

TEACHING HUMAN RIGHTS IN COMMONWEALTH UNIVERSITY LAW SCHOOLS: APPROACHES AND CHALLENGES, WITH PASSING REFERENCES TO SOME SOUTH AFRICAN EXPERIENCES*

JC Mubangizi

Dip Ed LLB Dip LP LLM LLD

*Professor and Dean of the Faculty of Law
University of the Free State*

DJ McQuoid-Mason

BCom LLB LLM PhD

*President of the Commonwealth Legal Education
Association, Professor and Acting Head of the
Centre for Socio-Legal Studies,
University of KwaZulu-Natal*

SUMMARY

There have been a number of international commitments by members of the United Nations, including Commonwealth countries, to include human-rights education in their formal and informal education programmes. In addition, the Commonwealth Legal Education Association (CLEA), under the auspices of the Commonwealth Secretariat, has produced a Model Human Rights Curriculum for Commonwealth countries. Despite these initiatives, there appears to have been no systematic programme for introducing human-rights education at Commonwealth universities. An increasing number of Commonwealth law schools, however, have introduced human-rights law by integrating it into existing law courses as a “stand-alone” optional or core course, or as a combination of both. In addition, university-based centres for human rights have been established. The importance of the role that universities can play in advancing human rights in countries transitioning from autocracy to democracy is illustrated with passing references to the South African experience.

* This article is based on the paper presented by JC Mubangizi as “Teaching Human Rights in University Law Schools: Approaches and Challenges” at the Commonwealth Legal Education Association (CLEA) Conference on Challenges and Opportunities for Commonwealth Legal Education held at the Zambia Institute of Advanced Legal Education, Lusaka, Zambia 4–5 April 2019.

1 INTRODUCTION

The inclusion of human-rights education is a comparatively recent addition to the curriculum of many law schools in the world. This is despite allusions to it in the Universal Declaration of Human Rights¹ as long ago as 1948:

“Everyone has the right to education ... Education should be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups ... for the maintenance of peace.”²

Subsequently, the United Nations Decade for Human Rights Education³ (the Decade) was introduced to encourage more widespread implementation of human-rights education in both formal and informal education programmes. The Decade was adopted by all UN member states that also affirmed the Plan of Action for the United Nations Decade for Human Rights Education, 1995–2004⁴ (Plan of Action). The Plan of Action stated:

“Education for the purpose of the Decade shall be conceived to include the equal participation of women and men of all age groups and all sectors of society both in formal learning through schools and vocational and professional training, as well as in non-formal learning through institutions of civil society, the family and the mass media.”⁵

The Plan of Action also imposed a duty on governments, *inter alia*, to:

“[P]lay an active role in the implementation of the programme of the Decade through the development of national plans of action for human rights education [and] the introduction or strengthening of national human rights curricula in their formal educational systems.”⁶

In 2000, the Commonwealth Education Ministers issued a joint statement in which they observed:

“The use of education to promote values of democracy, human rights, citizenship, good governance, tolerance ... as espoused by the Commonwealth in its key declarations of principles, should be strengthened.”⁷

¹ Universal Declaration of Human Rights (1948).

² Art 26.

³ Adopted by the UN General Assembly, Resolution 49/184, A/RES/49/184, 23 December 1994. This was in line with the 1991 Harare Declaration adopted by the Commonwealth Heads of Government, in which they pledged “to work with renewed vigour” *inter alia*, “concentrating especially in the following areas: ... fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief; [and] equality for women, so that they may exercise their full and equal rights” (The Harare Commonwealth Declaration (1991) (Issued by Heads of Government in Harare, Zimbabwe); <http://thecommonwealth.org/sites/default/files/history-items/documents/Harare%20Commonwealth%20Declaration%201991.pdf> (accessed 2019-04-24)).

⁴ UN General Assembly, A/51/506/Add.1, 12 December 1996.

⁵ Par 5.

⁶ Par 11.

⁷ “Joint Statement” 14th Conference of Commonwealth Education Ministers, Halifax, Nova Scotia, Canada (30 November 2000).

Despite these international commitments by Commonwealth governments, human rights still does not appear to be a core academic course in all Commonwealth law schools. Nonetheless, research and teaching of human rights has grown exponentially in the last half-century. Human rights has become a subject on its own in many university curricula:

“It also constitutes a vital component of courses in other fields, figuring ever more significantly in research and writing, in advocacy-oriented clinical work, and in programs or centres within different faculties (schools) or at the university level.”⁸

Although, by its nature, human rights is both interdisciplinary and multi-disciplinary, most of the research and teaching of human rights takes place in the field of law. It is for this reason that law schools have an important role to play in the teaching of human rights.

This article discusses the various approaches adopted by law schools in the Commonwealth, with passing references to the role of South African law schools during apartheid, and the country’s subsequent transition to democracy. These approaches include integrating human rights into the curriculum, using moots based on human-rights cases, introducing clinical legal education in the context of social justice, providing research on human-rights issues and establishing university-based human-rights centres. The challenges faced by law schools in teaching human rights are highlighted and analysed before conclusions and recommendations are made.

2 THE ROLE OF LAW SCHOOLS

For the purposes of this article, the reference to “law schools” is a generic term that refers to schools of law, faculties of law and colleges of law where students acquire legal education that generally leads to an undergraduate or postgraduate legal qualification. Other short courses and programmes may also be offered. Law schools are usually attached to a university or higher education institution. However, they may also be independent institutions, such as those that run a one- or two-year professional programme, the passing of which is a prerequisite to join the legal profession as an attorney or advocate.⁹

The role of law schools in teaching human rights must be seen in the context of the place of universities generally in human-rights movements. In determining this role, a number of questions come to mind. Should the university be part of the human-rights movement advocating for transformative change and the realisation of human rights? Or, should the university be a mere participant in the human-rights debate? Should the university’s approach towards human rights be different from their approach to other fields and disciplines? What is the relevance of a university’s human-rights curriculum and scholarship to the human-rights movement?

⁸ Steiner “The University’s Critical Role in the Human Rights Movement” 2002 *Harvard Human Rights Journal* 317.

⁹ Examples of such independent Commonwealth institutions are the College of Law in Australia and New Zealand, the law schools in Nigeria and Kenya, the Law and Development Centre in Uganda and the School for Legal Practice in South Africa.

These and other questions were addressed by a project organised by the Harvard Law School Human Rights Programme in 1999, which concluded:

“A fundamental task of the universities should be to systemize the text of human rights – to critically examine the corpus, to identify conceptual gaps and inconsistencies, to clarify and expand the scope of the text, and to critique institutions that participate in the production and promotion of human rights norms.”¹⁰

The project further concluded that “the university should not be directly involved in advocacy, except to act as a forum for clinical hands-on training for students.”¹¹

This “hands-off” approach to activism by universities in human-rights movements might be appropriate for a stable democracy, which the United States may have been at the time, but is inappropriate for transitional Commonwealth countries where law schools can play an invaluable part in shaping and leading the struggle for human rights. For instance, during the apartheid era in South Africa, some legal academics provided a valuable leadership role in the pursuit of a just society based on fundamental human rights.¹² In addition, the universities themselves were able to provide protection for numerous civil society organisations that would otherwise have been exposed to threats by the apartheid regime.¹³ However, many of the law schools remained silent and did not publicly condemn the apartheid-era human-rights violations. This prompted the President and Vice-President of the then Society of University Teachers of Law (SUTL) to appear before the Truth and Reconciliation Committee and apologise that law schools did not do more publicly to protect and promote human rights during apartheid.¹⁴

Human rights should be taught in law schools because protecting human rights should be a foundational principle of law teaching. Law schools have an obligation and a responsibility to ensure that their students are exposed to the basic principles of human rights. This is because of the link between human rights and other legal subjects such as constitutional law, administrative law, criminal law and labour law.

¹⁰ See “Human Rights@Harvard Law” <http://hrp.law.harvard.edu/academic> (accessed 2019-04-26).

¹¹ *Ibid.*

¹² See, for instance, some of the academics referred to in McQuoid-Mason “Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons From South Africa: Part 1: Pre-1970 Until 1990” 2004 *Journal for Juridical Science* 28–51; McQuoid-Mason “Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons From South Africa: Part 2: 1990 Until the Present” 2005 *JJS* 1–16. See also McQuoid-Mason “Teaching Human Rights in a Hostile Environment: A Lesson From South Africa” 2003 *Windsor Yearbook of Access to Justice* 213–238.

¹³ *Ibid.*

¹⁴ The second author was President of SUTL at the time and requested all law deans to give an account of why their law schools did not publicly promote or protect human rights: see Society of University Teachers of Law “Truth and Reconciliation Commission Submissions by the Society of University Teachers of Law and Certain Law Schools” 1997 *SALJ* 101–110.

3 APPROACHES OF LAW SCHOOLS IN THE COMMONWEALTH

The most common methods of accommodating human-rights education in law schools are to integrate human rights into the curricula of other courses, to teach human rights as a “stand-alone” course, or to offer a combination of both.

3.1 Integrating human rights into the law curriculum as part of other courses

Traditionally, law schools in the Commonwealth have taught human rights by integrating human-rights law into the core curriculum. Here, human rights is included as part of other courses delivered through lectures, seminars and tutorials. In order to do this effectively, law teachers should design their courses to ensure that the human-rights components form an essential part of their curriculum, and are not regarded merely as a peripheral “add-on” component. In many countries, this has led to the revision of core law courses to ensure an infusion of human-rights concepts throughout the curriculum. This usually happens as a result of a transition from an autocratic regime to a democratic dispensation.

An example of such a transition is the integration of an understanding of human rights into LLB degrees in South African law schools following the commencement of the post-1994 democratic order¹⁵ and the adoption of a new constitution that for the first time contained a bill of rights.¹⁶ Section 7(2) of the 1996 Constitution requires the State, *inter alia*, to “promote ... the rights in the Bill of Rights”, which clearly includes human-rights education. Likewise, section 24 of the Equality Act¹⁷ provides that both the State and “all persons” have “a duty and a responsibility to promote equality”. This is a duty that falls on both state-funded and private law schools and can best be done by including human rights in the curriculum.

Integrating human-rights concepts into university courses and programmes helps students understand societal and global problems through a human-rights lens, thereby inculcating a sense of social responsibility. As a result, students become better positioned to integrate human rights into their lives, their families, their communities and their future careers. The other important link between law schools and an embedding of human-rights values in society is through university law teachers and scholars.¹⁸ Through their scholarship, law academics can influence the

¹⁵ For instance, during 1994, the second author, as Dean of the Faculty of Law at the University of Natal, Durban arranged for a series of workshops whereby all faculty law teachers were required to revise their courses to incorporate relevant sections from the interim Constitution that would impact on their disciplines (personal knowledge of the second author).

¹⁶ First, in terms of Chapter 3 of the interim Constitution of the Republic of South Africa Act 200 of 1993, and subsequently in Chapter 2 of the final Constitution of the Republic of South Africa, 1996.

¹⁷ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

¹⁸ See Steiner 2002 *Harv Hum Rts J* 317.

thinking and practice of human rights in society. Such influences potentially have a direct impact on the way human rights are understood and protected in any society within which those scholars and academics operate.¹⁹

3 2 Including human rights as a separate course in the curriculum

Another method of integrating human rights into law schools curricula is to make it a subject on its own, dealing specifically and exclusively with human-rights issues. This enables students to acquire more specialised theoretical and practical knowledge about human rights. It was with this in mind that the Commonwealth Legal Education Association (CLEA) developed a Model Human Rights Curriculum for the Commonwealth Secretariat Human Rights Unit.²⁰ Initially developed in 1999 and revised in 2006, the Model Curriculum was intended “to provide a model for Commonwealth Law Schools...in offering a course on human rights to their undergraduate students (or in developing and strengthening existing courses).”²¹ It was also meant to facilitate the establishment and development of specific courses in human rights throughout the Commonwealth, in addition to assisting “in integrating human rights components, perspectives and principles into other subject courses.”²²

The Commonwealth Model Human Rights Curriculum covers the following topics: (i) an overview of human-rights education in the Commonwealth; (ii) considerations in constructing a course in human rights; (iii) a model human-rights curriculum for Commonwealth universities and schools; and (iv) further course materials, links and research resources.²³ A detailed discussion and analysis of the Commonwealth Model Human Rights Curriculum is beyond the scope of this article. The Model Curriculum is “intended as a teacher’s resource, to suggest and describe what might be possible components of a notional course in human rights.” It recommends a structure, provides reading lists and suggests ideas on methodology and leaves “the teacher to plan and provide the substance and content.”²⁴

It is not clear to what extent the Model Curriculum has been adopted or used by law schools in the Commonwealth. What is clear is that the existence of such a resource is testimony to the significance that the Commonwealth places on the role of law schools in human-rights education.

¹⁹ *Ibid.*

²⁰ See Commonwealth Secretariat “Model Human Rights Curriculum for Commonwealth Universities and Law Schools” http://www.clea-web.com/wp-content/uploads/2014/10/Commonwealth_Model_International_Human_Rights_Curriculum.pdf (accessed 2019-04-25).

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

3 3 Combining integrating human rights into other curricula and offering it as a separate course

It is possible for law schools to integrate human rights into the curricula of other courses and simultaneously to offer human rights as a separate course. For instance, core substantive courses can incorporate the effect of fundamental human-rights provisions in a country's constitution on the interpretation and development of the common law. In addition, a self-contained human-rights course can deal historically and holistically with relevant broad human-rights principles.

4 MOOTS ON HUMAN-RIGHTS ISSUES

There is no shortage of literature on the pedagogical value of moot courts in the curriculum of law schools.²⁵ In the context of human-rights education, it has been argued that moots play an important role in “assisting students to learn the substantive principles of human rights law as well as their practical application.”²⁶ Through undertaking research and preparing to argue a particular human-rights position, students are able to increase their knowledge of human rights. They are also able to embrace the fundamental principles of human rights and understand the legal principles mentioned in international human-rights instruments such as the Universal Declaration of Human Rights,²⁷ the International Covenant on Civil and Political Rights,²⁸ the International Covenant on Social Economic and Cultural Rights,²⁹ and numerous other conventions and treaties.

Moots are usually conducted as competitions. Such competitions can take various forms – from internal (to the school), to national (between institutions in a particular country), to international competitions. International moot court competitions are particularly important as they expose students to different legal and human-rights systems. Such competitions also involve “researching international sources and gaining new perspectives on complex legal problems that affect everyone.”³⁰

There are numerous national and international moot court competitions in the Commonwealth. The following are some examples of international moot competitions with a specific human-rights focus:

- Commonwealth Moot Competition, organised by the Commonwealth Legal Education Association (CLEA) for the Commonwealth Lawyers Association (CLA) biennial conferences;³¹

²⁵ See Gerber and Castan “Practice Meets Theory: Using Moots as a Tool to Teach Human Rights” 2012 *Journal of Legal Education* 298. See also Dickerson “In re: Moot Court” 1999 *Stetson Law Review* 1217.

²⁶ See Gerber and Castan 2012 *J Legal Educ* 298.

²⁷ United Nations Universal Declaration of Human Rights (1948).

²⁸ United Nations International Covenant on Civil and Political Rights (1966).

²⁹ United Nations International Covenant on Social Economic and Cultural Rights (1966).

³⁰ Spillane *International Moot Court: An Introduction* (2008) 7.

³¹ See CLEA “2019 Commonwealth Student Moot” <http://www.clea-web.com/events-conferences/zambia-2019/2017-moot/> (accessed 2019-04-25).

- Henry Dunant Memorial Moot Court Competition, organised by the International Committee of the Red Cross (ICRC) in collaboration with the Indian Society of International Law;³²
- African Human Rights Moot Competition, organised by the Centre for Human Rights, University of Pretoria,³³ and
- Nelson Mandela World Human Rights Moot Court Competition, also organised by the University of Pretoria Centre for Human Rights in partnership with the Academy on Human Rights, Washington College of Law, American University and the United Nations Human Rights Council Branch (HRCB) of the Office of the High Commissioner for Human Rights (OHCHR).³⁴

Such competitions provide a useful tool for the promotion of human-rights education in law schools in the Commonwealth.

While national and international moot court competitions tend to be in the limelight, it is important to acknowledge the value of moots organised in law schools as part of professional training programmes or as stand-alone courses. For example, at Nelson Mandela University, “Moot Court” is an elective stand-alone course that focuses on human-rights cases.³⁵ Such moots provide an opportunity for law students to learn about human rights in a dynamic and practical way at their own institutions.

5 CLINICAL LEGAL EDUCATION AND HUMAN RIGHTS

Clinical legal education has been referred to as “a course of study combining a classroom experience with representation by students of clients with real cases or projects, under the supervision of a full-time faculty member”.³⁶ It has also been defined as “a method of teaching practical legal skills to law students using interactive, reflective learning methods in a social justice environment”.³⁷ Clinical legal education is usually provided through law clinics, which ordinarily are attached to law schools.³⁸ There are a wide variety of law clinics operating at law schools in different parts of the

³² Indian Society of International Law “Henry Dunant Memorial Moot Court Competition” http://moot_court_compt.htm (accessed 2020_04_09).

³³ Wikipedia “African Human Rights Moot Court Competition” http://www.en.wikipedia.org/wiki/African_Human_Rights_Moot_Compition (accessed 2019-04-25).

³⁴ Centre for Human Rights, University of Pretoria “Nelson Mandela World Human Rights Moot Court Competition” <http://www.chr.up.ac.za/moot-courts/nelson-mandela-world-human-rights-moot-court-competition/english-site> (accessed 2020_04_09).

³⁵ Nelson Mandela University *Faculty of Law Prospectus* (2019) 29.

³⁶ Wilson “Clinical Legal Education for Human Rights Advocates” in Andreopoulos and Claude (eds) *Human Rights Education for the Twenty-First Century* (1997) 261.

³⁷ McQuoid-Mason “Introduction to Clinical Law” in Mahomed (ed) *Clinical Law in South Africa* 3ed (2016) 1.

³⁸ See, generally, Bloch (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice* (2010); Bodenstein (ed) *Law Clinics and the Clinical Law Movement in South Africa* (2018).

Commonwealth, including general practice clinics, specialist clinics, public-interest law clinics and Street Law-type public legal awareness clinics.³⁹

The importance of law clinics in legal education generally, and human-rights education in particular, cannot be overemphasised, considering that they are established with two main aims: first, to provide training and practical legal skills for law students; and, secondly, to provide free legal services to poor and marginalised clients.⁴⁰ As a result of the socio-economic circumstances of such clients, the matters that come to law clinics often have human-rights dimensions.⁴¹

Live-client law clinics provide law students with the opportunity to give legal assistance and advice, and in the process, to reflect on how law operates in society and how best to help poor and marginalised clients.⁴² Street Law-type clinics enable students to visit institutions like schools, prisons and community-based organisations to provide the participants with information about the law and legal processes, and to learn at first hand of the challenges faced by ordinary people when they come into conflict with the law.⁴³ By handling such matters, students are able to engage practically with real human-rights issues in a practical and participatory way:

“Human rights cannot be adequately taught through classroom lectures ... [S]tudents need to feel the problem marginalized communities face by working directly with them. They can then understand, appreciate, and personalize these problems. They become real, not classroom theories.”⁴⁴

In summary, it is not only students who acquire human-rights education from law clinics. Ordinary people who access the clinics’ services also benefit by being provided with legal assistance and advice on human-rights

³⁹ See, generally, Giddings, Burrige, Gavigan and Klein “The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada and Australia” in Bloch (ed) *The Global Clinical Movement* 3–22; McQuoid-Mason, Ojukwu and Wachira “Clinical Legal Education in Africa: Legal Education and Community Service” in Bloch (ed) *The Global Clinical Movement* 23–36; Lasky and Prasad “The Clinical Movement in South East Asia and India: A Comparative Perspective and Lessons to be Learned” in Bloch (ed) *The Global Clinical Movement* 37–51; Sarker (ed) *Clinical Legal Education in Asia: Accessing Justice for the Underprivileged* (2015); McQuoid-Mason “Law Clinics at African Universities: An Overview of the Service Delivery Component With Passing References to Experiences in South and South East Asia” *Special Issue on Clinical Legal Education 2008 JJS* 1–23; Mubangizi and McQuoid-Mason “The Role of University Law Clinics in Public Interest Litigation, with Specific Reference to South Africa” 2013 *JJS* 47.

⁴⁰ McQuoid-Mason “Teaching Social Justice to Law Students Through Clinical Legal Education and Community Service: A South African Experience” in Qafisheh and Rosenbaum (eds) *Experimental Legal Education in a Globalized World: The Middle East and Beyond* (2016) 333–343.

⁴¹ See McQuoid-Mason in Qafisheh and Rosenbaum (eds) *Experimental Legal Education* 334–339.

⁴² See Giddings, Burrige, Gavigan and Klein in Bloch (ed) *The Global Clinical Movement* 3–22; McQuoid-Mason, Ojukwu and Wachira in Bloch (ed) *The Global Clinical Movement* 23–36; Lasky and Prasad in Bloch (ed) *The Global Clinical Movement* 37–51.

⁴³ See Grimes, McQuoid-Mason, O’Brien and Zimmer “Street Law and Social Justice” in Bloch (ed) *The Global Clinical Movement* 225–251.

⁴⁴ Ezer, Dshko, Clark and Kameni “Promoting Public Health Through Clinical Legal Education: Initiatives in South Africa, Thailand, and Ukraine” 2010 *Human Rights Brief* 32.

issues during consultations in live-client clinics, or learning about human rights when participating in Street Law-type legal literacy programmes.⁴⁵

6 RESEARCH ON HUMAN RIGHTS

The term “research” is used broadly here to refer to all forms of knowledge production and associated activities, such as academic scholarly publications, conferences, colloquiums, round-table discussions, symposia and workshops. Through these research activities, human-rights education can be enhanced, particularly in countries that are subject to oppressive regimes⁴⁶ and hostile to human rights.⁴⁷ Indeed, there is no doubt a close link between human-rights education, research into human rights, and human-rights practice. This is because each of these contributes to the advancement of the others. It is for this reason that the United Nations Plan of Action for the Second Phase of the World Programme for Human Rights Education highlighted the importance of human-rights research as follows:

“Higher education institutions develop new knowledge and advance critical reflection in the area of human rights, which in turn inform policies and practices in human rights and in human rights education. Through an assessment of existing experiences and comparative studies, research can support the identification and dissemination of good practices as well as the development of innovative methodologies and tools based on those practices; research can also guide lesson-learning and evaluation exercises.”⁴⁸

Law schools play an important role in legal research generally, including research into human rights. As a result of the doctrine of academic freedom, which, for example, is enshrined in the South African Constitution,⁴⁹ academics are able to pursue fields of research and lines of inquiry without control or restraint or any fear of retribution from their institutions, although a repressive government may sometimes have other ideas, as occurred in apartheid South Africa. For instance, during apartheid, the more liberal English-speaking “open” universities tolerated their law academics engaging directly in confrontations with the apartheid government over human-rights violations, but the law teachers concerned were sometimes prosecuted by

⁴⁵ See McQuoid-Mason in Qafisheh and Rosenbaum (eds) *Experimental Legal Education* 339–343.

⁴⁶ See, for instance, during the apartheid era in South Africa, a few academic works were published that sought to promote human rights, such as Mathews *Law, Order and Liberty in South Africa* (1971); Van Niekerk “The Warning Voice from Heidelberg: The Life and Thoughts of Gustav Radbruch” 1973 90 *SALJ* 234; Dugard *Human Rights and the South African Legal Order* (1978); and the publication in 1986 of the first volume of the *South African Journal on Human Rights*: 1986 *SAHJR*, published by the Centre for Applied Legal Studies at the University of the Witwatersrand.

⁴⁷ McQuoid-Mason in Qafisheh and Rosenbaum (eds) *Experimental Legal Education* 213–238.

⁴⁸ United Nations, Plan of Action for the Second Phase of the World Programme for Human Rights Education 2012, (HR/PUB/12/3) http://www.ohchr.org/Documents/Publications/WPHRE_Phase_2_en.pdf (accessed 2019-04-26).

⁴⁹ S 16(1)(d).

the State.⁵⁰ In such cases, law teacher associations can provide moral and professional support for their embattled colleagues.⁵¹

Academic research into human-rights issues, like other research, is usually subject to peer review and critical analysis. Through publications, conferences, workshops and other platforms, research findings and new knowledge in human rights can be disseminated broadly to society and the general public. Studies have shown that good researchers make good teachers.⁵² It is therefore not only students and their lecturers that benefit from human-rights research. The legal profession also benefits as law firms, judges and other legal practitioners make use of the new knowledge produced in books and articles published by leading academics in the field of human rights. Moreover, research about human rights also informs policy formation and the development and application of the relevant law in courts and legislatures. For instance, academics played an important role on the technical committees that drafted the fundamental rights chapters in the interim⁵³ and final⁵⁴ South African constitutions during the transition from apartheid.⁵⁵

7 CENTRES OF HUMAN RIGHTS

A significant approach adopted by many Commonwealth law schools is the establishment of centres of human rights. Such centres play an important role in human-rights education. The establishment of these centres is part of the growing realisation that human-rights education has a significant place in legal education – a role that goes beyond teaching and research – and marks a philosophical change in legal education. Such an approach has policy implications nationally, and seeks to make law schools responsive to the needs of students, educators and society in general.⁵⁶ In doing so, the centres usually provide space for human-rights work intended to benefit marginalised and underprivileged members of society. Such centres also contribute to the intellectual climate of their law schools and universities by formulating cutting-edge programmes such as postgraduate human-rights

⁵⁰ For instance, Professor Barend van Niekerk at the University of Natal, was prosecuted for (but not convicted of) contempt of court for showing statistically that black South Africans were sentenced to death more often than white citizens for the same types of crime: *S v Van Niekerk* 1970 (3) SA 655 (T). See also Rhadamanthus “Contempt of Court: The Trial of Barend van Dyk van Niekerk” 1970 *Acta Juridica* 77.

⁵¹ In addition to academic colleagues providing material and other support for Professor van Niekerk, the Society of University Teachers of Law issued a strong statement condemning the violation of academic freedom by the State in prosecuting him: “Statement by the Council of the Society of University Teachers of Law” 1970 *SALJ* 467.

⁵² Sutherland and Wolhuter “Do Good Researchers Make Good Teachers?” 2002 *Perspectives in Education* 77–83.

⁵³ Chapter 3 of the Constitution of the Republic of South Africa Act 200 of 1993.

⁵⁴ Chapter 2 of the Constitution, 1996.

⁵⁵ See Technical Committee on Fundamental Rights During the Transition *Ad Hoc Committee Minutes of the Technical and Ad Hoc Committees of the Multi-party Negotiating Forum Relating to the Chapter on Fundamental Rights in the New Constitution (Chapter 3 of the Republic of South Africa Constitution Bill 1993)* (1993).

⁵⁶ See Wildman “Democracy and Social Justice: Founding Centers for Social Justice in Law Schools” 2005 *J Legal Educ* 257.

law courses, and sponsoring high-level multiple extracurricular human-rights activities, such as moots and law clinics.

Several Commonwealth law schools have centres of human rights. The following are some examples:

- Centre for Human Rights Education at Curtin University in Perth, Australia;⁵⁷
- Castan Centre for Human Rights at Monash University, Australia;⁵⁸
- Australian Human Rights Institute, University of South Wales, Australia;⁵⁹
- Human Rights Research and Education Centre, University of Ottawa, Canada;⁶⁰
- Centre for the Study of Human Rights, London School of Economics, United Kingdom;⁶¹
- Centre for Human Rights in Practice, Warwick University, United Kingdom;⁶²
- Human Rights Centre, University of Durham, United Kingdom;⁶³
- Human Rights Centre, University of Essex, United Kingdom;⁶⁴
- Human Rights Centre, University of Nottingham, United Kingdom;⁶⁵
- Human Rights Centre, Queen's University, Belfast, Northern Ireland, United Kingdom;⁶⁶
- Centre for Human Rights, University of Pretoria, South Africa;⁶⁷
- Human Rights and Peace Centre (HURIPPEC), Makerere University, Uganda;⁶⁸
- Human Rights Centre, University College Lahore, Pakistan;⁶⁹ and

⁵⁷ See Curtin University "Centre for Human Rights Education" <http://humanrights.curtin.edu.au/> (accessed 2019-04-26).

⁵⁸ See Monash University "Castan Centre for Human Rights Law" <http://www.monash.edu/law/research/centres/castancentre> (accessed 2019-04-26).

⁵⁹ See UNSW Sydney "Australian Human Rights Institute" <http://www.humanrights.unsw.edu.au/> (accessed 2019-04-26).

⁶⁰ See uOttawa "Human Rights Research and Education Centre" http://cdp-hrc.uottawa.ca/en/about_us (accessed 2019-04-27).

⁶¹ See The London School of Economics and Political Science "LSE Human Rights" <http://www.lse.ac.uk/sociology/human-rights> (accessed 2019-04-26).

⁶² See School of Law, University of Warwick "Centre for Human Rights in Practice" <http://www.warwick.ac.uk/fac/soc/law/research/centres/chrp> (accessed 2019-04-26).

⁶³ See Durham University "Human Rights Centre" <http://www.dur.ac.uk/hrc> (accessed 2019-04-26).

⁶⁴ See University of Essex "Human Rights Centre" <http://www.essex.ac.uk/hrc> (accessed 2019-04-26).

⁶⁵ See University of Nottingham "Human Rights Law Centre" <http://www.nottingham.ac.uk/hrc/> (accessed 2019-04-26).

⁶⁶ See Queen's University Belfast "The Human Rights Centre" <http://law.qub.ac.uk/schools/SchoolofLaw/research/> (accessed 2020-04-13).

⁶⁷ See Centre for Human Rights, University of Pretoria "Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa" <http://www.chr.up.ac.za> (accessed 2019-04-26).

⁶⁸ See Human Rights & Peace Centre, School of Law, Makerere University "Welcome to HURIPPEC" <http://www.hurippec.mak.ac.ug/> (accessed 2019-04-26).

⁶⁹ See University College Lahore "University College Lahore Human Rights Centre" <http://www.ucl.edu.pk/hrc.html> (accessed 2019-04-26).

- Centre for Human Rights and Duties, Panjab University, India.⁷⁰

The list is not exhaustive, but indicates that there are many centres of human rights in law schools spread across the Commonwealth.

Some human-rights centres located at law schools, such as the Centre for Human Rights at the University of Pretoria (CHRUP) in South Africa, were originally established to combat a repressive regime – in CHRUP’s case, to deal with apartheid through human-rights education and other means. Subsequently, CHRUP has attained a continental reach and engages in “the wide dissemination of publications on human rights in Africa and the improvement of the rights of ... disadvantaged or marginalised persons or groups across the continent.”⁷¹ Such centres may also establish human-rights law clinics, undertake research and advocacy, provide post-graduate and advanced human-rights courses, and organise international human-rights moot court competitions.⁷²

Centres located in other faculties, such as the Centre for Human Rights Education at Curtin University (CHRECU) in Australia, based in the Faculty of Humanities, might specifically focus on human-rights education and have a more multi-disciplinary approach. They may also engage in “research, education and advocacy in human rights”.⁷³ For example, as a multi-disciplinary centre, CHRECU “draws on scholarship, research and expertise from a variety of disciplines and professions, including philosophy, political science, sociology, education, health sciences, social work, law, international relations, psychology, anthropology, business and media studies.”⁷⁴

8 CHALLENGES WHEN INTRODUCING HUMAN RIGHTS INTO THE LAW CURRICULUM

Law schools face several challenges in the Commonwealth and elsewhere, when introducing human rights into the law curriculum. Mention was made earlier of the Model Human Rights Law Curriculum developed by CLEA for the Human Rights Unit of the Commonwealth Secretariat.⁷⁵ In developing the Model Curriculum, it was acknowledged that due to the nature and structure of legal studies generally, most Commonwealth law schools have no systematic programme for the teaching of human rights. As a result, human-rights issues are often dealt with piecemeal in other courses, such as constitutional law, public international law or criminal law. Official statistics

⁷⁰ See Panjab University “Centre for Human Rights & Duties (U.I.E.A.S.S)” <http://humanrights.puchd.ac.in> (accessed 2019-04-26).

⁷¹ See Centre for Human Rights, University of Pretoria “Overview” <http://www.chr.up.ac.za> (accessed 2020-04-13).

⁷² Centre for Human Rights, University of Pretoria <http://www.chr.up.ac.za>

⁷³ See Fleay and Briskman “Human Rights Education at Curtin University: The Interconnections of Education, Research and Advocacy” in *Human Rights Education in Asia-Pacific* (2011) 227.

⁷⁴ See Curtin University “Centre for Human Rights Education” <http://humanrights.curtin.edu.au/about/> (accessed 2019-04-26).

⁷⁵ See Commonwealth Secretariat http://www.clea-web.com/wp-content/uploads/2014/10/Commonwealth_Model_International_Human_Rights_Curriculum.pdf.

are not available but, anecdotally, it seems that not many Commonwealth law schools have adopted the Model Curriculum.⁷⁶

Another challenge is the teaching methodology. As a result of the principles of academic freedom and institutional autonomy, different law schools and academics adopt different methods of teaching human rights. Studies have shown that the most effective way of teaching law, including human-rights law, is to use interactive teaching methods,⁷⁷ and that lecturing is one of the least effective methods of learning for students.⁷⁸ Hence the move towards clinical legal education.⁷⁹ However, the reality is that the majority of law teachers in the Commonwealth probably still rely on the lecture method.

A further challenge is that while some law schools require human rights as a core course in their programme, others prefer to offer it as an elective, while yet others might only offer it at the post-graduate level. The result is that students at certain law schools, where human-rights law is not compulsory, may choose not to take it as an optional or post-graduate course, and receive no education about human rights.

There is also the challenge of a lack of law teachers who specialise in human-rights education. This can result in the assumption that human rights is the type of course that can be taught by any legal academic. This may be a false assumption in light of evidence gleaned from a large-scale three-country survey on democracy education conducted on behalf of the United States Agency for International Development (USAID). The survey was in respect of democracy education, which included the role that human rights plays in underpinning democracy, and found that one of the most important factors influencing the effectiveness of such education was whether the teachers were knowledgeable and inspiring.⁸⁰ This may not be the case where the law teacher is not an expert in the field of human-rights law.

Another issue is apathy on the part of both students and institutions, particularly after some time has elapsed since changes from repressive

⁷⁶ The first author undertook a web search of several Commonwealth law schools and found that very few referred to the CLEA Model Human Rights Law-.

⁷⁷ For step-by-step examples of a variety of interactive teaching methods, see McQuoid-Mason (ed) *Street Law: Practical Law for South Africans: Educator's Manual* 3ed (2015) 7–27. These include brainstorming, ranking exercises, small group discussions, case studies, role-plays, questions and answers, simulations, debates, games, hypothetical problems, moots, mock trials, open-ended stimulus, opinion polls, participant presentations, “taking a stand”, the “PRES formula”, problem solving, values clarification, “fishbowl”, “jigsaw”, “each one teach one”, visual aids, inviting experts and field trips.

⁷⁸ A survey on the effectiveness of civic and democracy education funded by the United States Agency for International Development (USAID) in the 1990s in the Dominican Republic, Poland and South Africa indicated that participatory, interactive teaching and learning methods were much more effective than the traditional lecture method. The study found that small group discussions, dramatisations, role-plays, problem-solving activities, simulations, and mock political or judicial activities led to far greater levels of positive change than more passive teaching methods such as lectures or the distribution of materials: USAID *Democracy Education Survey* (2002).

⁷⁹ See, generally, Stuckey (ed) *Best Practices for Legal Education: A Vision and a Roadmap* (2007).

⁸⁰ USAID *Democracy Education Survey* (2002); McQuoid-Mason “Introduction” in Council for a Community of Democracies *Democracy Education Best Practices Manual* (undated) 7–8.

regimes to democratic governments. As time passes, there is a tendency to feel that the subject is no longer necessary because there will be fewer human-rights issues to deal with. This is usually reflected in a fall in the number of students who register for the human-rights course if it is optional, as happened in Nigeria after 1999.⁸¹

A particular challenge facing human-rights law clinics and centres is their sustainability at universities where they are not mainstreamed into law-school budgets. Even though their activities are useful to a university, because they satisfy the university's mission statement regarding community engagement, such bodies may still be dependent on outside funding that may not be forthcoming.⁸² A lack of funding may result in capacity problems that negatively affect a clinic's or centre's ability to meet its objectives regarding human-rights education.

Another important challenge relates to the need for centres of human rights and law clinics to balance teaching and training of students with the desire to provide free legal services to indigent people.⁸³ Human-rights centres also need to maintain a proper balance between teaching and research, and activism and advocacy, and between classroom commitments and community service demands on students in law clinics. In both instances, the human-rights educational objectives of the programmes must be properly met, and not undermined by excessive caseloads involving activism and advocacy or the provision of free legal services.

9 CONCLUSION

Despite various challenges, the important role of law schools in human-rights education in the Commonwealth cannot be overemphasised. There is a need to continue expanding the scope of human-rights education in law schools and in universities. One method of achieving this is a "rights-based approach" to legal education that "transforms the law schools in a particular way, favouring a more profound consciousness about how a university can foster or erode the egalitarian ethos that makes human rights possible."⁸⁴

There is also a need to secure more funding from the universities and elsewhere in order to support the expansion and mainstreaming of human-rights education. Judicial support and curriculum development are other mechanisms of support.⁸⁵ The presence of practising judges presiding in human-rights moot competitions is a good example of judicial support. This was done in South Africa during the apartheid era when judges sat in Street

⁸¹ See Agbebaku and Akhigbe "Teaching Human Rights in Law Schools: The Nigerian Perspective" in *Key Issues in Teaching Human Rights in Law Schools: IALS 2013 Annual Meeting Papers* (2013) <http://www.ialsnet.org/wordpress/.../Papers-Key-Issues-in-Teaching-Human-Rights-in-Law-Schools.pdf> (accessed 2019-04-26).

⁸² See Mubangizi and McQuoid-Mason 2013 *JJS* 62.

⁸³ *Ibid.*

⁸⁴ See Alegre "Law Schools as Human Rights Institutions" in *The Role of Law Schools and Human Rights: IALS 2013 Meeting* (2013) <http://www.ialsnet.org/.../Papers-Law-Schools-as-Contributors-to-Public-Policy-on-Human-Rights.pdf> (accessed 2019-04-26).

⁸⁵ See Hatchard "Developing Legal Education in the Commonwealth: Linking the Judiciary with the Law Schools" <http://www.supremecourt.gov.pk/ijc/Articles/6/4.pdf> (accessed 2019-04-26).

Law mock trials and moots, and also helped to deflect the attention of the security police.⁸⁶ In respect of supporting curriculum development, the initiative of CLEA and the Commonwealth Secretariat's Human Rights Unit in developing the Model Human Rights Curriculum is a step in the right direction and one that needs to be publicised more widely. CLEA representatives in the different regions of the Commonwealth should ensure that law schools in their regions are aware of the Model Curriculum. It is hoped this will encourage Commonwealth law schools to play a more meaningful role in human-rights education, particularly in transitional Commonwealth countries.

⁸⁶ See McQuoid-Mason 2003 *WYAJ* 219.