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AN OVERVIEW OF THE ROLE OF LAW CLINICS IN ACCESS TO JUSTICE IN UGANDA

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Abstract

According to International and Ugandan laws, everyone is entitled to a fair trial. However, many Ugandans still molder in prison and others have failed to access justice due to a number of reasons among which is having limited resources to access legal services. This state of affairs hinders exercise of right to justice as enshrined in the Ugandan Constitution thus creating mistrust and misconceptions about the justice system. Research shows that a key mechanism in tackling this problem is the introduction of legal aid clinics within the paradigm of higher level of education system (vide the creation of University Based Legal Clinics). Devotion of time by law students and their tutors in ensuring that clinical legal education is implemented at its best will enhance access to justice as legal practitioners and trainees will be available to provide pro bono (free services) to the poor and vulnerable people. Uganda has a few standing regulations related to legal aid as the country awaits the National Legal Aid Bill to come into effect. This means that few lawyers feel obliged to provide legal assistance in one way or the other. University based legal clinics will stimulate the legal skills of law students from various Universities as they will have an opportunity to assist and also deal with real life cases with real clients. This legal aid system will play a vital role as working with the judiciary and other stakeholders to improve on the overall quality of professional education, while extending legal services to indigent people. The objective of this paper, against the above background, is to examine the role of law clinics in accessing justice in Uganda

Introduction

According to the United Nations Development Programme, access to justice is described as the route through which justice remedies can be bestowed lawfully and informally in line with deliberately accepted human rights.¹ Over the years the government as the key catalyst in ensuring access to justice has been cooperating with a number of institutions to guarantee that justice is accessed on the national and local levels in Uganda especially those which are more active in the law sector, namely the Uganda Law Society, the Uganda Law Council and many others.

However, due to many challenges such as inadequate financial resources, corruption, unclear policies, failure to regulate the legal aid schemes, passing the National Legal

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¹ United Nations Development programme 'Programming for justice: Access for All - A practitioner's guide to human Rights –based approach to access to justice' (2005) 4.

Aid Bill and many more. The government cannot afford legal services to all marginalized and poor Ugandans thus many are left out. Also, in terms of accessibility, there is an unclear policy on who qualifies for such pro bono services. Issues such as strict laws, ignorance and lack of awareness on how the legal aid system operates, such services are not accessed by the beneficiaries. The Constitution of Uganda mandates the judiciary to construe the law and protect the rights of all Ugandans and it provides assurances for the right to equality to all without being discriminated against irrespective of their gender, religion, colour, race to mention but a few. This compels the formation of national legal aid schemes since there are few legal practitioners that are willing to provide free legal services.²

In Africa, there is less legal clinic experience, but still due to more unjust circumstances and the need to give back to the society many Universities have started picking interest that Countries such as South Africa, Kenya, Lesotho, Malawi and many others have adopted the idea of establishing these University Based law clinics.³ It should be noted that according to Ugandan academic history, most Universities have not embraced the idea of legal aid systems such as legal clinics therefore there is need to ensure that these institutions open their doors to assist the indigent Ugandans so that access to justice can prevail. Conceivably those who are competent enough to practice law should offer assistance to those who have been agonized most at the bar of justice. Although Ugandan Universities have little experience with regards to operating these clinics, clinical students tend to pick interest with time as they start conducting client interviews, brainstorming and problem solving, conducting legal research, client counselling and communication skills, drafting of legal documents and advocacy and many more skills. With such impressive and brilliant skills, students are so ready to use them to benefit society. Grimes (1996) defines a law clinic as:

“A learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced. It almost inevitably means that the student takes on some aspect of a case and conducts this as it would be conducted in the real world.”⁴

This basically means that a legal clinic is may not be an authorized body exercising the law under any statutory obligation but it can be a group of legal students who have the potential to exercise their legal skills from theory to practical experience. The

² JJuko .A. *The impact of the Legal and policy Framework on Access to Justice for Transgender Persons in Uganda* (2019).

³ Combining Learning and Legal Aid: Clinics in Africa, Report on the First All Africa Colloquium on Clinical Legal Education. 23-28 June 2003.

⁴ Grimes, R. (1996). The Theory and Practice of Clinical Legal Education. In *Effective Learning and Teaching in Law*, R Burridge et al. (eds.),Kogan.

classroom and practical lessons which involve the teaching of skills and values under the supervision of practicing law professionals who prepare these law students and also broadens their viewpoint on the prospective of the law to deliver justice. It should be of great importance to know that access to justice is a key in the promotion and protection of human Rights in any democratic country. For example in situations where any human right has been violated, every person is entitled to be protected by the law regardless of their financial status and everyone must have a fair trial before an independent judge in a hearing. In such circumstances, when the poor or indigent Ugandan cannot afford legal assistance then they can always opt for legal aid clinics though few Ugandans are aware of these services and they do not know the right institutions to go to.

Legal awareness requires the involvement of both the private and public sector in order to ensure quick, effective and sustainable access to justice. These non-governmental bodies such as Universities can provide complementary services to the indigent Ugandans especially in circumstances where the government falls short in service delivery of sustainable justice with the help of these law clinic students. Nevertheless, like in any other developing country, there is a number of challenges that the justice system encounters on a daily that hinders the effective access to justice in Uganda.

Therefore, this article analyses how the introduction of law clinics in Uganda within the University National curriculum will provide more access to Justice in Uganda and to determine if this will readdress on the legal needs of the indigent Ugandans. Law students can change the legal customs that have always been subscribed to by lawyers by improving the well-being of the underprivileged in Uganda through these pro bono services.⁵ Along this process, tactics such as institutionalization of public services for law graduates and setting up of university law clinics and running of a number of law groups and associations for alumni should be taken into consideration.

Access to Justice

Access to justice is acknowledged in universal and regional human rights mechanisms (the Universal Declaration of Human Rights (UDHR) and the International covenant on Civil and Political Rights (ICCPR)).⁶Where a Human right is dishonored, access to justice as the fundamental value and a principle of the rule of law is the available remedy. Access to justice is a mechanism that can afford positive response in numerous ways such as promoting and protecting human rights, crime

⁵ Aldashev, G., chaara, L., Platteau, J.-P. and Wahhaj, Z. (2012). Using the law to change the custom, *Journal of Development Economics* 97(2):182-200.

⁶ Articles 7 and 8 of the Universal Declaration of Human Rights (UDHR); Articles 2(3)(a), 14(1) of the International covenant on Civil and Political Rights (ICCPR).

prevention, creating crime free communities, guaranteeing good governance, it ensures economy growth (GDP) and it adds value to societies since the rule of law is in place and respected, it contributes more to people's income levels, promotes the country's democracy and contributes to the fight against corruption.⁷

In order to promote and protect human rights that are preserved in the constitution, there must be respect for the rule of law, equality and access to justice. According to the Legal Aid Service Provider's Network (LAPSNET), access to justice entails both the accomplishment of substantive law and the quality of justice that is acquired via the system of justice delivery.⁸ On the international best standard of practice, the charter of fundamental Rights of the European Union guarantees the right to an effective remedy and a fair trial, including legal aid to those with inadequate resources. (European Union Agency for Fundamental Rights).

Access to Justice in Uganda

While poverty already affects demographic groups in various ways, the rate at which justice is accessed in most parts of Uganda is very low. This creates high inequality and violates the rule of law since it demonstrates that the person's low levels of income determine their justice accessibility. It should be noted that in Uganda as we speak, generally the rate of poverty is significantly greater than it neighboring countries. According to the 2020 survey conducted by the National Bureau of Statistics, it was indicated that the overall unemployment rate was 9.2% of females with the higher unemployment rate (14%) than males (6%).

This survey further indicated that for those who were employed most of them lived under the poverty line in 2016/17.⁹ This impacts negatively on the access to justice since most of Ugandans cannot afford legal representation and also undermines these people's capacity to fight for their human rights as the Ugandan citizens yet the majority are the poor and the minority in this instance are the favored ones by the law. "If the country's legal system and the legal rules are not accessible by the majority due to high costs and dysfunctional delays then the legal system and rules, both substantive and procedural, will always have limited impact on the economic activities in the country"¹⁰ Says A. Deseau, A. Levai, and Schmiegelow.

⁷ A.Deseau, A. Levai, and Schmiegelow Access to Justice and Economic Development : Evidence from an International Panel Databank University Saint Louis-Bruxelles, April 2019.

⁸ Legal Aid Service Provider's Network (LAPSNET) *Access to Justice for the poor, marginalised and vulnerable people in Uganda* (2015) 18.

⁹ Uganda Bureau of Statistics 2020 statistical Abstract <https://www.ubos.org> Accessed 12/07/2022.

¹⁰ A.Deseau, A. Levai, and Schmiegelow Access to Justice and Economic Development : Evidence from an International Panel Databank University Saint Louis-Bruxelles, April 2019.

After all the efforts of trying to seek justice from different authorities and all was in vain, Namudu Aisha a resident in Katereke Nsangi Wakiso District says she just gave up, as the culprit who was arrested by the Nsangi police station for assaulting her walked free just a few days after the arrest.

“I was advised to find a lawyer so that the perpetrator could be brought in at the Nsangi Gombolola Court but I could not afford a lawyer after all the little money I had, I paid it for the police to arrest my abusive husband and the rest was paid in clinic for medical attention. He walked free and I was always scared of my life because I felt that no one could fight for my rights. If I could afford a lawyer, they would have sent him to court and justice would be served.”

This practically shows that there is no effective and sustainable access to justice and this has been led by a number of challenges such as lack of information due to illiteracy on the law, lack of access to justice institutions like courts and police stations, insufficient funds to access legal representation and finally lack of legal representatives.

While states have the autonomous prerogatives on ensuring that all citizens can access justice, Courts are not accessible to the poor Ugandans yet the ICCPR provides that “everyone shall have the right to recognition everywhere as a person before the law”¹¹ The court has become a center for only the financially stable people leading to inequality in terms of the provision of justice thus the violation of the rule law. The issue of lack of financial resources to afford legal representation can only be addressed if more legal representatives are in place to assist the legal aid systems. Hence there is need to encourage law students to provide pro bono services whilst they complete their legal studies but this cannot be achieved effectively if their operations are not legally supported and binding before the law.

To guarantee the suitable gratification of access to justice to all Ugandans, sufficient information must be provided to all People without discrimination on all levels, that is the national level, District, county, sub county, parishes etc. This entails that in the due process, there is need to ensure that competent legal professionals that are so willing to offer pro bono services should be in place and accessible geographically in various parts of the country. The central question is whether the incorporation of the legal aid clinics within the Universities will be able to bridge the gap between the indigent people and the court so that justice can be served for all.

When various stakeholders, Universities work along with the judiciary and the government as key allies using the theoretical and practical methods, this connection

¹¹ ICCPR (n.4) Article 16.

will ensure that sustainable and comprehensive legal aid is provided to Ugandans in a conceivable manner hence justice and equality for all. When these higher institutions independently are given a chance to utilize any necessary resources and means to overlook and operate as a way of improving issues concerning justice and the rule of law outside their university grounds, a lot can be achieved.¹² It is high time the normal and old system changes so that the new and energetic young generation who possess the ability to offer these services to be given a chance. Students in their capacity have a lot to offer the world but they cannot function independently that is why they need the support of their institutions. Most of the students have the capacity to handle most of the cases and they can operate without any hesitation.

With this skill, students will grow career wise yet also many Ugandans will benefit. According to the report that was given in 2019 by the Initiative for social and economic Rights (ISER), the report shows that few Ugandans access state funded legal representation and that most of the legal representation is only offered in criminal cases. One should remember that the experience of handling certain cases such as criminal cases for the first time is really an overwhelming experience for a student therefore, if students deal with them on a daily basis or whenever they come across them, cases will not be delayed when handled in future. This speed in handling cases will also help clients with ease on the high legal costs. Many Universities would opt to buy the idea of establishing law clinics however, the process of legalizing the program is very overwhelming. I spoke to Mr Hasan Senyondo, the vice dean law faculty from the Islamic University in Uganda and he explained that the approval of operating law clinics in Uganda is really time consuming due to unnecessary bureaucracy in the country.

There are few policies that support the accessibility of legal aid services in Uganda, therefore, the Ugandan parliamentarians, LAPSNET, Ugandan prison Services, Ministry of Justice, FIDA Uganda and other stakeholders have so far taken the initiative to introduce the National Legal Aid Bill though it is just yet to be tabled in parliament. The Bill wishes to simplify access to legal representation for the indigent and vulnerable Ugandans through a number of ways such as the establishment of an organization that can render legal aid services on behalf of the government, making the provision of legal aid service to the indigent Ugandans an obligatory service that is offered by the government and many more.

¹² Mahdavi.p Social justice in, through and beyond higher education
<https://www.timeshighereducation.com/campus/social-justice-through-and-beyond-higher-education> 24/03/2022.

According to the previous stake holder's consultation meeting on the Bill, Hon. Asuman Basalirwa one of the parliamentarians pushing the Bill stated that "The coming into force of the Bill will ensure that the legal aid service provision is covered nationwide, legal service aid providers are known, accredited and there is also legal protection."¹³ This practically means that if legal aid schemes such legal aid clinics in Universities are protected by the law, their effort of providing free legal representation will be eased thus achieving an effective access to justice. Meanwhile, as the Bill still awaits to be taken to parliament, for anyone to access such services, only a few regulations can create avenues for access to justice and these include: the Constitution of the Republic of Uganda, 1995, poor person Defence Act 8 of 1998 and Advocate Act Cap 267 and the Advocates (Legal Aid to indigent Persons) Regulations S.1 No.12 of 2007.

Article 50 of the Ugandan Constitution grants a person whose fundamental human rights that has been violated to seek redress from any court of law. Whilst Constitution goes as far as protecting and promoting human rights of all Ugandans by encouraging fair trial and guarantees affair, speedy and public hearing before an independent and impartial court or tribunal established by law to ensure justice by imposing a duty on the government to provide free legal representation in case of any heavy offence.¹⁴ This entails that irrespective of any person's inabilities, the constitution protects and ensures that every Ugandan can access justice because they are entitled to it. It also guarantees the right to liberty and provides guarantees for detainees. Most importantly the Constitution puts in place courts of justice on all levels to ensure that justice is accessed by all Ugandans irrespective of their social, cultural or economic status.¹⁵

The poor persons defence Act 8 of 1998, ensures that during criminal proceedings, where an accused cannot afford legal representation, the court can assign a legal practitioner to provide legal aid in the process of organizing for their trial. All this is done to ensure that justice is accessed since these legal practitioners are in most cases funded by the government. In this case, these state funded lawyers with the help of University law clinic students can ensure that the provision of these services may be more effective that equitable and sustainable access to justice may be achieved successfully. With all these legislations, the government can also ensure that the laws

¹³ Nelson.M LAPSNET,partners strengthen National Legal Aid Bill 2022
<https://www.pmldaily.com/news/2022/05/lapsnet-partners-strengthen--national-legal-aid-bill-2022.html> May 32,2022.

¹⁴ Art 28 The Constitution of Uganda, 1995.

¹⁵ HRAPF *A guide to the normative legal framework on the human rights of LGBTI persons in Uganda* 2nd Edition (2019)7.

governing these legal aid schemes is put in place to ascertain the status of these legal aid schemes such as law clinics and their activities.

The Advocate Act Cap 267, provides that the law council shall exercise general supervision and control over the provision of legal aid and advice to indigent persons. The Amendment of the same legislation provides that the every Advocate shall provide services whenever they are required by the Law council or pay a fee that is prescribed by the council and failure to comply may result in refusal to renew or issuing of the Advocate's certificate of practice.¹⁶

Law Clinics in Uganda

while some Universities have not yet found it ideal to in-cooperate law clinic in their academic program, a few Universities such as the prominent Makerere University, Kampala International University and now The Islamic University in Uganda have so far embraced and established law clinics as a way of contributing to the effective and sustainable access to justice for all Ugandans. As also mentioned earlier, the main institutions that has been ensuring access to justice among others includes the Ugandan Law Society.

The major issue in Uganda is that few Ugandans know their rights and some have no idea where to seek justice in case where their Human Rights have been violated. These legal clinics contribute on creating awareness, which will prompt legal practitioners to consider providing legal education. Apart from law students providing free legal services to the indigent Ugandan, these clinics improve professional capabilities that is required to inform the general public about the law thus enabling all Ugandans to fight against the violation of Human Rights. These legal aid clinics will be looked at each one in particular as follows:

The Uganda Law Society (ULS)

Ugandan Law Society is an organization of lawyers that is charged with safeguarding and elevating heights of professionalism among Ugandan legal practitioners. It wishes to uphold professional values of legal practitioners, human Rights and the Rule of law in Uganda through collaboration with the Ugandan government and the Judiciary as well.¹⁷ This body has managed to offer pro bono services for some time now and it has been able to set up a number of legal clinics in various districts and it has embarked on different initiatives to ascertain that justice is delivered to a number of impoverished and defenseless Ugandans across the country.

¹⁶ S 3(e) and S.5A Advocate Act Cap 267.

¹⁷ Interview with the President, Uganda Law Society <https://www.jlos.go.ug/index.php/component/k2/item/445-interview-with-the-president-uganda-law-society> Accessed on 12/07/2022. Pp.7.

“The legal aid and pro bono work are the flagship projects of the Uganda law society. Through these schemes, society has contributed to access to justice for the indigent, marginalized, and vulnerable.....”¹⁸ Said the Vice President of on the Uganda Law Society (ULS) Diana Angwech. According to their previous annual report (2020-2021), it shows that the organization has managed so far to provide legal assistance to a total number of 162,840 people through its legal Aid project.¹⁹

Law Development Center Legal Aid Clinic

Under the Law Development Center Act Cap.132, the law development center is mandated to assist in imparting practical skills to students of the diploma in Legal practice (taking the Bar Course) through it clinical Legal Education and also to offer legal aid services to juveniles, indigent litigants and accused persons in Uganda.²⁰ This legal aid clinic center has managed so far to provide free legal services to the public for some time now and if the National Legal Aid Bill comes into effect, there is more hope many indigent Ugandans can benefit.

The Public Interest Law Clinic (PILAC)

This law clinic is found at the Makerere Law school which was the first established law clinic at a University in Uganda.²¹ This clinic aims at providing real life exposure to student. The students deal with real cases with real clients. The clinic objectives include legal awareness and literacy sessions on different platforms about the law, conducts research about access to justice ,provides legal counseling and court representation, deals with client dispute resolution, to mention but a few. On its five year celebrations, the former law society president Mr. Francis Gimara endorsed PILAC as a group that transformed the storylines of practicing law which had incorporated the public interest that was previously not taken into account by the legal profession.²²

New and emerging law clinics: Kampala International University and Islamic University in Uganda Law Clinic (IUIU)

Other Universities such as Kampala International University have recently established law clinics as others such as Islamic University in Uganda are setting up theirs all to enhance and build clinical skills for successful careers for students. On its part,the Islamic University in Uganda law clinic seeks to open its doors to the Ugandan society through which law students will deal with real cases and clients

¹⁸ Legal Aid Project Annual Report 2020-2021 <http://www.uls.or.ug/pro-bono-scheme> Accessed on 11/07/2022.

¹⁹ (n.10) pp. 13.

²⁰ Law Development Center, Legal Aid Clinic <https://ldc.ac.ug/legal-aid-clinic>.

²¹ <https://pilac.mak.ac.ug/>

²² <https://law.mak.ac.ug/news/public-interest-law-clinic-pilac-celebrates-five-years> Accessed 12/07/2022.

especially indigent people The idea of introducing a law clinic at IUIU is to give a push to these students law careers.

Challenges faced by Legal Aid Clinics

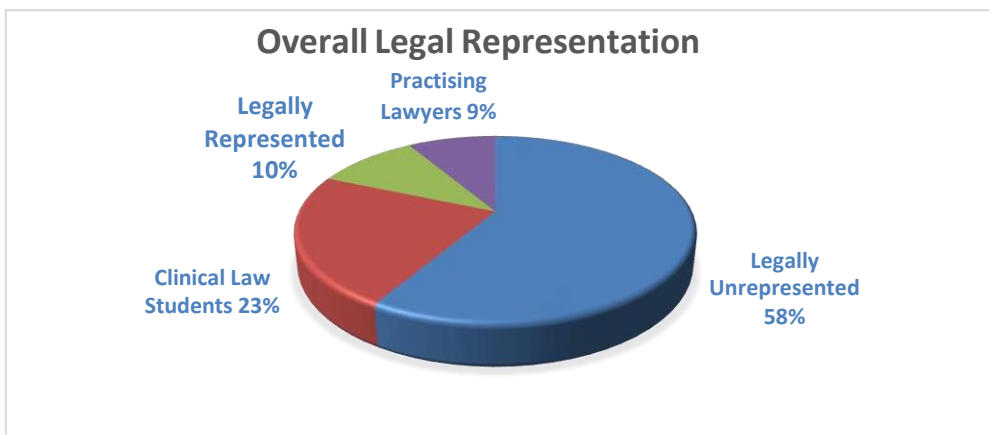
These legal services are usually institutionalized and are required to be provided by fourth year LLB students in a the University, and most times the participation of students is voluntary yet when these law students reach the Law Development Center where more practical skills are required for a student to qualify as a proper and fit lawyer, the student must have acquired the practical knowledge on how to provide various legal services and passed all subjects. However, due to lack of experience, many students struggle to pass the Bar Course at LDC. This basically impacts negatively on the reputation of universities because it may indicate that these universities have not done enough on promoting the legal education on a more advanced practical level.

For the law schools that have adopted the new culture of establishing these University-Based Legal Aid Clinics, they face a number of challenges among which include; lack of financial sustainability due to the fact that a number of Universities do not see the need of investing in such activities since it is pro bono thus these clinics have to base their operations on grants that are obtained outside the University. Secondly, limited training time since in most Universities this program is not incorporated within the student's curriculum. It is always doubted if students can always concentrate and provide the required services especially when they will have to balance attending classes and at the same time engage in the legal aid clinical activities. Notwithstanding the challenges aforementioned, there are also a number of benefits in the establishment of Legal Aid Clinic in Universities and the obligatory participation of students in clinical work. Among the benefits include the potential improvement in the readiness of graduate students to participate in legal practice and the fact that students get exposure to the considerable skills that is required by the law.²³

²³ Bamhizer 1979 *J Leg Ed* 67.

The Rates at which Legal Aid Services are rendered in Uganda

According to this study, almost a third of the population in Uganda have no legal representation. And only about 10% of the population are legally represented because they are the ones who can afford the high costs of legal representation. And the 9% are the practicing lawyers who are willing to provide pro bono or free legal assistance to the poor and vulnerable persons. The remaining 23% are the available law students from various Universities who can provide the same free legal assistance like that of the practicing lawyers. This practically means that the number of Ugandans who really need legal representation yet they cannot afford it are so many that the few practicing lawyers who are willing to offer free legal assistance are very few. If law



students are given a chance to aid population few cases especially in lower courts that will minimize the backlog and bring justice closer to the people. This entails that students from all accredited Universities and institutions such as Makerere, Law development center, Law Society, Islamic University in Uganda, Kampala International University and many Universities will get an opportunity to practice in lower courts with the guidance of practicing lawyers.

In Uganda, most organizations that provide pro bono services are situated in Kampala which is the central business district (CBD) yet the poor and vulnerable people who are in need of these legal services are the poor peasants from various districts. Districts like Kamwenge, Karamoja, Koboko, bududa, Kamuli and many others are all occupied by people with low cost earnings depending on farming. These people cannot afford the high transportation costs from their districts to the CBD to access legal representation which means that the legal aid providers are the ones that travel these long distances at their own costs. This only hinders access to justice because the geographical locations of clients create a very expensive service delivery for both the service providers as well as the client. If clinical law students provide pro bono services from various Universities with in the country, more clients will be catered

for from various University clinical centers in all districts. Most districts have Universities, this entails that it won't be necessary for a client for example from Mbale district to travel to Kampala to seek legal help yet Islamic University in Uganda Mbale campus has a law clinic that can help this poor person.

University law Clinics can play a vital role in acting as a channel between the indigent Ugandans and the upcoming professionals who are the law students. It is indispensable to know that Pro bono could become a new focus for many law clinics in relation to access to justice, whilst at the same time facilitate expanded clinical education programs.²⁴ According to McQuid-Mason, "law students can play a valuable role in assisting indigent members in the community in satisfying some of their needs by engaging with the community service programs."²⁵ This effort will reflect on the actual needs of these marginalised and poor Ugandans thus reflecting on the demographic distribution of poverty, unemployment and the rest of the problems that these people face on a daily.²⁶

Conclusion

Provision of free legal assistance to the indigent and vulnerable Ugandans should always be addressed on the broader community basis. The aim of having Legal Aid Clinics in Uganda is to ensure that law students are equipped with appropriate capabilities to serve vulnerable Ugandans whilst improving the clinical training of these students. The article has analyzed University Based Clinics and their significance in providing vital and critical services to society in the promotion of access to justice in Uganda. To that end, Uganda National Council for Higher Education, the Law Council among other stakeholders, should work with various universities in Uganda to ensure that every law school operates a law Clinic (Legal Aid Clinic) following the requisite procedures as this will help in guaranteeing the constitutional requirement for access to justice and enhance the quality of legal education.

²⁴ De Klerk 2005 *SALJ* 945.

²⁵ Mc-Quoid-Mason "Teaching Social Justice"5.

²⁶ Bodenstein "Role of University-Based Law Clinics".