outcome Document of the Durban Review Conference

The Outcome Document of the Durban Review Conference recommends that steps be taken at the national level to promote human rights education in all parts of the world

⁵³ United Nations, The Vienna Declaration and Programme of Action, art 33

⁵⁴ *ibid*, para 79

⁵⁵ *ibid*, para 80

after the adoption in 2001 of the Durban Declaration and Programme of Action, particularly in order to sensitize the public at large and to foster respect for cultural diversity.⁵⁶

The 2005 World Summit Outcome

The 2005 World Summit Outcome supports the promotion of human rights education and learning at all levels, including through the implementation of the World Programme for Human Rights Education, as appropriate, and encourage all States to develop initiatives in this regard.⁵⁷

United Nations Declaration for Human Rights Education 2012

The United Nations Declaration on Human Rights Education recognizes the right to education and access to information as key effective enjoyment of all human rights.⁵⁸

The United Nations Declaration on Human Rights Education reaffirms the right of everyone to know, seek and receive information about all human rights and fundamental freedoms and to have access to human rights education and training.⁵⁹

⁵⁶ United Nations, Outcome Document of the Durban Review Conference, (2009) para 22

⁵⁷ The 2005 World Summit Outcome, para. 131

⁵⁸ United Nations, Declaration on Human Rights Education, art 1(3)

⁵⁹ *ibid*, art 1(1)

World Declaration on Education for All

The Declaration provides that every person child, youth and adult shall be able to benefit from educational opportunities designed to meet their basic learning needs. The basic learning content includes the knowledge, skills, values and attitudes required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in their development, to improve the quality of their lives, to make informed decisions, and to continue learning.⁶⁰

The Doha Declaration

At the conclusion of the 13th United Nations Congress on Crime Prevention and Criminal Justice held in Qatar, the Doha Declaration was adopted. Calling for the integration of crime prevention and criminal justice into the wider agenda of the United Nations, and endorsed by the General Assembly, the Doha Declaration has at its centre the understanding that the rule of law and sustainable development are interrelated and mutually reinforcing.⁶¹

The Doha Declaration⁶² of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (Qatar, 2015) prompted the United Nations Office on

⁶⁰ United Nations, World Declaration on Education for All, art 1(1)

⁶¹ Doha Declaration, (n25) <<https://www.unodc.org/unodc/doha-declaration/index.html>>

⁶² *ibid*

Drugs and Crime to develop the Education for Justice Initiative, aiming to support the integration of crime prevention and the rule of law into all levels of education.

Sustainable Development Goals (SDGs)

Goal four of the SDGs requires states to ensure the provision of inclusive and equitable quality education and promote to lifelong learning opportunities for all. Two of the indicators of this goal is that States ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university by 2030; increased participation rate of youth and adults in formal and non-formal education and training in the previous 12 months, by sex and increased proportion of youth and adults with information and communications technology (ICT) skills, by type of skill and elimination of gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.

4. The Role of Law Schools and Clinics in Promoting Education for Justice, Human Rights and a Culture of Lawfulness

The need for a system of legal education that can be guaranteed to produce such lawyers with necessary skills and capacity to meet the evolving needs of the society

has been the thrust of legal education and a daring challenge to tackle.⁶³ According to Ndulo, Muna accessing past decades of legal education in Africa⁶⁴ lawyers produced by the then existing system of legal education in Africa were trained to become legal technicians. They were encouraged to have little or no interest or comprehension of the policy issues inherent in the law. They were generally reluctant to criticize current law. Even as technicians they had limits hence few were competent to represent national and commercial interests in international transactions, involving complexities of taxation and international finance.

However, according to Jessup, 'The law courses of early curricular design did not reflect the needs of the society, and the training of lawyers was based on doctrinaire teaching geared to an adversary setting catering to litigation for the fortunate few at the cost of social injustice to the deprived many'.⁶⁵ According to Geraghty and Quansah, 'African law schools have similar potential to produce the next generation of leaders committed to promoting human-rights through ethical and social responsibility'.⁶⁶ The lawyer's role is culture-bound, determined by the way in which

⁶³ Morokenji Onolaja, (n10)

⁶⁴ Ndulo, Muna, 'Legal Education in Africa in the Era of Globalization and Structural Adjustment' (2002) 20(3) *Penn State International Law Review*, 487, 500

⁶⁵ Grady Jessup, Symbiotic Relations: Clinical Methodology-Fostering New Paradigms in African Legal Education, (2002) 8(2) *Clinical Law Review*, 377, 387

⁶⁶ Thomas Geraghty & Emmanuel Quansah, 'African Legal Education, A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to a Neglected Means of Securing Human Rights and Legal Predictability' <<http://lawcommons.luc.edu/lucilr/vol5/iss1/7>> Accessed 15 March 2021

he or she is taught and conditioned to perceive himself, and the way in which he or she is perceived by the non-legal professionals among and for whom he works.⁶⁷

This gap was not only related to legal education in Africa but obviously seem to have been the problem of English legal education as can be implied from the statement of Lord Sankey set out below thus:

Our educational methods have to breed a race of lawyers able to utilize the spirit of law reform for highest uses... They have to teach at once the importance of stability and change... we must also turn out lawyers with a courage to criticize what is accepted, to construct what is necessary for new situations, and new duties both at home and abroad.⁶⁸

The International Association of Law Schools has emphasized the need to produce lawyers who will be advocates of justice as well as law experts who will be advocates of public good.⁶⁹ The major question academia need to answer are: how do we shape our Students to be fit for the justice purpose? What type of lawyer is needed to promote justice, human rights and a culture of lawfulness? And what type of training is needed to produce the kind of lawyer needed? One recurrent recommendation from nations that reviewed the development of legal education was the need for an

⁶⁷ Issa Shivji, 'From the Analysis of Forms to the Exposition of Substance: The Tasks of a Lawyer Intellectual' (1972) 5 1&2 *East Africa Law Review*, 1

⁶⁸ Lord Sankey, referred to in Laurence Gower, 'English Legal Training' (1950) 13 *Modern Law Review*, 137, 161

⁶⁹ The Role of Law Schools and Law School Leadership in a Changing World (2009), <<https://www.ialsnet.org/annualmeeting/the-role-of-law-schools-and-law-school-leadership-in-a-changing-world/>> Accessed 13 March 2023

appropriate interactive teaching methodology that focuses on acquiring knowledge, skills and ethics using an interactive training method that permits immediate practice of skill learnt. The trend across the globe has shifted from traditional legal- education to legal education for justice education which is inspired by justice education campaigns.⁷⁰

In the United States as in several countries including Nigeria and Africa standards and rules of procedure for approval of law schools now focuses on development of curriculum of law programs that provides substantial opportunities to students for law clinics or field placement(s) and promotes student participation law-related community service activities.⁷¹ Law schools are encouraged to promote opportunities for law student pro bono service. In the United States, law-related public service activities have been defined to include: helping groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights; helping charitable, religious, civic, community, governmental, and educational organizations not able to afford legal representation; participating in activities providing information about justice, the law or the legal system to those who might not otherwise have such information; and engaging in activities to enhance the capacity of the law and legal institutions to do justice.⁷²

⁷⁰ Deborah Rhode, 'Access to Justice: An Agenda for Legal Education and Research, Consortium on Access to Justice' (2013) 62(4) *Journal of Legal Education*, 531

⁷¹ American Bar Association, Standard 303 (b) (1) & (2) of the ABA, ABA Model Rules of Professional Conduct

⁷² Interpretation 303-4

Another driving force of the social justice mission of legal clinics in Nigeria is the release of the draft Bench Mark Minimum Standards for Academic programme (BMAS) by the Nigerian National Universities Commission in 2015 which is aimed at developing appropriate training methods aimed at producing law graduates who can compete actively in legal, social, economic and political development on a local scale. by developing the analytical, research and advocacy skills of students who can apply their knowledge to solve academic and practical social problems. This greatly influenced the growth of law clinics especially life clinics where students are able to interact within the society the law schools are situated enabling law and justice to make meaning to the students in line with Vygotsky theory of experiential learning which stresses the fundamental role of social interaction.⁷³

4.1 The Role of the Nigerian Law School Yenagoa Law Clinic in Promoting Education for Justice, Human Rights and a Culture of Lawfulness

The mission of the Nigerian Law School Yenagoa Law Clinic Programme is to train, facilitate and mentor law school students and supervise their work as they contribute to promotion of social justice by providing correct and valuable assistance to the communities. This is achieved by providing opportunity for experiential learning, create a thirst for justice in law students by permitting them to have life contact with

⁷³ For further reading on Lev Vygotsky, see American Educational Research Association, Dewey and Vygotsky: Society, Experience, and Inquiry in Educational Practice (2001) <<https://www.jstor.org/stable/3594354?seq=1>> Accessed 13 March 2023

society to be able to directly hear of social and legal issues confronting communities around and afford them opportunity to provide education and solutions to communities, school students and inmates through clinic projects while preparing for their legal career.

Although the Nigerian Law School Yenagoa Law Clinic is broadly split across several clinical programmes and projects undertaken by each clinic, the focus of this article is to shine a light on activities related to human rights and justice education, and Education for Justice and a culture of lawfulness. It is worthy to note that the assignment of students to law clinics is preceded by first induction training in clinical legal education and law clinics during the orientation week and a more detailed induction course which serves as a capacity building course for law clinicians which is closely followed by clinic placement and a strategy meeting for each clinic to generate their own education and advocacy plan and focus. So while students do not choose the legal cases that come to the clinic, they have the opportunity to choose their own education project, develop their own plan for teaching and their own advocacy strategy.

The mandate for the clinics' work on Education for Justice, human rights and a culture of lawfulness are international instruments and declarations including the Doha Declaration, the plan of action for the World Programme for Human Rights Education, the United Nations Global Framework related to Drug control, the Sustainable

Development Goals and Agenda 2030 and other national legislation and policies like the Nigerian constitution and the Child's Right Act.

The beneficiaries of past education projects include school children, youths at the Nigerian Law School, inmates, law officers and communities. The secondary school's outreach programme on Education for Justice, Human Rights and a Culture of Lawfulness focuses on teaching secondary students about human rights and especially familiarize them with the Child's Right Act, training and interacting with them on crime prevention and anti-social vice especially cultism, drug abuse & crime generally founded on developing a value system founded on integrity and ethics and facilitating their interaction and participation in discussions and in identifying underlying factors that drive anti -social vices and criminal activities like cultism and drug abuse, hence enabling them to rake a stand for a culture of lawfulness. Secondary students are able to share their experience and that of their peers and are given access to counselling opportunity from clinicians.

Another aspect of the Programme on Education for Justice, Human Rights and a Culture of Lawfulness focuses on educational activity targeted at training inmates and awaiting trial detainees on a culture of lawfulness and getting them to commit to a crime free life on reintegration into society. At the interactive session inmates are able to ask questions and make contributions. The clinic's activities also extend to training of students within the law school on prevention of drug abuse and distributing

materials donated by Centre for Human Rights and Climate Change Research and Foundation for a Drug Free world.

Also worthy of mention is the training of police officers on torture and arbitrary detention, The first of this was the Akenfa police station education program on torture and arbitrary detention focused on training police officers and an interactive session with police officers with question and answer. The next attempt at the programme met with bottleneck which led to an adjustment to focus on just the police station close to the law school but on the state headquarters with participants from all police stations in Yenagoa. Lastly, there is a pending proposed with the objective of training of prison officials on minimum standards for treatment of prisoners which been temporally put on hold.

The Nigerian Law School Yenagoa Law Clinic Programme is closely linked and integrated with the Clinic's broad goal of Justice Education and also integrates aspects of the sustainable development goal. While the Clinic seems transitory as a result of other aspects of the law school including its externship programme, the Clinic still aims for sustainability and transition that keeps its goals alive and hopes to in future build capacity to serve as nurturing ground for externs with strategic collaborations.

4.2 The role of Indian law schools and law clinic in promoting education for justice, human rights and a culture of lawfulness

Legal aid is based on the premise that the inability to enforce fundamental or basic rights is as bad as not having the rights at all. It enables people to access information about their rights, entitlements, and duties. Therefore, ensuring legal aid to the needy is critical for empowering people living on the margins of society. As it provides a forum to facilitate enforcement of rights related to family, labor disputes, and discrimination, thus it is fundamental to protect meaningful access to justice.

For this reason, Article 14(3(d)) of the International Covenant on Civil and Political Rights states that if a person does not have legal assistance, then it should be assigned to him/her.⁷⁴ Nonetheless, in the interests of justice, if the person does not have sufficient means to pay for it, then it should be provided without payment.⁷⁵ Similarly, the 2030 Agenda for Sustainable Development recognizes 'the need to build peaceful, just, and inclusive societies which provide equal access to justice and are based on respect for human rights.' It highlights the importance of ensuring 'access to justice for all' in achieving sustainable development.⁷⁶

⁷⁴ United Nations, International Covenant on Civil and Political Rights, art 14(3)(d) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> Assessed 13 March 2023

⁷⁵*ibid* art 14(3)(d)

⁷⁶ United Nations General Assembly, Resolution adopted by the General Assembly on 25 September 2015 [without reference to a Main Committee (A/70/L.1)] 70/1. Transforming our World: the 2030 Agenda for Sustainable Development Goal 16

Although the above international instruments and the many national Constitutions categorically state the need to make the legal system accessible to all to promote human rights. However, in the absence of an efficient legal system and lack of resources, people, due to either vulnerable circumstances or poverty, are excluded from the formal justice system. Therefore, the legal system is unduly weighted towards one section of society and exclusionary towards another, leading to social exclusion and powerlessness among the poor and marginalized sections of society. Through the legal aid system, the governments' attempt to create an inclusive legal system. However, its policies towards legal aid, by and large, are either remain ad-hoc or poorly administered if enforced at all. In such a situation, what could be the most effective way to ensure that legal aid reaches the most vulnerable social groups?

One way to make the legal aid scheme more effective is to enroll universities and law schools. Under the supervision of a professor, Legal Aid Clinics (LAC) should be allowed to develop local legal assistance programs for the poor and marginalized, which will enable law student's exposure to understanding the root causes of legal issues and probe them through interdisciplinary approaches. As awareness of legal aid is critical for implementing legal assistance policies, Universities or law school-based LACs through public platforms or activities such as drama and other outdoor street awareness programs can broadcast information about legal aid services to the public. Such awareness programs will promote understanding and knowledge of the law, and by asserting rights, people resolve legal matters.

On the other hand, through encounter and interaction with people and clients, including women and children, prisoners, and villagers, the law students will be exposed to cases involving discrimination, housing or rent disputes, domestic violence, divorce and child custody, and consumer rights, among other issues. Thus, the LACs can provide law students opportunities to the range of the social problems and challenges people face in society. This way, the students will get to know how law functions in society, especially when there is an increasing emphasis on learning the law in context, apart from being skilled in the theoretical aspect of legal education. Consequently, the LACs system teaches law students that disputes can be resolved relatively and peacefully by using the law and equipping them to work towards social justice issues. Thus, if effectively utilized, the legal aid program can be used to ensure access to justice and contribute to the promotion of social justice and upholds the rule of law and creates a culture of lawfulness.

4.2.1 Case Study from Legal Aid Cells set up at two Private Universities⁷⁷ in India:

One of the main focuses of these Legal aid societies being set up at these law schools is to teach community service to law students as clinical legal education doesn't just aim to build lawyering skills but also cultivate humanities in legal education. In India, both these clinical legal education aims are farfetched dreams because of the poor state

⁷⁷ Legal Support and Care Centre at GD Goenka University and Legal Aid Society at The NorthCap University, Gurugram, Haryana, India

of law school facilities for proper training and mechanism. Advocacy is more or less is a technical aspect of reading law, whereas cultivating humility and humanities in legal education is far more complicated.

From 2015 to 2017, the legal aid cell of GD Goenka University, associated with various NGO's, i.e., KAMALINI, Navjyoti Foundation, Unnati Charitable Trust in the nearby areas bridging the gap between community and students and provided a platform to spread awareness and help people who were actually in need of legal assistance. Workshops were conducted to explain how to file Right to Information on ongoing development projects in the respective areas and focused on approaching the chief minister grievance cell, i.e., CM window⁷⁸ to so that people can get heard themselves and resolve the issues. We have touched upon various problems prevailing in our society and made villagers aware of policies and schemes drafted by the local government.

In 2019, the Legal Aid Society of the school of law at The Northcap University proactively participated in organizing various legal aid activities through organizing camps and awareness drives on particular issues. Plea Bargaining. An awareness camp on plea bargaining was organized for under-trial prisoners in Bhondsi Jail (District Jail) in Haryana, India, to understand whether the prisoners are aware of the plea-bargaining process or not. Surprisingly, the general on-the-spot findings after conducting interactive sessions with women and men cells in the jail indicated that

⁷⁸ <<https://haryana.gov.in/cm-window/>>

only one percent of total prisoners were aware or informed by their advocates. Students of the legal aid society prepared a report and submitted the same to Gurugram Haryana, the District Legal Services Authority. This project made students learn more about the concept of criminal procedure and how the system itself is denying legal rights

4.3 Impact of Lock-downs and Social Distancing on Human Rights and Justice Education

The past one year ushered in a range of government sanctioned lock downs and social distancing directives aimed at risk-control across Nigeria, India and several countries round the globe in an attempt to curtail the spread of the coronavirus disease- COVID-19. The Educational sector and Justice Sector seem to be among those worst hit with closure of schools to students physically for one year and very restricted access to online court sitting. Physical school attendance and Learning at the Nigerian Law School was disrupted from March 2020 to February 2021 when students resumed. Although in Nigeria the Nigerian Law tried to adapt by introduction of online lectures using google meet, the consequential socio-legal and economic burden will be borne disproportionately not only by students but also by communities.

The almost global school closures not only disrupted learning but also disrupted access to vital school/student-provided services including justice education and access to justice. Human Rights and Justice Education including Education for Justice and a culture of lawfulness which has always thrived on the wings of having physical access

to secondary school students, to communities and inmates and being able to organize legal literacy programmes in schools, communities and prisons was frustrated leaving more people behind in having access to justice including understanding of the rule of law and in achieving goal 16 of the Sustainable Development Goal.

Use of Technology in Justice Education to reach the most marginalized is the greatest challenge of our law clinics at this time. While it has been realistic to continue legal justice education within the law school community using technology during the pandemic as evident in the last World's Environment Day event by the Nigerian Law School Yenagoa Law Clinic. It was difficult to link clinicians with secondary school students or inmates during the pandemic.

5. Conclusion and Recommendation

The equitable application of human rights principles to current and future societal problems are an indispensable requirement of justice. Legal education and capacity development through the activities of law clinics as evident in the activities of the Nigerian Law School Yenagoa Law Clinic and the Legal Support and Care Centre at GD Goenka University and Legal Aid Society at The NorthCap University, Gurugram, Haryana, India is playing a huge role in crime prevention, promoting access to justice and promoting value for integrity and a culture of lawfulness and has become very relevant to sustainable development.

Legal clinics situated in law schools have been part of the history of access to justice for communities and the marginalized and are playing a very vital role in human rights education and education for justice and need to be strengthened. The COVID-19 pandemic has revealed that apart from physical learning in school there is need to integrate the use of technology for lectures into law clinic's human rights and justice education activities by investing in building the capacity of secondary school students and communities on the use of ICT. Where well developed, the use of ICT can serve as a contingency plan for human rights and justice education in times of emergency. There is need to institutionalize law school-based clinics in universities globally to expand the scope of human rights and justice education.