

*Soros Foundation Kyrgyzstan*

**LEGAL CLINICS  
AND THE STATE  
GUARANTEED  
LEGAL AID SYSTEM  
IN KYRGYZSTAN**



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SOROS FOUNDATION KYRGYZSTAN<sup>1</sup>

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## I. EXECUTIVE SUMMARY

In recent decades, governments the world over have recognized that state-provided legal assistance to vulnerable segments of the population is fundamental to the practical realization of citizens' rights. Yet effective provision of state-guaranteed legal aid requires expansive cooperation between a wide range of actors. Few governments around the world, if any, are financially and logistically positioned to provide comprehensive legal aid services to their entire populations. Today it is widely agreed that governments must form partnerships with non-governmental organizations, including foundations and universities, in order to render much-needed legal assistance to those most in need of it.

Given the current state of reflection in the Kyrgyz Republic, in the midst of wide-scale reforms to its legal aid and criminal defense systems, consideration of the role of legal clinics is vital in the dialogue on the country's provision of legal aid to its citizens. University-based legal clinics have gained widespread acceptance across the globe both as fundamental educational tools and as instruments for providing legal aid to underserved populations.

Legal clinics present a tremendously valuable resource for the government's free legal aid system, as has been shown by the success of legal clinics worldwide, including in Russia – where they have been fully incorporated into the governmental legal aid system – as well as in many other countries, including Poland, Ukraine, and South Africa. Each of these nations, recognizing the dual nature of the legal clinical advantage in 1) creating a critical practical component to law students' education and 2) providing much-needed legal aid to vulnerable populations requiring assistance, has embraced the clinical model and taken steps to ensure the clinics' standardized quality of aid provision and long-term sustainability.

Kyrgyzstan is at an advantage in terms of the development of its clinical legal education system. Several young legal clinics have led the charge over the past decade in providing the country's future lawyers with hands-on, practical experience that will improve the quality of legal service that they offer after graduation, while providing free legal aid to hundreds of Kyrgyz citizens from low-income or otherwise marginalized backgrounds.

In the process of legislation review, Kyrgyz lawmakers now have an opportunity to take advantage of this vast untapped resource, and simultaneously advance access to justice for the nation's citizens, by incorporating the clinics into the state-guaranteed legal aid (SGLA) system. This report provides concrete recommendations for how a modified law on SGLA could do so, including through the state-guaranteed provision of legal aid in specific civil law matters, and through increased opportunities for student assistance in limited criminal matters.

The following will introduce the concept of legal clinics and describe how they have developed and succeeded in providing legal aid in several case study countries, including Russia, Poland, Ukraine, Moldova, and South Africa. It will then provide an overview of the current state of clinical legal education in Kyrgyzstan based upon the experiences of seven legal clinics based in Bishkek. Finally, it will provide recommendations on how the country could advance human rights and improve the quality of legal services overall in the country through the support and further development of clinics as service providers.

## II. LEGAL CLINICS AND STATE-GUARANTEED LEGAL AID

### A. Legal Clinics Overview

Law schools today must serve multiple functions; over the past several decades, it has become increasingly clear that legal educational institutions that merely teach legal codes from books produce students who are ill-equipped to deal with the demands of the legal profession in today's global economy. Furthermore, increasing pressure from citizens for government accountability and responsiveness to the population's needs have required educational institutions to adapt as well. With regard to this phenomenon, one commentator noted: “[Law] schools are accountable both to the legal community, for producing lawyers who will shape the profession in constructive ways, and to society, for producing the practitioners who will help address societal needs.”<sup>2</sup>

Legal clinics have proliferated across the globe as a solution for meeting those needs. In many countries they are still in the experimental phases; while in others, like the U.S., they are so widely accepted as to be considered indispensable for a complete legal education.<sup>3</sup> For many law students, practicing in a legal clinic represents the sole opportunity for practical, hands-on experience available over the course of a 4- or 5-year legal education. Clinical teaching methods, developed over many decades to respond to the demands of the legal profession today, emphasize interactive learning processes and require instantaneous judgment and analysis on the part of student-trainees, skills that are conspicuously absent from traditional law curricula. In other words, legal clinics and associated training courses teach students how to actually be lawyers, not just learn legislation.

Yet legal clinics present yet another advantage in jurisdictions where they have been widely accepted: they provide free legal assistance to vulnerable populations who otherwise lack access to justice, tangibly improving the lives of citizens through their work. As discussed in detail below, in several countries that have adopted laws on free legal aid, legal clinics are explicitly incorporated into the legislation as legal aid providers. Students who are properly trained and supervised by experienced, qualified attorneys are able to provide assistance in a wide range of legal matters of a quality that is comparable with that of licensed attorneys, particularly those who bear heavy case loads. As one experienced university rector describes, a student who is properly supervised will spend two weeks researching the law and writing a detailed analysis and recommendation for a client, while a licensed attorney would spend just a few minutes on the same case.<sup>4</sup>

Clinics offer another potential advantage in regions where legal aid provision systems depend upon voluntary registration by licensed attorneys: they educate students in social justice issues and instill into a younger generation of legal professionals a sense of responsibility for

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<sup>2</sup> Lusine Hovhannisian, *Clinical Legal Education and the Bologna Process*, PILI PAPERS 2, at 5 (Dec. 2006).

<sup>3</sup> AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS 2012–2013, at 19 (“Standard 302: Curriculum, (b) A law school shall offer substantial opportunities for: (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence; (2) student participation in pro bono activities; and (3) small group work through seminars, directed research, small classes, or collaborative work.”) Legal clinics are widely recognized as the most obvious opportunity for meeting all three of these requirements.

<sup>4</sup> Interview with Arkady Gutnikov, Director, St. Petersburg Institute of Law named after Prince P.G. Oldenburgsky, Mar. 3, 2014 [hereinafter *Gutnikov interview*].

social welfare. Studies show that working with a clinic tends to increase law students' desire to enter a public interest law career, and influences their actual decision to do so.<sup>5</sup> Having worked in a legal clinic also demonstrates to students the mechanisms by which lawyers are able to assist in improving the lives of fellow citizens. Many students express surprise at the relatively low legal literacy of the clients they work with and satisfaction at having been able to assist in what are sometimes quite simple civil matters.<sup>6</sup>

## B. State-Guaranteed Legal Aid Models and Diversification

Designing and implementing effective systems of state-guaranteed legal aid are among the primary challenges to ensuring access to justice the world over, particularly for low-income and otherwise vulnerable populations. The right to a fair and impartial defense in criminal prosecutions has long been recognized under international law and in most national legislation systems.<sup>7</sup> Yet the provision of state-guaranteed legal assistance to indigent defendants is often costly and difficult to administer. For this reason governments the world over have recognized the need to establish partnerships with public and private non-governmental organizations in order to effectively provide legal aid. Emphasizing this point, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems calls on states to “recognize and encourage the contribution of lawyers’ associations, universities, civil society and other groups and institutions in providing legal aid.”<sup>8</sup> The Guidelines also encourage the establishment of “public-private and other forms of partnership” in order to “extend the reach of legal aid.”<sup>9</sup>

Aside from the right to defense in criminal cases, the right to legal assistance in civil and administrative matters has more recently been recognized as a critical component in overall efforts to ensure that citizens are ensured effective realization of rights guaranteed under international law, constitutions, and national legislation. Ensuring such access to justice for an entire country presents a daunting challenge to governments, and today most countries recognize that doing so is impossible without cooperation between governmental and non-governmental organizations. Although models of state-guaranteed legal aid systems vary widely across regions, nations, and even within countries, among the most effective are mixed-model systems, in which a number of different actors including government agencies, NGOs, universities, etc. work in concert to provide legal aid. Most contemporary reviews of national legal aid systems emphasize that effective service delivery to large swathes of a population, particularly in a country where few qualified lawyers are available, often requires diversification of legal aid sources.<sup>10</sup>

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<sup>5</sup> *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120(8) HARVARD L. REV. 2134, 2137 (2007).

<sup>6</sup> All but one of the clinical students I spoke with in Kyrgyzstan said that working with the legal clinic concretely increased their understanding of social issues in the country, and most volunteered that they were surprised at how little the clients understood about the law.

<sup>7</sup> *See, e.g.*, International Covenant on Civil and Political Rights art. 14(3)(d), Dec. 19, 1966, 999 U.N.T.S. 171.

<sup>8</sup> UN OFFICE ON DRUGS AND CRIME, UN PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS, para. 39 (2013).

<sup>9</sup> *Id.*, para. 40.

<sup>10</sup> *See, e.g.*, PENAL REFORM INTERNATIONAL AND BLUHM LEGAL CLINIC OF THE NORTHWESTERN UNIVERSITY SCHOOL OF LAW, ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY 43 (2007) [hereinafter ACCESS TO JUSTICE IN AFRICA AND BEYOND] (“It is...widely recognized that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students,

This report is not intended to examine and assess the full range of options available to governments seeking to effectively implement a legal aid system.<sup>11</sup> Rather, it will focus specifically on the role of legal clinics as providers of free legal aid, and their current capacity to do so in Kyrgyzstan. It will also emphasize the importance of diversifying sources of legal aid in Kyrgyzstan in order to afford the nation's citizens an effective means of realizing their rights under the law.

### C. Legal clinics as providers of free legal aid

The idea of using university-based legal clinics to provide free legal aid to vulnerable and poor populations is far from new. In fact, the provision of legal aid has historically been one of two primary goals of legal clinics, the other being the practical education of students. The birth and rapid expansion of the clinical movement in the U.S. in the 1960s was motivated primarily by the nation's desperate need for legal aid to underserved populations.<sup>12</sup> At this time, the U.S., along with many other countries around the world, grappled with the problem of access to justice, or "making rights real," that is, providing citizens with practical mechanisms with which to realize the rights formalistically guaranteed to them by written laws and constitutions.<sup>13</sup> Currently in the U.S., law school clinics play a major role in the country's overall legal aid delivery system, accounting for a substantial portion of legal services rendered to the poor, both in civil cases and in the form of legal defense to indigent defendants in criminal cases.<sup>14</sup>

Every country on earth is home to citizens who are unable to afford vital legal assistance, and over the past fifty years the global legal clinical movement has continued expand with the provision of legal aid as one of its two main motivations. In recognition of the tremendous role that clinics play in increasing access to justice, one legal aid expert recently noted: "In virtually all countries, including the United States, there are insufficient resources to provide legal

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paralegals, and legal assistants. These paralegals and legal assistants can provide access to the justice system for persons subjected to it, assist criminal defendants, and provide knowledge and training to those affected by the system that will enable rights to be effectively asserted. An effective legal aid system should employ complementary legal and law-related services by paralegals and legal assistants."); *id.* at 45, 71–77, 85, 101, 106, 126; UNDP REGIONAL CENTRE FOR EUROPE AND THE CIS, WIDENING ACCESS TO JUSTICE: QUALITY OF LEGAL AID AND NEW UN PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID 56 (2013) (This report was the outcome of an international workshop jointly organized by the UNDP, the Moldovan Ministry of Justice, and the National Legal Aid Council of the Republic of Moldova) [hereinafter UNDP, WIDENING ACCESS TO JUSTICE]; UN OFFICE ON DRUGS AND CRIME, HANDBOOK ON IMPROVING ACCESS TO LEGAL AID IN AFRICA (2011), at 38–39.

<sup>11</sup> For an overview of organizational approaches to legal aid, see ACCESS TO JUSTICE IN AFRICA AND BEYOND, *supra* note 10, at 59–77. For an analysis of international models of legal aid in criminal cases as they relate to the Russian system, see Elena Burmitskaya, *World's Models of Legal Aid for Criminal Cases: What Can Russia Borrow?* (2012).

<sup>12</sup> *Adopting and Adapting*, *supra* note 5, at 2136 (2007) ("The mission of these new clinical programs [in the United States] was intrinsically tied to the legal aid movement: the programs aimed not simply to teach skills and instill a general commitment to public service, but to create a cadre of dedicated young lawyers ready to fill positions in new legal aid centers funded by the LSC. Clinical legal education was synonymous with an access-to-justice goal."); Frank S. Bloch & Mary Anne Noone, *Legal Aid Origins of Clinical Legal Education*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 153, 156–7, Frank S. Bloch ed., 2010.

<sup>13</sup> *Id.* at 153–4.

<sup>14</sup> For a comprehensive list of university-based legal clinics operating in the U.S., see AMERICAN BAR ASSOCIATION, *Law School Public Interest Programs – Public Interest Clinics*, [http://apps.americanbar.org/legalservices/probono/lawschools/pi\\_pi\\_clinics.html](http://apps.americanbar.org/legalservices/probono/lawschools/pi_pi_clinics.html) (last visited Mar. 5, 2014).

representation to low-income people, even on issues vital to their survival such as public benefits, shelter, family matters, and civil rights. While law school clinics cannot meet this need by themselves, they often are the key provider of representation for poor people on civil matters in South Africa and elsewhere [citations omitted].”<sup>15</sup>

Aside from their role in providing direct services to citizens, clinics also have a role to play in increasing the awareness of law students – a generation of future lawyers – about major social issues in their communities, and the ability of the law to help mitigate these problems. As the director of one African legal clinic put it, “the work of [our legal clinic], or any law clinic in the world, centers around the reality of the vulnerable client.... The debate about the role of international law clinics must, therefore, locate itself within the binary ideas of human rights protection and access to justice.”<sup>16</sup> Law students who are exposed to such values during their training will be better sensitized to the most pressing issues and greatest challenges of vulnerable populations in their countries. They are thereby better prepared to serve these populations as lawyers, and very likely more motivated to do so than students who do not participate in legal clinics during their studies.<sup>17</sup>

In the past five years numerous international and local agencies, civil society organizations, and members of the legal community have recommended the use of legal clinics as service providers in Kyrgyzstan specifically. In a 2009 analysis of legislation on the legal profession in Central Asian states, the UNDP recommended the increased use of legal clinics as service providers in the region’s state-guaranteed legal aid schemes in order to increase the efficacy of service delivery systems.<sup>18</sup> More recently, a 2013 report by the UNDP Regional Centre for Europe and the CIS on legal aid and access to justice specifically recommended that CIS governments support the development, maintenance, and stability of university legal clinics in order to increase citizens’ access to legal aid.<sup>19</sup> In light of the current underdeveloped state of Kyrgyzstan’s free legal aid system and large gaps in provision of vital legal services to the country’s citizens, several other local civil society organizations have made similar recommendations.<sup>20</sup>

In the process of reviewing its law on State-Guaranteed Legal Aid (SGLA), the Kyrgyz government must consider the importance of providing legal aid in civil and administrative matters. The original 2009 legislation on SGLA provides that, by 2011, the government of the Kyrgyz Republic “will take measures and introduce suggestions directed at the provision of

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<sup>15</sup> Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30(2) *FORDHAM INT’L L. J.* 374, 377 (2007).

<sup>16</sup> Yvonne Dausab, *Access to Justice: The Use of International Law Clinics to Advance the Case for Vulnerable Members of Society*, 26(1) *MD. J. INT’L L.* 8, 11–12 (2011) (speaking on the establishment and services of the University of Namibia Legal Aid Clinic).

<sup>17</sup> See *Adopting and Adapting*, *supra* note 5, at 2137. (“Studies have found that... participation in law school legal clinics increases students’ professed desire to enter a public interest career and seems to be a factor in students’ actual decisions to do so. [citations omitted]”).

<sup>18</sup> UN DEVELOPMENT PROGRAM, *ANALYSIS OF THE LEGISLATION REGULATING LEGAL PROFESSION IN CENTRAL ASIA STATES* 67 (2009) [hereinafter *UNDP ANALYSIS OF LEGISLATION IN CENTRAL ASIA*].

<sup>19</sup> UNDP, *WIDENING ACCESS TO JUSTICE*, *supra* note 10, at 53–54, 56.

<sup>20</sup> See, e.g., Eurasia Foundation of Central Asia, Printed presentation of roundtable “Protecting the rights of vulnerable segments of the population through educational programs in law universities of the Kyrgyz Republic,” carried out under the project “Equal Before the Law: Access to Justice in Central Asia,” Feb. 19, 2014 (on file with author and available through EFCA Bishkek).

state-guaranteed legal aid to a separate category of citizens in civil and administrative cases.”<sup>21</sup> Yet today, in 2014, no comprehensive plan for doing so has even been proposed, let alone implemented. Numerous recent examinations of social and legal issues in Kyrgyzstan have revealed that major barriers remain preventing citizens’ access to justice. In a survey of almost 2500 primarily low-income citizens in 2012, 80% of respondents indicated that they felt they needed free legal assistance for civil (non-criminal) matters, yet an even larger percentage – 84% - did not know where to receive such assistance.<sup>22</sup> Given that disputes over property, divorce proceedings, documentation problems, contract disputes, etc. affect a significant number of underprivileged Kyrgyz citizens on a daily basis,<sup>23</sup> effective state legal aid would also comprise assistance in civil and administrative matters for citizens who lack the financial means to pay an attorney, as emphasized by the UNDP in recent recommendations.<sup>24</sup>

Furthermore, the results of the survey indicated that an overwhelming mistrust of the judicial system and state agencies generally presented an additional barrier to justice – citizens reported perceiving a lack of skills, professionalism, and attention from public authorities rendering services to the public, leading to an overall lack of confidence in official government bodies.<sup>25</sup> These problems with public service providers stem in part from a lack of government funding for adequate staffing and training to public authorities.<sup>26</sup> This reality highlights the importance of diversification of legal service provision in Kyrgyzstan.

Properly managed, university-based legal clinics present a significant untapped resource in the provision of legal services to vulnerable populations. Legal clinics in Kyrgyzstan already play a major role in this system by serving hundreds of Kyrgyz citizens in civil and administrative matters annually.<sup>27</sup> Yet under the current SGLA legislation, university-based legal clinics are not included in the list of authorized legal aid providers in Kyrgyzstan.<sup>28</sup> With no official government sanction or support (financial and technical), the clinics are not reaching their full potential as providers of free legal aid, and as a result, citizens in need of legal consultations, assistance in preparing documents, and other basic services that legal clinics can provide are currently lacking such assistance.

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<sup>21</sup> Закон Кыргызской республики от 17 июля 2009 года N 227, «О гарантированной государством юридической помощи», art. 32(3) [hereinafter Kyrgyz Republic Law on SGLA].

<sup>22</sup> Ассоциация ЦПГО, *Access to Legal Services for Low-Income People in the Kyrgyz Republic*, Summary Report, at 4 (July 2012).

<sup>23</sup> Public Foundation “Legal Clinic Adilet,” which provides free legal assistance to vulnerable segments of the population of Kyrgyzstan, reports that alimony/child support, divorce, and land rights ranked among the 5 most common legal issues they dealt with in the time period January 2012-June 2013. Ainura Osmonalieva, Presentation entitled *Model of Legal Aid Provided by the Program “Equal Before the Law: Access to Justice in Central Asia”*, Mar. 5, 2014, Eurasia Foundation of Central Asia, Bishkek (on file with author and available through Legal Clinic Adilet, Bishkek).

<sup>24</sup> UN DEVELOPMENT PROGRAM, ACCESSING JUSTICE: LEGAL AID IN CENTRAL ASIA AND THE SOUTH CAUCASUS, at 39–40 (2013) [hereinafter UNDP, ACCESSING JUSTICE IN C. ASIA AND THE SOUTH CAUCASUS].

<sup>25</sup> Ассоциация ЦПГО, *supra* note 22, at 5.

<sup>26</sup> *Id.*

<sup>27</sup> See *infra* section III on the current capacity and activities of legal clinics in Kyrgyzstan. When asked about the role of clinics in providing state-guaranteed legal aid in civil matters, the near-universal response from clinicians in seven Bishkek legal faculties was that they were already providing this type of legal aid, just without formal recognition from the government.

<sup>28</sup> Kyrgyz Republic Law on SGLA, art. 17. (“Адвокаты Кыргызской Республики, включенные в Государственный реестр и заключившие договор об оказании юридической помощи с Министерством юстиции Кыргызской Республики, оказывают гарантированную государством юридическую помощь.”).

#### D. Regional Models Relevant to Kyrgyzstan

Although international examples of the success of legal clinics as service providers abound, there are a few models that are of particular relevance to Kyrgyzstan as it considers the role of legal clinics in its own state-guaranteed legal aid system. As legal clinical education has gained worldwide acceptance, newer members of the system are able to learn from the lessons and experiences of others that have previously adopted legal clinical education.<sup>29</sup> Kyrgyzstan finds itself in a unique situation; as a former member of the Soviet Union, the country's legal system shares many commonalities with that of Russia and other post-Soviet states, yet as an independent nation in pursuit of a legal system that will provide access to justice for all its citizens, Kyrgyzstan is able to observe the successes and challenges of a wide range of similarly-situated nations in order to select the best practices to follow in its own system design.

Some of the following case studies are of countries that have incorporated legal clinics as service providers in their free legal aid systems, whether through specific legislative authorization or de facto partnerships between the government and clinics providing such services. This is certainly not a comprehensive list of countries that have done so, but a handful of those that may be particularly useful as case studies for Kyrgyzstan in its current stage.<sup>30</sup>

##### i) Ukraine

The Ukrainian parliament adopted the country's Law on State-Guaranteed Legal Aid in 2011,<sup>31</sup> which provides for the rendering of primary legal aid and secondary legal aid.<sup>32</sup> Primary legal aid includes providing legal information; giving advice and explanation of legal issues; drafting court applications, complaints, and other legal documents; and assisting client in accessing secondary legal aid and mediation.<sup>33</sup> Secondary legal aid consists of protection from

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<sup>29</sup> "Though established on different continents and operating under different circumstances, these [global clinical organizations] attempt to achieve essentially the same goals using similar methods and performing similar tasks. Moreover, newer organizations learn from more established ones and then pass on their experience to others." Margaret Barry, Filip Czernicki, Izabela Kras'nicka, & Mao Ling, *The Role of National and Regional Clinical Organizations in the Global Clinical Movement*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 278, 279, Frank S. Bloch ed., 2010.

<sup>30</sup> Other countries have explicitly included legal clinics as service providers in their legal aid legislation. See, for example, Barbara Preložnjak, *Clinical Legal Education in Croatia – from Providing Legal Assistance to the Poor to Practical Education of Students*, 19 INT'L J. CLINICAL LEGAL EDUCATION 373, 374-5 (2013) (discussing the inclusion of clinics in the 2008 SGLA law of Croatia, where students can provide consultations and help prepare written documents for clients); THE SUBORDINATE COURTS OF SINGAPORE, FAMILY JUSTICE DIVISION, *News and Events*, Sept. 18, 2006, *Implementation of Lay Assistant Scheme (Pilot Phase)*, available at: <http://app.subcourts.gov.sg/family/newsdetails.aspx?pageid=27144&cid=27174> (describing Singapore's "Lay Assistant Scheme" in law universities, which function similarly to university legal clinics by allowing law students to help prepare documents for civil cases and attend hearings in Singapore's Family Court).

<sup>31</sup> Закон України от 2 червня 2011 N. 3460-VI, «Про безоплатну правову допомогу», Відомості Верховної Ради України (ВВР), 2011, N 51, ст. 577 (Law of Ukraine "On free legal aid," 2 Jun. 2011) [hereinafter Ukraine Law on Free Legal Aid].

<sup>32</sup> Ukraine Law on Free Legal Aid, art. 3.

<sup>33</sup> Ukraine Law on Free Legal Aid, art. 7.

prosecution; representation of clients in courts, other state agencies, or in confrontation with another individual; and drafting of procedural documents.<sup>34</sup>

The 2011 SGLA law, envisioned the provision of aid by non-profit “specialized agencies”<sup>35</sup> in addition to governmental agencies. The role of Ukrainian legal clinics in the provision of state guaranteed legal aid in the country was thus not officially determined.<sup>36</sup> Yet legal clinics are a *de facto* part of this system, providing both primary and secondary legal aid to large numbers of low-income clients each year.<sup>37</sup> Following the establishment of Ukraine’s first university-based legal clinic in 1996, virtually every law school in the country founded its own clinic.<sup>38</sup> Today, over 100 such clinics operate across the nation.<sup>39</sup>

Legal clinics in Ukraine received official government recognition in 2006 with the Ministry of Education’s order “On Standardized Provisions on Legal Clinics at Higher Schools in Ukraine,”<sup>40</sup> formally establishing legal clinics as “subdivision[s] of higher educational institutions...that provide[] training in law.”<sup>41</sup> Among the enumerated purposes of legal clinics set forth in the order are: 1) enhancing practical knowledge and skills for students of law; 2) ensuring access to legal aid for vulnerable groups in the population; 3) the development of a “legal culture” among citizens; and 4) training and education of students in a spirit of respect for and adherence to the rule of law, justice, and human dignity, among others.<sup>42</sup>

The SGLA law is currently under revision, set to introduce amendments including legal clinics as official providers of SGLA in Ukraine. In 2011–2012, the Ukrainian Association of Legal Clinics introduced the first draft revisions to the law, which have passed the first stage of review in Ukraine’s parliament and are now set to undergo a second review in the process of signing them into law.<sup>43</sup> The Ministry of Justice has strongly supported proposed revisions which would include legal clinics as providers of primary aid under the SGLA law.<sup>44</sup> Another revision could potentially establish clinics as providers of secondary aid, a proposition that is currently under debate in parliament.<sup>45</sup> The amendment of the law to include university-based legal clinics is seen by many commentators as a highly beneficial move for the country’s legal aid system, given the developed state of clinical legal education in Ukraine, the ability of the

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<sup>34</sup> Ukraine Law on Free Legal Aid, art. 13. Secondary legal aid is available to certain enumerated categories of vulnerable individuals, including those below a certain income level, juveniles without parental care, individuals in administrative detention or arrested on suspicion of a crime, etc. *Id.* art 14.

<sup>35</sup> Ukraine Law on Free Legal Aid, art. 12.

<sup>36</sup> Сенчак И.И., *Оказание бесплатной юридической помощи маломощным слоям населения студентами юридических вузов Украины*, 3(4) ЕВРАЗИЙСКАЯ АДВОКАТУРА 99, 99 (2013).

<sup>37</sup> Email interview with Vitalii Elov, President, Ukrainian Association of Legal Clinics, Mar. 8, 2014 [hereinafter Elov interview].

<sup>38</sup> Сенчак И.И., *supra* note 36, at 100.

<sup>39</sup> Elov interview, *supra* note 37; see also UKRAINIAN ASSOCIATION OF LEGAL CLINICS, *Network of Legal Clinics in Ukraine: Retrospective and Perspective*, [http://www.legalclinics.org.ua/index\\_old.php?menuitem=karta](http://www.legalclinics.org.ua/index_old.php?menuitem=karta) (last visited Mar. 4, 2014).

<sup>40</sup> Ministry of Education of Ukraine, Order 592, Aug. 8, 2006, «Про затвердження Типового положення про юридичну клініку вищого навчального закладу України» [hereinafter Ministry of Education of Ukraine Order on Legal Clinics].

<sup>41</sup> *Id.* art. 1.1, “Terms.”

<sup>42</sup> *Id.* art. 2.1, “The aims and objectives of legal clinics in higher educational institutions of Ukraine.”

<sup>43</sup> Elov interview, *supra* note 37.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

country's legal clinics association (described below) to set universal standards for clinical education, and the clinics' strong foundational bases in universities across the country.<sup>46</sup>

Clinical legal education in Ukraine, including its significant role in providing free legal aid, provides a helpful model for Kyrgyzstan, both due to its advanced state of pedagogical development and cooperation between clinics – particularly the formation and activities of the association of legal clinics – as well as in its effectiveness in providing legal services to vulnerable segments of the population. The stability of clinical education in Ukraine is apparent in its complete integration into university law faculties as per the Ministry of Education order. The order set official academic standards for clinical operation which had been previously discussed and agreed upon by a range of stakeholders.<sup>47</sup> Indicative of their integration into law faculties, clinics award academic credit for student participation the legal clinic course, and such training programs are graded and treated as any other optional course in the law program.<sup>48</sup> Aside from their focus on practical education for law students and service provision to poor and marginalized groups in society, clinics in Ukraine also focus on raising legal awareness among the Ukrainian population through educational campaigns in the media and in local high schools.<sup>49</sup>

The success of Ukraine's clinical legal education development has been due in large part to the country's highly active association of legal clinics, the Ukrainian Association of Legal Clinics (UALC), established in 2003.<sup>50</sup> Currently the membership of the UALC is comprised of 53 clinics, with an additional six clinics set to join the association later this year.<sup>51</sup> The UALC plays several roles with respect to legal clinical education in Ukraine. The association has been highly instrumental in the creation of standardized curricula and training programs for clinical education.<sup>52</sup> In addition, the UALC has adopted its own regulations for clinical practice, including codes of ethics and educational standards; a draft regulation on performance standards is now in the process of being adopted.<sup>53</sup> The organization has also lobbied the government for support, the introduction of standards by the Ministry of Education, and revisions to the SGLA law, as described above. With regard to financing of clinics, the UALC liaises with international donors for funding on projects that are carried out by the clinics collectively, such as seminars, competitions, and classes.<sup>54</sup> Finally, the UALC serves as a clearing house for useful information on the provision of free legal aid and clinical education; the organization's website even features a Legal Consultation Forum, where users can post general legal questions and receive advice and relevant legislation from the forum's moderators.<sup>55</sup>

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<sup>46</sup> See, e.g., Сенчак И.И, *supra* note 36.

<sup>47</sup> See Mariana Berbec-Rostas, Arkady Gutnikov, & Barbara Namuslowska-Gabrysiak, *Clinical Legal Education in Central and Eastern Europe: Selected Case Studies*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 52, 63, Frank S. Bloch ed., 2010.

<sup>48</sup> *Id.* at 63.

<sup>49</sup> *Id.* at 63.

<sup>50</sup> UKRAINIAN ASSOCIATION OF LEGAL CLINICS, [www.legalclinics.org.ua](http://www.legalclinics.org.ua). For more on legal clinic associations, see *infra* section II.D.vii.

<sup>51</sup> Elov interview, *supra* note 37.

<sup>52</sup> Barry et al, *supra* note 29, at 280–81.

<sup>53</sup> Elov interview, *supra* note 37.

<sup>54</sup> *Id.*

<sup>55</sup> UKRAINIAN ASSOCIATION OF LEGAL CLINICS, *Legal Consultations*, <http://www.legalclinics.org.ua/forum2/index.php> (last visited Mar. 9, 2014).

ii) Moldova

Moldova's 2007 law on state-guaranteed legal aid also establishes a mixed-model system. The law specifically authorizes provision of legal assistance by non-governmental organizations and paralegals, in addition to public and private lawyers. Although legal clinics are not specifically named as service providers in the legislation, they are *de facto* contributors to the system.

The law provides for the rendering of two types of assistance to Moldovan citizens and foreign citizens/stateless persons. The first is "primary" legal assistance: consultations on general law provisions, rights, and assistance in drawing up documents, which is available to all citizens.<sup>56</sup> The second is "qualified" legal assistance: legal advising, representation, and/or defense<sup>57</sup> which was available only in criminal cases until 2012, and has since then become available also in civil cases where an individual lacks the necessary funds for a private attorney.<sup>58</sup> Per the legislation the legal aid system is administered by the National Legal Aid Council, a body consisting of seven members drawn from the Ministry of Justice, the Bar Association, the Ministry of Finance, the Superior Council of Magistracy, and one NGO or academia representative.<sup>59</sup>

Although not formally incorporated into the legislation, in practice legal clinics do contribute to the function of the free legal aid system. The SGLA law specifically authorizes the provision of primary legal aid by paralegals and specialized NGOs, while qualified legal aid may be provided by lawyers (public defenders or private lawyers) and NGOs (in any case except representation on criminal or misdemeanor trials).<sup>60</sup> Furthermore the law stipulates that the National Council may conclude cooperation agreements with NGOs for the delivery of legal aid.<sup>61</sup> Legal clinics are participating in this system mainly by providing primary legal aid to low-income and otherwise marginalized segments of the population. Documented cases of clinics winning legal victories for underserved clientele highlight the significant role that clinics have to play in increasing access to justice within Moldova's state-guaranteed legal aid system.<sup>62</sup>

The SLGA law entered into force in 2008, and assessments undertaken by both the government<sup>63</sup> and by non-governmental actors<sup>64</sup> in the system's fourth year of function showed it to be functioning quite effectively, although with certain challenges remaining to be addressed.

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<sup>56</sup> Legii nr. 198-XVI din 26 iulie 2007 cu privire la asistența juridică garantată de stat, arts. 2, 3 [hereinafter Moldova Law on SGLA]. A Russian version of the law is available at <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325350&lang=2>.

<sup>57</sup> Moldova Law on SGLA, arts. 2, 3.

<sup>58</sup> Moldova Law on SGLA, art. 19(1)(e). The original legislation included civil cases within its scope, but this provision did not enter into force until January 2012. Moldova Law on SGLA, art. 37(1).

<sup>59</sup> Moldova Law on SGLA, art. 11(1)–(2).

<sup>60</sup> Moldova Law on SGLA, art. 15(2).

<sup>61</sup> Moldova Law on SGLA, art. 17(2).

<sup>62</sup> See, e.g., AMERICAN BAR ASSOCIATION, *Clinics in Moldova Win Three Big Cases*, Feb. 2008, [http://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/europe\\_eurasia/moldova/news/news\\_moldova\\_clinics\\_win\\_three\\_cases.html](http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/moldova/news/news_moldova_clinics_win_three_cases.html).

<sup>63</sup> Ministerul Justiției Raport de monitorizare privind implementarea Legii nr. 198-XVI din 26 iulie 2007 cu privire la asistența juridică garantată de stat (2012), *available at* [http://www.justice.gov.md/public/files/file/rapoarte/raport\\_monitorizare\\_asistenta\\_sem.I\\_2012\\_v.2.doc](http://www.justice.gov.md/public/files/file/rapoarte/raport_monitorizare_asistenta_sem.I_2012_v.2.doc) (Romanian only).

<sup>64</sup> E.g., Martin Gramatikov & Nadejda Hriptievski, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid* (2011) (research sponsored by the Soros Foundation – Moldova and the Human Rights and Governance Grants Program, Open Society Foundations, Budapest).

Recent assessments of the law's impact recommend strengthening and supporting the legal clinics, on the grounds of their potential for helping to resolve minor legal issues, thereby relieving strain on government legal aid lawyers.<sup>65</sup>

iii) Georgia

Georgia's approach to legal aid has been referred to as "by far the most advanced system of state-guaranteed access to lawyers" in Central Asia and the Caucasus,<sup>66</sup> and is itself responsible for the administration of a legal clinic program for law students.<sup>67</sup> The country's 2007 Law on Legal Aid provides for legal assistance in criminal as well as civil and administrative cases, and also authorizes the provision of legal aid by non-state entities working in partnership with the government. The law is based upon the principle of ensuring legal consultation to everyone, not just limited classes of individuals, and creating access to justice in criminal, civil, and administrative matters.<sup>68</sup> Drafting of the law occurred between 2004 and 2007, led by the Ministry of Justice with the active input of national and international experts and non-governmental organizations.<sup>69</sup>

Regarding criminal cases, the law provides for representation not only for qualifying criminal defendants, but also to victims of crime.<sup>70</sup> Per the Law, the system is administered by the Legal Aid Service (LAS),<sup>71</sup> a public legal entity originally established under the Ministry of Justice but now under the auspices of the Ministry of Corrections and Legal Aid, according to a 2008 amendment to the Law.<sup>72</sup> The establishment of the LAS as a public legal entity has certain advantages for the service as compared with other ministries; for example, in addition to receiving budgeted funding from the state, the LAS can raise money through membership fees, targeted budgetary donations from the state, state procurement and contract-related income, and other legal sources of funding such as grants.<sup>73</sup> As of 2012, the LAS was providing aid only in criminal cases, and employing roughly 100 lawyers.<sup>74</sup>

Significantly, the Law provides for rendering of legal aid not only in criminal, but also in civil and administrative matters, including representation before administrative bodies and not just in courts.<sup>75</sup> Furthermore, it identifies two sources of legal aid provision: state-funded legal aid bureaus as well as a network of non-state providers such as civil society organizations, private lawyers, and law firms.<sup>76</sup> In fact, NGOs play a very prominent role in the provision of free legal aid in Georgia. The Georgian Young Lawyers' Association, for example, provides aid in criminal, civil, and administrative cases, conducting more than 130,000 consultations in 2010.<sup>77</sup>

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<sup>65</sup> See, e.g., UNDP, WIDENING ACCESS TO JUSTICE, *supra* note 10, at 21–23, 53–54, 56.

<sup>66</sup> UNDP, ACCESSING JUSTICE IN C. ASIA AND THE SOUTH CAUCASUS, *supra* note 24, at 30.

<sup>67</sup> MINISTRY OF CORRECTIONS AND LEGAL ASSISTANCE OF GEORGIA, LEGAL AID SERVICE, ANNUAL REPORT 2012, at 29, available at [http://www.legalaid.ge/?action=page&p\\_id=512&lang=eng](http://www.legalaid.ge/?action=page&p_id=512&lang=eng).

<sup>68</sup> ED CAPE & ZAZA NAMORADZE, EFFECTIVE CRIMINAL DEFENCE IN EASTERN EUROPE 162 (2012).

<sup>69</sup> *Id.* at 162.

<sup>70</sup> Law of Georgia on Legal Aid, art. 3.; CAPE & NAMORADZE, *supra* note 68, at 171.

<sup>71</sup> See LEPL LEGAL AID SERVICE, <http://www.legalaid.ge/index.php?lang=eng> (last accessed Mar 24, 2014).

<sup>72</sup> CAPE & NAMORADZE, *supra* note 68, at 162–163.

<sup>73</sup> *Id.* at 163.

<sup>74</sup> *Id.* at 188.

<sup>75</sup> Law of Georgia on Legal Aid, arts. 1(4), 2(a).

<sup>76</sup> Art. 3(e), Georgian Law on Legal Aid; see also ACCESSING JUSTICE IN C. ASIA AND THE SOUTH CAUCASUS, *supra* note 24, at 31.

<sup>77</sup> CAPE & NAMORADZE, *supra* note 68, at 188.

University-based legal clinics in Georgia actively provide free legal aid in criminal, civil, and private law matters for various segments of the population, including minors, pensioners, refugees and internally displaced persons, disabled people, and others.<sup>78</sup> Clinics in the nation see themselves both as trainers of future lawyers in Georgia as well as providers of free legal aid to vulnerable groups.<sup>79</sup> Furthermore, as in many other legal clinic models, clinical missions in the country include the inculcation of law students with a sense of justice and compassion for others in their society.<sup>80</sup>

The LAS itself administers a legal clinics project which allows law students to handle cases of citizens applying to the legal aid bureaus for assistance.<sup>81</sup> In 2012, the program was in its fifth consecutive year, channeling about 30 students annually through the 6-month program, which according to the LAS is designed to “promote the professional development of law students, as well as recruit highly qualified personnel for the Legal Aid Service.”<sup>82</sup> Furthermore, the program gives students the opportunity to “develop professional relationships with legal and penal institutions as well as the prosecutor’s office.”<sup>83</sup> Students work in six different legal aid bureaus located around the country, drafting documents for real clients on specific criminal law issues.<sup>84</sup> Successful interns are employed by the LAS after their graduation.<sup>85</sup>

A few shortcomings of the Georgian legal aid system pertaining to criminal cases should be noted. The position of the LAS within the Ministry of Corrections and Legal Aid has raised “justified” concerns about the independence and impartiality of government-employed legal aid lawyers.<sup>86</sup> Criminal defense attorneys and lawyers representing clients in administrative matters in Georgia under the free legal aid system have complained that they are prevented from effectively representing their clients in court, and that judges frequently dismiss motions without adequate justification or fail to admit relevant evidence into their considerations.<sup>87</sup>

#### iv) Russia

The Russian Federation has fully embraced university-based legal clinics as service providers in its state-guaranteed legal aid system,<sup>88</sup> the 2011 law on free legal aid explicitly

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<sup>78</sup> See, e.g., GEORGIAN AMERICAN UNIVERSITY, *Legal Clinic*, <http://gau.ge/ge/schools/law-and-social-sciences/llb/legal-clinic-program> (last visited Mar. 24, 2014).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> MINISTRY OF CORRECTIONS AND LEGAL ASSISTANCE OF GEORGIA, LEGAL AID SERVICE, ANNUAL REPORT 2012, *supra* note 67, at 29.

<sup>82</sup> *Id.*

<sup>83</sup> MINISTRY OF CORRECTIONS AND LEGAL ASSISTANCE OF GEORGIA, LEGAL AID SERVICE, ANNUAL REPORT 2010, at 50, available at [http://www.legalaid.ge/?action=page&p\\_id=161&lang=eng](http://www.legalaid.ge/?action=page&p_id=161&lang=eng).

<sup>84</sup> MINISTRY OF CORRECTIONS AND LEGAL ASSISTANCE OF GEORGIA, LEGAL AID SERVICE, ANNUAL REPORT 2012, *supra* note 67, at 29.

<sup>85</sup> *Id.*

<sup>86</sup> CAPE & NAMORADZE, *supra* note 68, at 172.

<sup>87</sup> *Id.* at 186–7.

<sup>88</sup> See, e.g., Доклад Министерства юстиции Российской Федерации о реализации государственной политики в области обеспечения граждан Российской Федерации бесплатной юридической помощью, 13 февраля 2013, <http://www.rg.ru/2013/02/12/doklad-site-dok.html> («При работе с гражданами студенты закрепляют на практике полученные знания, приобретают навыки практической работы, а граждане имеют возможность воспользоваться юридической поддержкой на безвозмездной основе. Одновременно отрабатывается механизм, который обеспечивает качество оказываемой юридической помощи. . . . Юридические клиники способствуют доступу населения к правосудию, обеспечивают правовое информирование граждан и вместе

includes legal clinics among non-governmental service providers.<sup>89</sup> Article 22(2) of the law states: “Participants in the non-governmental system of free legal aid are legal clinics (student counseling offices, student law offices, and others) and non-governmental centers for free legal aid.”<sup>90</sup> The law also provides a basic framework for the establishment, regulation, and activities of university legal clinics.<sup>91</sup> Furthermore, the Ministry of Justice on its website provides a list of over 300 university-based legal clinics, along with contact information, supervisors, and specializations.<sup>92</sup> By publishing this information on the site, the government not only increases visibility of clinics by providing a centralized, official source of information for citizens seeking access to legal aid, but also reinforces official sanction of the clinics as legitimate providers of free legal aid.

Over twenty years after the legal clinical movement in Russia first took hold, clinics are now generally recognized as legitimate service providers not only by the government, with particular support from the Ministry of Justice and the Ministry of Education, but also by members of the legal profession and by citizens themselves.<sup>93</sup> As noted in a recent report by the Ministry of Justice on the implementation of the national free legal aid system, “Legal clinics contribute to the population's access to justice, provide legal information to citizens and at the same time help to educate a new generation of legal professionals focused on social assistance.”<sup>94</sup>

A majority of higher educational institutions that train lawyers have fully-integrated legal clinics in their faculties which enjoy broad support from university administrations.<sup>95</sup> In many ways, clinics present a more attractive alternative to state-funded legal aid systems for a large fraction of citizens who perceive government services to be ineffective or corrupt, or whose legal problems stem from an interaction with the government such as a dispute over state benefits. Furthermore, student clinicians under the close supervision of a licensed attorney tend to spend more significant amounts of time researching and drafting legal opinions and written consultations, and may treat clients with more respect and courtesy than clients have received from professional attorneys.<sup>96</sup>

Russian legal clinics work on a diverse range of cases; aside from consultations and representation on civil matters as described above, some clinics are also involved in criminal matters (including rights of prisoners and their families, private prosecutions, etc.) and representation of Russian citizens before the European Court of Human Rights.<sup>97</sup> Some Russian

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с тем помогают воспитывать новое поколение юристов-профессионалов, ориентированных на социальную помощь.»); Gutnikov interview, *supra* note 4.

<sup>89</sup> Russian Federation, Federal Law on Free Legal Aid in the Russian Federation, Nov. 21, 2011, Art. 22(2) (Ст. 22(2) Федеральный закон от 21 ноября 2011 г., N 324-ФЗ, «О бесплатной юридической помощи в Российской Федерации», Собрание законодательства Российской Федерации, 2011, N 48, ст. 6725 [hereinafter Russian Federation Law on SGLA].

<sup>90</sup> Russian Federation Law on SGLA, art. 22(2).

<sup>91</sup> Russian Federation Law on SGLA, art. 23(1)–(5).

<sup>92</sup> MINISTRY OF JUSTICE OF THE RUSSIAN FEDERATION, *Legal Clinics*, [http://to77.minjust.ru/sites/to77.minjust.ru/files/page/2013/02/yuridicheskie\\_kliniki\\_moskvy.xls](http://to77.minjust.ru/sites/to77.minjust.ru/files/page/2013/02/yuridicheskie_kliniki_moskvy.xls) (last visited Mar. 14, 2014).

<sup>93</sup> Gutnikov interview, *supra* note 4.

<sup>94</sup> Доклад Министерства юстиции Российской Федерации о реализации государственной политики в области обеспечения граждан Российской Федерации бесплатной юридической помощью, *supra* note 88.

<sup>95</sup> Gutnikov interview, *supra* note 4.

<sup>96</sup> *Id.*

<sup>97</sup> А.И. Говорун, «От общественной приемной по правовым вопросам – к лаборатории клинических методов

law schools also offer specialized courses for legal clinics in specific areas of law, such as social security matters and constitutional court appeals.<sup>98</sup>

Among the greatest challenges Russia has faced in the expansion of clinical legal education and provision of services to the general population is a lack of generalized standards and criteria for determining the effectiveness of clinics.<sup>99</sup> This problem is not in fact restricted to legal clinics, but to legal education more generally, as well as to the provision of state guaranteed legal aid more generally. As of 2013, there existed over 1200 higher education institutions in Russia providing legal education, yet the quality of education offered by many law faculties remains dubious.<sup>100</sup> The vast variation in educational services provided by law schools across Russia led first to a Presidential Order in 2009 “On measures to improve higher legal education in the Russian Federation,”<sup>101</sup> and is now being addressed through a law school accreditation process administered by the Lawyers’ Association of Russia.<sup>102</sup>

Thus, the administration of free legal aid by university-based legal clinics must be viewed with this quality control deficit in mind. Commentators observe that the quality of service rendered by Russian clinics tends to be viewed as higher than average in the country’s overall free legal aid scheme.<sup>103</sup> Yet it must be noted that the system as a whole lacks any quality control mechanism. In Russia, as in Kyrgyzstan, no license or even law degree is required for attorneys to consult or represent clients in civil matters; a license is required only for advocates representing criminal defendants.<sup>104</sup>

Yet the Russian model presents a helpful case study for Kyrgyzstan both in its strengths and its weaknesses. First of all, as noted above, Kyrgyzstan’s educational system and legal tradition – though both undergoing significant reform at the present time – bear certain historical similarities to those of the Russian Federation. Kyrgyzstan and Russia face similar challenges in modernizing and reforming law school curricula in order to meet the demands of today’s legal profession, including the development of critical problem analysis skills.<sup>105</sup>

Furthermore, the types of legal issues faced by low-income citizens in Russia (and therefore handled by students working in the clinics) are similar in some respects to those faced

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обучения: опыт развития юридической клиники ростовского филиала российской таможенной академии», in ГКОУ ВПО «Российская таможенная академия» Санкт-Петербургский филиал имени В.Б.Бобкова, *Юридическая клиника: Выпуск II*, at 97; Э.Г. Давидян, «Особенности юридической клиники вне ВУЗа», in ГКОУ ВПО «Российская таможенная академия» Санкт-Петербургский филиал имени В.Б.Бобкова, *Юридическая клиника: Выпуск II*, at 107 [hereinafter *Юридическая клиника: Выпуск II*].

<sup>98</sup> See, e.g., SAINT PETERSBURG STATE UNIVERSITY LAW FACULTY, *Legal Clinic Teaching Staff*, <http://law.spbu.ru/Structure/JurClinic/MemberClinic.aspx> (last visited Mar. 18, 2014).

<sup>99</sup> АССОЦИАЦИЯ ЮРИСТОВ РОССИИ, ВСЕРОССИЙСКАЯ ЗАОЧНАЯ КОНФЕРЕНЦИЯ ПО РАСПРОСТРАНЕНИЮ ЛУЧШЕЙ ПРАКТИКИ РЕАЛИЗАЦИИ ПРОЕКТОВ, НАПРАВЛЕННЫХ НА ОКАЗАНИЕ БЕСПЛАТНОЙ ЮРИДИЧЕСКОЙ ПОМОЩИ И ПРАВОВОЕ ПРОСВЕЩЕНИЕ НАСЕЛЕНИЯ (2012): Абрамовская Ольга Ривхатовна, *Основы внедрения в образовательный процесс клинического юридического обучения*, at 7–8, available at [http://www.alrf.ru/user/119/sbornik\\_nauchnih\\_statey.doc](http://www.alrf.ru/user/119/sbornik_nauchnih_statey.doc).

<sup>100</sup> Berbec-Rostas, Gutnikov, & Namuslowska-Gabrysiak, *supra* note 47, at 64–65.

<sup>101</sup> Указ Президента Российской Федерации от 26 мая 2009 г. N 599, «О мерах по совершенствованию высшего юридического образования в Российской Федерации».

<sup>102</sup> As of February 2014, the Lawyers’ Association had accredited 129 law schools in the country. Ассоциация юристов России довела число аккредитованных вузов до 129, *РАПСИ*, Feb. 18, 2014, [http://rapsinews.ru/legal\\_market\\_news/20140218/270742734.html](http://rapsinews.ru/legal_market_news/20140218/270742734.html).

<sup>103</sup> Gutnikov interview, *supra* note 4.

<sup>104</sup> Федеральный закон от 31 мая 2002 г. N 63-ФЗ, «Об адвокатской деятельности и адвокатуре в Российской Федерации».

<sup>105</sup> Berbec-Rostas, Gutnikov, & Namuslowska-Gabrysiak, *supra* note 47, at 54.

by low-income Kyrgyz citizens. Data from the Information Centre for Free Legal Aid in St. Petersburg and Leningrad shows that, in the period from April 2011–November 2012, about 2,300 citizens contacted the center for legal aid provision. The bulk of these cases focused on alimony (child support), housing, labor, government benefits and compensation – the same primary issues that legal clinics focus on in Kyrgyzstan, as shown through interviews with legal clinics and other survey data.<sup>106</sup> Students can and do handle these cases successfully in Russia, thereby providing legal services to thousands of low-income Russian citizens annually; law students in Kyrgyzstan can and do provide the same services to Kyrgyz citizens, but currently without government sanction, support, or standardized performance requirements. Furthermore, some legal clinics in Russia specialize in criminal matters. For example, Legal Clinic “Hope” at Urals State Law Academy provides consultations on criminal and penal advice.<sup>107</sup>

The success with which Russian law schools have integrated legal clinics into their faculties, and the government has at the same time integrated clinics into its free legal aid system, demonstrate how the same is possible in Kyrgyzstan. Twenty years of clinical development in Russia show the types of challenges, and solutions, that might be common in the development of Kyrgyzstan’s own legal clinics.<sup>108</sup> As a result of this history, a vast corpus of Russian language literature and organizational documents has been produced discussing clinical legal education in the former Soviet educational system and its role in providing free legal aid. Furthermore, active clinical associations such as the Center for the Development of Legal Clinics<sup>109</sup> and the Center for Legal Clinical Education<sup>110</sup> host websites organize trainings, conferences, disseminate information on clinics and free legal aid in Russia, and even provide legal aid through a web-based portal. These resources could be quite instrumental in the development of legal clinics as service providers in Kyrgyzstan.

#### v) Poland

The Polish legal clinic model offers a glimpse into the mechanics of a well-organized, self-regulated clinical program constituting a primary actor in the provision of free legal aid to the nation’s population.

It should be noted first that, as a member of the European Union, Poland is legally differently situated than members of the CIS or other countries.<sup>111</sup> Yet its legal aid system and

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<sup>106</sup> For example, an analysis of legal consultation data collected during a similar period (April – June 2012) from legal center Adilet in Kryrgyzstan showed that, of 1116 consultations rendered in that period, 229 (20.5%) concerned divorce or child support. Lillian Langford, *Equal Before the Law Kyrgyzstan: Common Legal Issues and Persistent Barriers to Justice* (on file with author); interviews with legal clinics showed that the most common problems faced by clients involved family law (divorce and alimony), property or housing problems, and administrative problems (obtaining documents and/or government benefits).

<sup>107</sup> УРАЛЬСКАЯ ГОСУДАРСТВЕННАЯ ЮРИДИЧЕСКАЯ АКАДЕМИЯ, *Юридическая Клиника*, <http://www.usla.ru/ch.php?mid=122&cid=555&obid=555> (last visited Mar. 19, 2014); a list of university-based legal clinics, including areas of specialization, is available on the website of the Ministry of Justice at [http://to05.minjust.ru/sites/to05.minjust.ru/files/page/2013/02/yuridicheskie\\_kliniki.xls](http://to05.minjust.ru/sites/to05.minjust.ru/files/page/2013/02/yuridicheskie_kliniki.xls) (last visited Mar. 20, 2014).

<sup>108</sup> See Berbec-Rostas, Gutnikov, & Namuslowska-Gabrysiak, *supra* note 47, at 63–65 (describing the history and challenges to the development of clinical legal education in Russia).

<sup>109</sup> ЦЕНТР РАЗВИТИЯ ЮРИДИЧЕСКИХ КЛИНИК, <http://codolc.com/> (last visited Mar. 7, 2014).

<sup>110</sup> ЦЕНТР КЛИНИЧЕСКОЕ ЮРИДИЧЕСКОЕ ОБРАЗОВАНИЕ, <http://www.lawclinic.ru/> (last visited Mar. 7, 2014).

<sup>111</sup> As a member of the EU, Poland has acceded to the European Convention on Human Rights and the Charter of Fundamental Rights (CFR) of the EU and is thus subject to the decisions of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (respectively the bodies responsible for rendering judgment on these two rights treaties). Poland is thus bound to more stringent international standards of human

its relationship to university legal clinics bear relevance to the case of Kyrgyzstan. Poland has not adopted any comprehensive legislation on state guaranteed legal aid; the country's legal aid system provides for representation of the indigent in court proceedings by *ex officio* counsel, but lacks any provision for pre-trial or non-litigation legal aid.<sup>112</sup> Eligibility for representation in such cases is determined through an income-based means test.<sup>113</sup> State-guaranteed legal aid in non-criminal cases is thus extremely limited, and its quality remains dubious.<sup>114</sup>

As a result, NGOs including legal aid bureaus and university-based legal aid clinics play a very significant role in the provision of free legal aid to vulnerable populations in Poland.<sup>115</sup> Legal aid organizations are permitted to represent clients in court proceedings,<sup>116</sup> while students in legal clinics provide legal aid by providing low-income clients with advice on their rights and by preparing legal documents such as motions and complaints to national courts and the European Court of Human Rights.<sup>117</sup> In 2011 a comprehensive clinical reporting system indicated that over 10,000 citizens were provided free legal aid by about 1,800 students in university-based legal clinics each year.<sup>118</sup> In addition, the clinics work in cooperation with government entities, such as the Polish Ombudsman, in order to increase access to justice.<sup>119</sup>

Clinical education first took root in Poland in 1997, after which every law faculty in the country established its own legal clinic.<sup>120</sup> The success of the clinical movement in the country, as in many others, is attributed to its ability to provide free legal aid to underserved segments of the population, while simultaneously providing practical training to law students who lacked other opportunities for experiential learning.

Legal clinical education in Poland is highly organized; clinics are regulated and supported by an active association of clinics, the Fundacja Uniwersyteckich Poradni Prawnych (FUPP).<sup>121</sup> As per its establishing statute, the Foundation's activities include setting standards for clinical education, facilitating cooperation between Polish clinics and international cooperation in development of legal education, organizing trainings and conferences, publishing on legal clinical education, assembling and analyzing data on clinical activities, and general promotion of experiential legal education.<sup>122</sup> The Foundation has also focused largely on

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rights than non-EU member countries. Article 47 of the CFR states that "Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice." Charter of Fundamental Rights of the European Union, Dec. 18, 2000, 2000 O.J. (C 364) 1. The ECtHR found in *Mirosław Orzechowski v. Poland* (no. 13526/07, 13 January 2009) that in some cases the refusal to provide legal aid to an applicant may "infringe[] the very essence" of an applicant's right to seek justice in the court. Poland is bound by this judgment. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, ACCESS TO JUSTICE IN EUROPE: AN OVERVIEW OF CHALLENGES AND OPPORTUNITIES 47 (2010) [hereinafter FRA ACCESS TO JUSTICE IN EUROPE REPORT].

<sup>112</sup> EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, COUNTRY THEMATIC STUDIES ON ACCESS TO JUSTICE: POLAND 13 (2011), available at <http://fra.europa.eu/en/country-report/2012/country-thematic-studies-access-justice> [hereinafter FRA COUNTRY THEMATIC STUDY POLAND].

<sup>113</sup> FRA ACCESS TO JUSTICE IN EUROPE REPORT, *supra* note 111, at 51.

<sup>114</sup> FRA COUNTRY THEMATIC STUDY POLAND, *supra* note 112, at 15.

<sup>115</sup> *Id.* at 13–14.

<sup>116</sup> FRA ACCESS TO JUSTICE IN EUROPE REPORT, *supra* note 111, at 54.

<sup>117</sup> FRA COUNTRY THEMATIC STUDY POLAND, *supra* note 112, at 13.

<sup>118</sup> Filip Czernicki, *The Polish Legal Clinics Program and the Role of the Polish Legal Clinics Foundation*, 4 REVISTA DE EDUCACIÓN Y DERECHO, at 9 (2011).

<sup>119</sup> *Id.* at 5.

<sup>120</sup> Berbec-Rostas, Gutnikov, & Namusłowska-Gabrysiak, *supra* note 47, at 57.

<sup>121</sup> FUNDACJA UNIWERSYTECKICH PORADNI PRAWNYCH, <http://www.fupp.org.pl> (last visited Mar. 4, 2014).

<sup>122</sup> Czernicki, *supra* note 118, at 3.

obtaining financial and technical support for clinics; since its establishment, the Foundation has provided Polish legal clinics with over \$530,000 in financial and in-kind support.<sup>123</sup> Perhaps among the Foundation's greatest accomplishments was the establishment and enforcement of operational standards among clinics, including mandatory legal liability insurance at each.<sup>124</sup>

The FUPP lists 27 active member clinics on its website,<sup>125</sup> most of which have their own active websites offering information to clients and prospective students on the clinic's activities, bylaws, training materials, and admissions policies. The clinics specialize in legal services across a broad range of topics. The University of Białystok Faculty of Law, for example, offers a legal clinic program open to the "best students" from the 4<sup>th</sup> and 5<sup>th</sup> years of study in the faculty,<sup>126</sup> offering advice on Civil rights, Criminal law, Labor law and Social security, Tax Law, Administrative Law, International Law, and the Rights of Refugees,<sup>127</sup> serving about 300 clients per year.<sup>128</sup> The university has signed an agreement with the Polish Ombudsman on the protection of human rights, in which the Clinic is an active participant, regularly reporting to the Ombudsman on the types of issues faced by the Clinic's clients.<sup>129</sup> This Clinic reports that the establishment of the Polish Foundation for Legal Clinics provided immense support to the organization and significantly helped to improve the clinic's performance in providing free legal aid to the Polish population.<sup>130</sup>

vi) South Africa

South Africa presents an exceptional example of how a mixed-model system which fully integrates university legal clinics can successfully contribute to the provision of free legal aid to underserved citizens, while simultaneously endowing students with practical training otherwise difficult to find. Clinical legal education in the country has a long history, with its first university legal clinic established in 1971.<sup>131</sup> Since then, more than XXXXX legal clinics have taken firm root in universities across the country, which now serve as primary providers of legal aid to the nation's underserved populations.

Legal aid in South Africa is administered by the South African Legal Aid Board, and delivered through four distinct, but interrelated mechanisms: 1) "Justice Centers," 2) cooperation agreements with legal clinics and NGOs; 3) impact litigation; and 4) the National Legal Aid Internship Program.<sup>132</sup> First, Justice Centers serve as all-inclusive legal aid centers, serving clients in priority legal aid issues, such as criminal matters and those pertaining to women and children. These centers are managed by a National Access to Justice Director, and include members of each of the other legal aid delivery groups (qualified public defenders, legal clinics,

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 5.

<sup>125</sup> FUNDACJA UNIWERSYTECKICH PORADNI PRAWNYCH, *Polish Legal Clinics Contact List*, <http://www.fupp.org.pl/en/legal-clinics/clinics-in-poland> (last visited Feb. 28, 2014).

<sup>126</sup> UNIVERSITY OF BIAŁYSTOK FACULTY OF LAW, *Legal Clinic*, [http://www.prawo.uwb.edu.pl/prawo\\_new/faculty.php?p=971&h=](http://www.prawo.uwb.edu.pl/prawo_new/faculty.php?p=971&h=) (last visited Feb. 28, 2014).

<sup>127</sup> UNIVERSITY OF BIAŁYSTOK FACULTY OF LAW, *Poradnia Prawna, Informacja dla klientów*, [http://www.prawo.uwb.edu.pl/prawo\\_new/wydzial.php?p=270](http://www.prawo.uwb.edu.pl/prawo_new/wydzial.php?p=270) (last visited Feb. 28, 2014).

<sup>128</sup> UNIVERSITY OF BIAŁYSTOK FACULTY OF LAW, *Poradnia Prawna, Historia Pracowni*, [http://www.prawo.uwb.edu.pl/prawo\\_new/wydzial.php?p=267](http://www.prawo.uwb.edu.pl/prawo_new/wydzial.php?p=267) (last visited Feb. 28, 2014).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Maisel, *supra* note 15, at 380.

<sup>132</sup> UN OFFICE ON DRUGS AND CRIME, *supra* note 10, at 20.

and law interns). Second, the Legal Aid Board concludes agreements with NGOs, public-interest law firms, legal clinics, and paralegal advice offices. These agreements allow the Legal Aid Board to ensure the delivery of quality legal aid to thousands of citizens annually, particularly those residing in areas where the Legal Aid Board lacks its own offices.<sup>133</sup> Third, the Legal Aid Board has established its own Impact Litigation Unit, which seeks to enforce constitutional rights for the whole of South Africa's population, thereby "making the Constitution and its promises a living reality for the marginalized segments of [the] population."<sup>134</sup> Fourth and finally, the state-funded National Legal Aid Internship Program allows candidate attorneys (law graduates who must acquire a certain level of practical experience before being admitted as attorneys) to represent clients in both civil and criminal cases.<sup>135</sup> This program, training approximately 3,000 law graduates each year, not only renders invaluable legal assistance to South Africa's underserved populations, but also provides training and the requisite experience for these graduates to enter the legal profession.<sup>136</sup>

University legal clinics comprise a part of the "wider national system of legal aid delivery," including in both civil matters and in the representation of indigent defendants.<sup>137</sup> The Legal Aid Board has entered into agreements with numerous university legal clinics across the nation which provide legal aid to thousands of citizens annually. In 1997–1998, shortly after the conclusion of an agreement between the Board and 20 university-based clinics, these clinics completed 33,951 cases; of these cases, 41% concerned civil matters and 59% concerned criminal matters.<sup>138</sup> The Legal Aid Board continues to form partnerships with university-based legal aid clinics for service provision to the community; in February 2014 the Board concluded an agreement with one such legal clinic which involves the provision of a supervising attorney to mentor clinical students in exchange for the rendering of legal aid to local communities.<sup>139</sup>

South African legal clinics work in cooperation with a variety of partners, including the South African Department of Justice, in order to provide free legal aid to the public. Students at clinics provide legal consultations and draft litigation documents, including pleadings and notices. In return for their contribution to the free legal aid system, clinics are given access to the Department of Justice facilities.<sup>140</sup>

The South African case is of particular interest because, owing to the relatively long history of clinical development in the country, it offers a wealth of lessons learned for other countries seeking to set up a mixed-model legal aid system. In particular, the case shows a particular series of challenges confronted and solutions devised to deal with them over the past several decades of operation.<sup>141</sup> Over time, however, the success of the legal clinic movement

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<sup>133</sup> *Id.* at 20.

<sup>134</sup> LEGAL AID SOUTH AFRICA, IMPACT LITIGATION: GIVING CONTENT TO OUR RIGHTS 2 (Mar. 2013), <http://www.legal-aid.co.za/wp-content/uploads/2012/05/Impact-Litigation-Booklet-2013.pdf>.

<sup>135</sup> PUBLIC INTEREST LAW INSTITUTE, MAKING LEGAL AID A REALITY: A RESOURCE BOOK FOR POLICY MAKERS AND CIVIL SOCIETY 21–22 (2009).

<sup>136</sup> UN OFFICE ON DRUGS AND CRIME, *supra* note 10, at 20–21.

<sup>137</sup> ACCESS TO JUSTICE IN AFRICA AND BEYOND, *supra* note 10, at 74.

<sup>138</sup> David McQuoid-Mason, *The Delivery of Civil Legal Aid Services in South Africa*, 24 FORDHAM INT'L L.J. 111, 124–125 (2000).

<sup>139</sup> UNIVERSITY OF KWAZULU-NATAL, *Law Clinic and Legal Aid SA to Strengthen Legal Education*, Feb. 5, 2014, <http://www.ukzn.ac.za/news/2014/02/05/law-clinic-and-legal-aid-sa-partner-to-strengthen-legal-education>.

<sup>140</sup> U.S. DEPARTMENT OF JUSTICE, EXPERT WORKING GROUP REPORT: INTERNATIONAL PERSPECTIVES ON INDIGENT DEFENSE 48 (2011).

<sup>141</sup> For a history of the development of South Africa's legal aid system, including major challenges and strategies for addressing them, see PUBLIC INTEREST LAW INSTITUTE, *supra* note 135, at 20–28.

in South Africa has been, according to a leading expert on the topic, due to four major factors: “(i) the desire of law students and key members of the faculty and administration to be involved in the struggle for social justice, (ii) private bar support, (iii) exposure to clinical education in other countries, and (iv) international assistance.”<sup>142</sup> These four factors are also of importance in considering the role of legal clinics in Kyrgyzstan’s state-guaranteed legal aid system.

vii) Legal Clinic Associations

Aside from the models offered by specific country case studies, the concept of an association of legal clinics is of particular importance to Kyrgyzstan, where there is currently no organized bar association. In several ways, a legal clinic association (LCA) can contribute to some of the same goals as can be achieved by a bar association, namely in the setting of standards for legal education, the organization of training and networking events, and, perhaps most importantly, in the establishment and enforcement of standards of ethics and conduct for lawyers (-in-training).

A number of international models have shown that the establishment of an association of legal clinics can be a tremendously helpful step both in the development, support, and guidance of clinical legal education, as well as in the development and promotion of standards for lawyerly conduct that serve as the guiding principles of future lawyers. As mentioned above, some LCAs contribute to the establishment of minimum operational requirements, such as in Moldova and the UK.<sup>143</sup> In addition, many develop standardized curricula for clinical education such as the legal clinic associations in Poland (FUPP) and Ukraine (UALC), mentioned above.<sup>144</sup> They may also be instrumental in working with ministries of justice and other government agencies in the adoption of standards and model regulations for legal clinics as service providers. As mentioned above, in Ukraine, the efforts of the UALC prompted the Ministry of Education to adopt the order “On Standardized Provisions on Legal Clinics at Higher Schools in Ukraine.”<sup>145</sup>

LCAs also contribute to the development of legal clinical pedagogy. Some clinical associations publish books, manuals, and journals pertaining to clinical education; many also maintain websites with information for the public, such as the location and specializations of clinics across the country, and resources for clinicians, including newsletters and job postings for clinical instructors.<sup>146</sup> An LCA can serve as an instrument for organizing and sponsoring cross-clinical training programs and competitions, sharing best practices and ideas, and setting national ethical standards for clinicians.<sup>147</sup> In Russia, some less formal associations of clinical development have grown out of individual university initiatives, such as the “Center for the Development of Legal Clinics” based at the law faculty of the Moscow State University named for Lomonosova, which aims to organize cross-university trainings and competitions, develop

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<sup>142</sup> Maisel, *supra* note 15, at 379.

<sup>143</sup> Barry et al, *supra* note 29, at 281.

<sup>144</sup> FUPP, *The Standards of the Polish Legal Clinics’ Activity*, <http://www.fupp.org.pl/en/legal-clinics/standards>; see also Barry et al, *supra* note 29, at 280–81.

<sup>145</sup> Ministry of Education of Ukraine Order on Legal Clinics, *supra* note 40.

<sup>146</sup> See, e.g., FUNDACJA UNIWERSYTECKICH PORADNI PRAWNYCH, <http://www.fupp.org.pl/en/> (FUPP, Poland); UKRAINIAN ASSOCIATION OF LEGAL CLINICS, [http://www.legalclinics.org.ua/index\\_old.php?menuitem=library](http://www.legalclinics.org.ua/index_old.php?menuitem=library) (UALC, Ukraine); CLINICAL LEGAL EDUCATION ASSOCIATION, <http://www.cleaweb.org/> (CLEA, USA) (last visited Mar. 18, 2014).

<sup>147</sup> See, e.g., Maisel, *supra* note 15, at 392, 411–12 (discussing the role of the South African legal clinics association in developing the country’s clinical education); Barry et al, *supra* note 29, at 280–82 (discussing the role of clinic associations in clinical development in a variety of countries, including several in Eastern Europe).

universal methods for clinical teaching, and provide logistical support to new and existing clinics, among other goals.<sup>148</sup>

Another objective that some (though not all) legal clinic associations pursue is that of fundraising. Among the most successful models in doing so is the Association of University Legal Aid Institutions (AULAI/SAULCA) in South Africa, established in 1982. AULAI runs its own Trust, which began with a \$1,000,000 endowment from the Ford Foundation, and serves as an umbrella organization for channeling funding to each of its university legal clinic members for regular operational activities as well as special cross-university projects.<sup>149</sup> Similarly, in China, the Committee of Chinese Clinical Legal Educators (CCCLE) has served as the main agent through which Chinese legal clinics receive their funding.<sup>150</sup> In late 2012, the CCCLE boasted a membership of 149 law schools across China.<sup>151</sup> Aside from managing funding from international organizations, the Committee has also been responsible for obtaining resources and support from Chinese government and non-governmental bodies.<sup>152</sup>

Perhaps the two most important roles of a clinical legal association, particularly in the Kyrgyzstan context, are 1) creating and regulating standards for legal clinical education and legal profession preparation; and 2) fundraising for legal clinical education and lobbying for the official status of legal clinics as service providers in the country's free legal aid system. Currently in Kyrgyzstan there is no established bar association, the draft law for its establishment having stalled in parliament,<sup>153</sup> and thus no enforceable set of ethical standards for lawyers or legal clinics. The establishment of a legal clinics association presents an immense opportunity for the clinics themselves to contribute to the establishment of a standard of ethics for a new generation who will soon graduate law school and join the nation's ranks of attorneys. The Ukrainian, Polish, and South African models in particular provide concrete examples of how this works in practice, ensuring that not just legal clinics, but the students who graduate from them and become lawyers, have attained a minimum level of ethical and practical training for the legal profession.

## E. Challenges for legal clinics as providers of SGLA

Legal clinics as service providers in a free legal aid system are not, of course, without certain drawbacks. The histories of models discussed above reveal many challenges encountered along the way, and interviews with clinicians and other legal experts in Kyrgyzstan also exposed particular veins of skepticism regarding the concept of students providing legal aid. The

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<sup>148</sup> МОСКОВСКИЙ ГОСУДАРСТВЕННЫЙ УНИВЕРСИТЕТ ИМЕНИ М.В. ЛОМОНОСОВА, *Центр развития юридических клиник*, <http://sc.law.msu.ru/centr>.

<sup>149</sup> Maisel, *supra* note 15, at 392–93; see also SOUTH AFRICAN UNIVERSITY LAW CLINICS ASSOCIATION, *SAULCA Trust*, <http://www.saulca.co.za/saulca-trust> (reporting on the outcomes of a 2009–2011 AULAI Trust project entitled “Access to Justice Cluster Project”).

<sup>150</sup> Yanmin Cai, *Global Clinical Legal Education and International Partnerships: A Chinese Legal Educator's Perspective*, 26(1) MARYLAND J. OF INT. L. 159, 167 (2011).

<sup>151</sup> А.Б. Гутников, «Развитие юридических клиник в современном мире», in *Юридическая клиника: Выпуск II*, *supra* note 97, at 105.

<sup>152</sup> Barry et al, *supra* note 29, at 288.

<sup>153</sup> The draft law “On the Bar of the Kyrgyz Republic and the Activities of Lawyers” (“Об адвокатуре Кыргызской Республики и адвокатской деятельности”) can be found at [http://minjust.gov.kg/?page\\_id=5793](http://minjust.gov.kg/?page_id=5793) (last visited Mar. 14, 2014).

following will note some of the primary challenges and also review solutions that have been offered to address them.

i) Civil law cases

Among the primary concerns for students working on (civil law) legal aid expressed by clinicians working in Kyrgyzstan, discussed in more detail below, was the tension between the two fundamental goals of clinical education: education of law students versus service provision to the general public. Some interviewees emphasized that the educational goal took a primary position to the service provision goal and worried that, if clinics were included in Kyrgyzstan's legislation as service providers in the free legal aid system, the educational goal would ultimately suffer as a result.

The assumption underlying the ranking of these two goals is of course that there must necessarily be a conflict between them. Yet clinical legal education need not choose between these goals; a properly managed clinic will strike a balance between them. Emphasizing the importance of service provision does not necessarily damage the educational component, when strong, universal standards are agreed upon and clinical education is fully integrated into a holistic legal education curriculum.

Careful curation of client caseload and management in legal clinics is essential to striking a proper balance between these goals. This point underscores the vital nature of a full-time, dedicated clinical professor attending to the needs of both students and clients. One reason why many law professors and clinicians may feel there is a conflict between the two goals is that in none of the seven law schools I interviewed are students currently awarded academic credit for the practical component of the clinic (as distinct from the classroom component, or the "Legal Clinic Course" as many interviewees referred to it). At best, students receive a certificate of completion after graduating from the legal clinic. Furthermore, aside from the clinic directors and their one or two assistants, professors also did not receive academic credit or additional salary for teaching in the practical clinic (again, this is distinct from the classroom component). This net result of this segregation of the practical clinic component from other aspects of legal education is that the clinic is viewed by many as a volunteer job or an internship, an activity that students can undertake for practical training, but which does not form part of the core law school curriculum.

It is critical to note that when it comes to the success of clinical programs – from the perspective of either of the twin goals, education and service provision – *quality* must always be emphasized over *quantity*. This applies both to caseloads and to the total number of legal clinics that exist in a country. Students should work on only the number of cases that they are able to devote complete, careful attention to within a set weekly number of hours, and clinical instructors should only be assigned to the number of students and cases that they are able to adequately supervise. This means almost necessarily that the number of students permitted to work in the legal clinic in every semester will be limited by the abilities of the instructors to supervise them. It also means that, once a legal clinic has reached its case load capacity, clients will need to be temporarily placed on waiting lists or else referred to another legal clinic (this is another advantage of an association of legal clinics, discussed further below). Although, when properly managed, the tension between the pedagogical and service provision aims of legal

clinics need not present significant impediments to either, when students are overburdened with more cases than they can properly handle, both goals suffer.<sup>154</sup>

At the present time, the only serious monitoring of legal clinics in Kyrgyzstan has focused on quantitative factors, such as the number of clients served and the percentage of students employed at graduation, while largely neglecting critical non-quantitative factors such as students' pedagogical experiences, substantive experience gained, and client satisfaction with aid rendered (remembering that it is not always about whether a client wins or loses a case, but whether she feels that she has at least been able to access the justice system). The development of standardized requirements and guidelines for the clinics would be a good first step in this process, particularly if developed and enforced by an association of legal clinics, as discussed above. Ultimately, ensuring the quality of both services rendered and student education may require serious overhaul of some clinics. The necessary changes may mean that some legal clinics in Kyrgyzstan should close while they adjust their curricula and training practices, and others may need to scale back activities while a comprehensive standardization of clinical legal education takes place.

### ii) Criminal law cases

The idea of students providing legal aid in criminal law cases was, naturally, viewed with more skepticism. The most obvious concern about legal clinics working on criminal cases is that, under current Kyrgyz law, students are unable to represent criminal clients in court, as they do not have a license, which is required to represent criminal defendants in court proceedings.<sup>155</sup> This is in stark contrast to representation and consultation on civil cases, which does not require a license in any case (meaning that one does not even have to have graduated from law school to provide civil law representation in court).

The first important thing to note is that allowing students to work on criminal cases does not necessarily mean that students represent indigent criminal defendants in court. In reality, students in Kyrgyzstan can and do work on criminal matters in two senses that do not require client representation by non-advocates. First, students can provide consultations on criminal matters without a license. Three of the legal clinics interviewed indicated that they are already providing basic criminal law consultations and helping to prepare documents that do not require actual client representation. Second, as is already being practiced by at least one university legal clinic in Kyrgyzstan, discussed in more detail below, students can easily serve as assistance to practicing advocates (clinical instructors), by sitting in on interviews, helping to prepare case documents that will be thoroughly reviewed by their instructors, and attending court proceedings to observe how they proceed.

Far from placing too much responsibility in the hands of students by allowing them to participate, this type of hands-on training in criminal law matters will greatly increase the quality of the lawyers who graduate from these legal clinics, making them an asset to the criminal law system of Kyrgyzstan in the future. Through further developing these two components of criminal law clinical practice, including the potential development of specialized criminal law clinics, legal educational institutions would enrich the learning environment for students with an

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<sup>154</sup> See, e.g., Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10(7) GERMAN L.J. 823, 835 (2009).

<sup>155</sup> Закон Кыргызской республики от 21 октября 1999 года N 114, «Об адвокатской деятельности», art. 8 (stipulating the qualifications for becoming an advocate, licensed to represent criminal defendants, including the completion of higher legal education and not less than one year practical experience).

interest in pursuing criminal law after graduation, while simultaneously improving the quality and training of the lawyers who will later become available for the SGLA system.

The second major point is that there is no fundamental barrier to allowing students to represent criminals in court aside from the current law itself. In many other countries, including those that have an undergraduate law degree system as in Kyrgyzstan, students routinely represent clients in criminal cases in court, both in misdemeanor (minor crime) and felony (serious crime) trials. Law students in the U.S. argue in front of trial and appellate courts, including state supreme courts.<sup>156</sup> As noted above, a number of university-based legal clinics in Russia now engage in criminal law work.<sup>157</sup> Clinics listed on the site Center for Clinical Education include many that engage in criminal law consultation and representation.<sup>158</sup> China has developed university legal clinics that specialize in criminal law.<sup>159</sup> Certain clinics in the UK specialize in criminal representation work,<sup>160</sup> as in South Africa, where specialized legal clinics represent indigent criminal defendants in court proceedings.<sup>161</sup> Note that, unlike the U.S. system, law students in the UK and South Africa are in fact undergraduate students; the requirement to become an attorney in South Africa is the attainment of a 4- to 5-year LLB degree.<sup>162</sup>

Perhaps the biggest barrier to clinics' current ability to engage in more criminal law casework is the lack of licensed attorneys working as instructors in the clinic. As described above, student legal clinics in many other countries have demonstrated that students are not only willing and able to take on criminal representation, but in doing so also gain the critical practical experience necessary to later take on such cases as practicing attorneys. Particularly in criminal justice systems such as that of Kyrgyzstan, where practical experience is required in order to gain an advocate's license,<sup>163</sup> allowing students to participate (under close supervision) in criminal cases would not only provide critical practical training for those who will enter criminal law practice, but also eliminate a substantial barrier to obtaining a license for those who have few other opportunities to gain this experience. Furthermore, students working on criminal cases

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<sup>156</sup> See, e.g., UNIVERSITY OF COLORADO LAW SCHOOL, *Criminal Defense Clinic*, <http://www.colorado.edu/law/academics/clinics/criminal-defense-clinic>; GEORGETOWN LAW SCHOOL, *Criminal Defense & Prisoner Advocacy Clinic*, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/criminal-defense-prisoner-advocacy/>; UNIVERSITY OF ALABAMA SCHOOL OF LAW, *Criminal Defense Clinic*, <http://www.law.ua.edu/academics/law-clinics/criminal-defense-clinic/>; HARVARD LAW SCHOOL, *Criminal Justice Institute* (Student Clinical Program), <http://www.law.harvard.edu/academics/clinical/clinics/cji.html>; BOSTON UNIVERSITY SCHOOL OF LAW, *Criminal Law Clinic*, <http://www.bu.edu/law/central/jd/programs/clinics/criminal/>; TULANE LAW SCHOOL, *Criminal Litigation Clinic*, <http://www.law.tulane.edu/tlsAcademicPrograms/index.aspx?id=4178> (describing the Tulane clinic's appointment by the Louisiana Supreme Court to work on post-conviction applications) (all last visited Mar. 29, 2014).

<sup>157</sup> For a list of many university-based legal clinics in Russia providing free legal aid, along with their specific areas of specialization, see MINISTRY OF JUSTICE, *Legal Clinics*, at [http://to05.minjust.ru/sites/to05.minjust.ru/files/page/2013/02/yuridicheskie\\_kliniki.xls](http://to05.minjust.ru/sites/to05.minjust.ru/files/page/2013/02/yuridicheskie_kliniki.xls) (last visited Mar. 29, 2014).

<sup>158</sup> КЛИНИЧЕСКОЕ ЮРИДИЧЕСКОЕ ОБРАЗОВАНИЕ, <http://www.laweljin.ru/russianclinic.phtml>.

<sup>159</sup> International Bridges to Justice, *Five law schools in China join IBJ's criminal clinical project*, Oct. 9, 2008, <http://blog.ibj.org/2008/10/09/five-law-schools-in-china-join-ibjs-criminal-clinical-project/>.

<sup>160</sup> See, e.g., UNIVERSITY OF KENT, *Criminal Appeals Team*, <https://www.kent.ac.uk/law/clinic/teams/criminal.html> (last visited Mar. 29, 2014).

<sup>161</sup> SAULCA, *The Services Rendered by Legal Clinics*, <http://www.saulca.co.za/services>; see also UNIVERSITY OF PRETORIA LAW CLINIC, *Services Rendered and Eligibility for Services*,

<http://web.up.ac.za/default.asp?ipkCategoryID=7415&subid=7415&ipklookid=10> (last visited Mar. 29, 2014).

<sup>162</sup> LAW SOCIETY OF SOUTH AFRICA, *How to Become an Attorney*,

<http://www.lssa.org.za/?q=con,92,How+to+become+an+attorney> (last visited Mar. 21, 2014).

<sup>163</sup> Закон Кыргызской республики от 21 октября 1999 года N 114, «Об адвокатской деятельности», art. 8.

under careful supervision may in some ways be preferable to state-appointed attorneys from the SGLA roster working with no oversight whatsoever. This type of supervision addresses not only deficits in quality of service provision widely observed in state-guaranteed legal aid cases in Kyrgyzstan, but also the problem of “pocket lawyers” which has also been recognized in the country.<sup>164</sup>

Although the idea of students representing indigent criminal defendants in Kyrgyz courts is perhaps a long way from gaining widespread acceptance in the country, particularly among university administrators and legislators with more traditional ideas of legal education, it is a concept with great potential for helping to improve the provision of state-guaranteed legal aid in the country, and one that should at least be considered for the future.

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<sup>164</sup> The low quality of services rendered by state-appointed defense attorneys is recognized by many observers as a major obstacle to justice in Kyrgyzstan. *See, e.g.*, UNDP ANALYSIS OF LEGISLATION IN CENTRAL ASIA, *supra* note 18, at 61.

### **III. LEGAL CLINICS IN KYRGYZSTAN: A BRIEF OVERVIEW OF THEIR CURRENT STATE OF DEVELOPMENT**

#### **A. Methodology for Clinical Interviewing**

The current study resulted from a series of interviews and desk research conducted between January and March 2014. A total of 31 interviews were conducted with individuals in a semi-structured format and ranged between 45 and 120 minutes per individual. Interviewees included clinical directors and/or instructors (12 individuals), current legal clinic students from seven Bishkek-based university law faculties, ranging from the 3<sup>rd</sup> to 5<sup>th</sup> year of studies (11 individuals), current law students who participated in an experiential internship program that was not a legal clinic (3 individuals), associates of ABA ROLI's offices in Kyrgyzstan (3 individuals), one telephonic interview with a clinical legal education expert in Russia, and one telephonic interview with a Budapest-based international expert on clinical legal education. In addition, one interview was conducted over email with a legal clinics expert in Ukraine.

What follows is a brief summary of information gained through these interviews and through extensive documentation and reporting provided directly by clinics and through reporting requirements by the Soros Foundation Kyrgyzstan linked to grant funding that six of the clinics received through 2013. This summary does not seek to assess the quality of the clinics individually or collectively. It is also not designed to provide detailed quantitative data about the clinics, their students, and clientele.<sup>165</sup> Rather, this portion of the paper aims to provide a snapshot of the overall state of legal clinical development in Kyrgyzstan at the present time, highlighting best practices and challenges that the legal clinics face with a particular eye to their capacity for contributing to the state-guaranteed legal aid system in the future.

This summary begins with a review of the general procedures and operation of the legal clinics. It then reviews the best practices observed and discusses their potential for extrapolation across clinical education in Kyrgyzstan. Finally this summary offers a glimpse into the challenges facing the clinics that bear relevance to clinical capacity for providing legal aid to the nation's population.

#### **B. Overview of Clinical Procedures**

Each of the clinics I spoke with was staffed by 2-3 full-time supervisors (although many were also lecturers in the law faculty on other subjects). Several of the clinics also included up to 6 other professors from the law faculty, who provided trainings and consulted with students on specific law issues (e.g., family law, property law, etc.). On average, each legal clinic consisted of 20-30 law students.<sup>166</sup>

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<sup>165</sup> Detailed statistical data for each clinic, such as the exact number and types of clients served each year, the types of cases processed, and other qualitative indicators are available from the clinics themselves, many of whom have already prepared quarterly reports for donors such as the Soros Foundation Kyrgyzstan, as well as from ABA ROLI in Bishkek, which has done extensive qualitative research on several clinics in Kyrgyzstan.

<sup>166</sup> One outlier reported a clinical student group of 60 individuals, but most were in fact participating in the clinic's street law program, and not providing client consultations.

i) Application process

The importance of the clinical application process relates to the overall quality of the student consultations that the clinic is likely to produce. Interviews revealed a general support for the use of application procedures, but a couple interviewees also expressed that mandatory clinical components for law students could be beneficial both in ensuring a standard level of practical training for all graduates and in providing the maximum amount of legal aid to target populations.

All except one of the clinics interviewed described some kind of formalized application process,<sup>167</sup> which generally involved submitting transcripts, writing one or more essays on topics such as motivation to join the legal clinic, motivation to be a lawyer, etc., and an in-person interview with the clinic director. Some clinics also required recommendation letters from professors, and one required a written test on practical concepts for admission. One clinic had a more detailed, two-stage application process, in which students first submitted transcripts and wrote several pages of essays on topics like teamwork, the role of the lawyer in society, etc., and then in the second stage were invited to field questions on law from a selection committee.

The great benefit of a rigorous application process is, of course, that it tends to capture the students who are most motivated, academically meritorious, and interested in working with clients. In theory, the initial self-selection and the second level of selection by clinicians in choosing the students who will work in the clinic will ultimately equate to stronger client consultations and better overall service delivery (as well as a more productive learning environment for fellow students). The important thing to note here, however, is that the training and management of students is equally important to, if not more important than, the initial selection of a strong pool of students. This applies equally to application-only clinics and mandatory clinical components.

ii) Training

Training standards varied significantly between clinics. About half of the clinics interviewed include a formal, semester-long classroom component. The others coupled the practical legal clinic work with independent, non-credit-awarding training sessions, which ranged from just one or two sessions in total to several months of training sessions, several times a week.

One important difference in the approaches to trainings was how much training students received before they actually began consulting clients. A couple of the clinics use training components that last a whole semester *before* students begin working in the legal clinic. This means, in effect, that the clinic does not operate for one semester each year, while students receive training. One clinic suspended client consultations for some period of time, less than a full semester, while students received intensive training. Still other clinics provide only minimal training before students begin consulting clients, early in the semester. The variation in these training approaches produced predictably diverse responses from students about whether they felt fully prepared to begin consulting real clients, with those receiving less training reporting that they did not feel fully prepared, and those with semester-long training components reporting

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<sup>167</sup> One of the clinics interviewed has no application process for admission since participation in the legal clinic is mandatory for all 3<sup>rd</sup>- and 4<sup>th</sup>-year students.

almost universally that they began client consultations feeling confident about their level of preparation.

The most standardized, comprehensive training system was found in a legal clinic that had developed its own clinical curricula, including two semester-long courses – one for third-year students, Fundamentals of Legal Clinical Education, and the more advanced course for fourth-year students, Fundamentals of Trial Advocacy.<sup>168</sup> Each course has its own corresponding student workbook and teacher guidebook. Students in the legal clinic at this university are required to take these courses, which occur in the fall of the academic year. For third-year students, client consultations then begin in the spring following their participation in the course (and successful completion of the course exam). Fourth-year students work with clients year-round, including during the fall when they take the Trial Advocacy Course.

Generally speaking, both clinical instructors and students expressed overwhelming approval for the use of interactive teaching methods in training clinical students. Students in particular emphasized the contrast of these methods with the traditional lecture format of their other law classes. One clinical director said of the trainings: “I don’t want to duplicate what they’re learning in their other classes. The work in the clinic is different; it’s practical.” The clinicians and students described a wide range of interactive methodologies used for training; a handful of these include mock client consultations, mock trials, interactive presentations on legal topics before a panel of judges, “brain rings” where students work in teams to make presentations on various legal topics in a competition format, and cross-university client consultation competitions.<sup>169</sup>

### iii) Client consultation process

Of the clinics interviewed, most follow the same general procedure for client intake and interviewing, although with significant variation in terms of organization methodology and confidentiality measures. Generally, legal clinics are staffed by 1 to 3 students; two clinics reported that a supervisor is nearly always present to observe interviewing, while in the other clinics the students conduct interviews and gather basic client information without direct supervision. None of the clinics reported providing consultations immediately. Generally speaking, students gather as much information as possible during the initial interview, then take client details and set a time for the follow-up meeting. Turnaround times for written consultations vary between clinics, but are usually between 3 and 7 days.

Students are required to inform potential clients that they are still in training, and then the client must give consent to receive consultation from (or in some cases, representation by) a student. Some clinics limit their clinical target group by income (self-reporting by the potential client) or by whether the client already has another source of legal representation.

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<sup>168</sup> See «Основы клинического юридического образования» and «Основы судебной адвокатуры», student workbooks and teachers’ guides developed and distributed by the clinic at the Kyrgyz Russian Slavonic University. These courses are mandatory for all students in the legal clinic.

<sup>169</sup> The annual client counseling competition is a major, two-day event, bringing together six to nine law faculties from across the country to test the interviewing, legal research, document drafting, and client consultation skills of two students from each legal clinic. Although a detailed description of this event is beyond the scope of this paper, the competition was unanimously praised by student participants and clinical instructors, who all emphasized the educational and networking benefits of the competition.

iv) Client data

The clinics reported overwhelmingly that the majority of their cases concerned family law, particularly divorce and alimony. Most clinics reported that their clientele consisted primarily of women, pensioners, low-income individuals, and students.

Based on 2013 reporting data, confirmed with the clinics themselves, on average, the annual number of clients served by a single clinic was about 125 individuals. Taking into account the average number of students working in each clinic (20-30), this means that on average students handle 4–6 client cases in an academic year. This is consistent with my interviews with students, keeping in mind that students practicing in clinics serving clients for only one part of the year (if training takes a full semester or almost a full semester) will serve fewer clients in an academic year.

v) Supervision and feedback

In some clinics, advisors decide whether students will be permitted to take on a case; while in others, advisors take a more hands-off approach, and check student work only after the students have completed the legal research and written a consultation.

The clinics have adopted a wide range of approaches to group meeting and discussion opportunities. At one end of this spectrum, clinical instructors and students from one legal clinic reported that they have a regular meeting, once a week, where they all sit together and discuss general issues arising in their cases (without mentioning specific client details), consult with their supervisors, and learn from each others' research and consultation strategies. At the other end of the spectrum, students from one clinic reported that they never meet in a group with their instructors and other students, and in fact usually go to professors in the law faculty, unassociated with the legal clinic, for specific questions regarding their cases.

Needless to say, the opportunity for meeting and talking through cases with instructors and other students is a very important component of clinical education. Since students can only handle a certain number of cases per semester, the opportunity to learn from the work of their classmates, and share in discussions about the substantive law issues as well as ethical issues that arise, can exponentially increase the amount of learning that a student can take away from participating in a legal clinic. This also helps clinical instructors regularly monitor the progress of students and ensure that they are following up with clients and pursuing sound strategies of legal research.

vi) Clinical partners

The interviews revealed that the legal clinics work with a wide range of partners. These included: a variety of NGOs, generally working on issues of law, human rights, education, or a combination of these; municipal agencies such as the Union of Property Owners; pensioners' homes; organizations working on the rights of former prisoners; NGOs rendering legal aid, namely Adilet; and other university legal clinics, among others.

Many clinics indicated that they have a running referral system with other NGOs and clients, so that a client with a problem not falling within their area of expertise (particularly criminal matters for clinics not handling them) can be sent to another place for assistance.

### **C. Criminal law in the legal clinics**

Only one clinic indicated that it engaged in criminal law matters as a significant component of its work. Last year the clinic's course was, in fact, divided into two components – one specializing in civil matters and the other in criminal matters. This clinic is staffed by two licensed attorneys who have the right to conduct criminal defense under Kyrgyz law.<sup>170</sup> Although students are unable to actually represent criminal defendants in court, clinical students are able to assist the instructors in legal research and preparation of court documents, as well as attending the court hearings themselves to observe a criminal trial process. The clinic indicated that, in the 2012-13 academic year, criminal cases comprised 18% of total cases handled by the clinic.<sup>171</sup>

#### **D. Legal clinics' interest in participating in SGLA system**

Once introduced, the idea of participating in the state-guaranteed legal aid system generated a range of responses from clinical instructors and students. Generally speaking, clinical directors and instructors were open, and even eager, to participate in the system if it were to include legal aid in civil cases. These same individuals expressed more skepticism regarding the provision of legal aid by students in criminal cases. Students, however, were quite open to both, and depending on their individual interests (civil versus criminal law), indicated that they would be eager to participate in the system both as law students, and to the extent practical following their graduation.

Interestingly, many students were not very familiar with the SGLA law; two of the students interviewed had never heard of the law, while those who had heard of it demonstrated a very limited understanding of its provisions or how they could become involved in the system following their graduation. The exception to this were students involved in the legal clinic at KNU, where both of the full-time clinical instructors are licensed, practicing advocates who actively work on criminal cases and occasionally involve students with assisting in cases.

Not surprisingly, the clinic with practicing criminal law advocates on staff had more students that expressed a strong desire to practice criminal law later. The access to a mentor with criminal law experience, particularly the opportunity to help prepare criminal defense cases and attend court hearings, were cited as primary highlights of the clinical program by those who had these opportunities.<sup>172</sup>

As noted above, one general concern about clinics providing legal aid is the potential for interference with the educational component of clinical education. One clinical director, for example, expressed open skepticism about the involvement of university legal clinics in the system of SGLA because he views the clinic more as a training ground than a service provider; in fact, he noted that in his view the clinic was linked more to the law faculty's career services office than anything else, since he saw it as a method by which students could be trained to get

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<sup>170</sup> Representing clients in criminal cases in Kyrgyzstan requires a license. See Закон Кыргызской Республики от 21 октября 1999 года N 114, «Об адвокатской деятельности».

<sup>171</sup> This statistic was reported to the Soros Foundation Kyrgyzstan as part of the annual grant reporting requirements. The reports are on file with the Law Program of SFK.

<sup>172</sup> The possibility of including students in assistance with preparing court documents and even representation of criminal defendants was discussed at length during a roundtable on legal education organized by the Eurasia Foundation of Central Asia on February 19, 2014 in Bishkek, with several participants noting the importance of legal students gaining practical experience in criminal defense as well.

jobs later. As such, he did not see the clinic as a service provider, but rather as a sort of apprenticeship for law students to gain skills for their future careers.

This sentiment was not, however, a general one among the clinical instructors. Some clinics and clinical students emphasized the importance of service provision to their missions, while other clinicians expressed a view that the two goals were of equal importance to their clinics' mission. In addition, when asked about the role of legal clinics in the case that the law would include a provision for legal aid in civil cases, almost all of the clinical instructors and students indicated an interest in participating. In fact, several of the clinical instructors responded by saying that their clinics were already providing exactly the type of legal assistance to vulnerable groups that would likely be covered by such an amendment to the legislation. In this sense, these respondents expressed that formal inclusion could be beneficial to coordination between service providers and technical and/or financial support to the clinics.

### **E. Creating awareness and sensitivity of social justice issues**

Every student I interviewed reported that working with the clinic had raised their awareness and understanding of the types of social issues and/or legal challenges faced by marginalized groups in Kyrgyz society. The students as a whole expressed significant surprise at discovering, through working with the clinic, how few people in Kyrgyzstan know and understand their rights, and how many people cannot afford legal counsel. This is an important aspect of clinical education that should not be overlooked. The experiences that students have in the clinic can, and should, have a lasting impact on their understanding of law in society and how they as lawyers (whether in the private or public sector) can contribute to the resolution of issues that socially vulnerable populations experience in Kyrgyzstan.

For some students, working with the legal clinic will be one of the few opportunities they have to work with certain vulnerable sectors of society. As one student put it, working with the clinic was the first opportunity she had had to interact with a wide variety of clients – “educated or uneducated, very poor, employed or unemployed, former convicts, people of all ages, including pensioners” were among the groups she reported having met throughout three years of clinical work at her university.

Furthermore, about half the students I interviewed reported that working with the legal clinic had a tangible impact on their future plans. These students reported that working with the clinic caused them to change their plans of working in a different field of law and instead to focus either on civil issues or work in the non-profit sector on rights issues.

### **F. Post-graduation employment for clinical students**

Thousands of students graduate each year from law faculties in Kyrgyzstan. A study recently conducted by ABA ROLI showed that students who worked in a legal clinic at university have a much higher post-graduation employment rate than students who did not;<sup>173</sup> this is confirmed by the statistics of the clinics themselves, several of whom reported a 100% post-graduation employment rate for their students.

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<sup>173</sup> American Bar Association Rule of Law Initiative (ROLI), *Support to the Kyrgyzstani Legal Defense Community, Quarterly Report: Oct. 1, 2013–Dec. 31, 2013*, at 5.

### G. Primary challenges to legal clinics at the present time

In spite of tangible development in the quality and quantity of clinical legal education opportunities in Kyrgyzstan over the past decade, the interviews revealed substantial challenges remaining to their ongoing development.

**Sustainability:** As is often the case for legal clinics that are not fully integrated into a university faculty, sustainability poses perhaps the greatest challenge of all for many of the legal clinics interviewed. With the conclusion of grant funding from Soros Foundation Kyrgyzstan and ABA ROLI,<sup>174</sup> several of the most well-developed university legal clinics in the country will face a significant reduction in financial and technical resources. While some of these clinics have indicated that they receive adequate institutional support from their respective university administrations, at least half suggested that their status from 2015 onwards would be uncertain. Without financial support from university faculties or other outside donors, many clinics will lose funding for instructor salaries, course manuals and trainers, access to the Kyrgyz legislation database (Toktom), and other essentials required to continue serving clients and training students.

One expert on clinical education in Russia suggests that long-term clinical success depends largely upon 1) full integration of legal clinics into university academic programs, including the dedication of a full-time, experienced supervisor and inclusion into legal education curricula; and 2) clinical specialization, whether by subject or client type.<sup>175</sup> These are critical considerations for law faculties and legal clinics in Kyrgyzstan. The integration of clinics into university faculties would involve not only the employment of full-time clinical instructors, but also requiring a semester- or year-long classroom component for academic credit, and the awarding of course credit for the practical component of legal clinic work. On average, the clinical students interviewed in Kyrgyzstan reported spending 2 to 8 hours per week working at the clinic, but these hours were not regulated by their instructors aside from the requirement that the students actually sit in the legal clinic to receive clients a certain number of hours a week. Many of the students interviewed view the clinic as a volunteer job in addition to their studies, rather than as an integral part of those studies. This is likely due in part to the fact that none of the clinics I interviewed indicated that students receive academic credit for the clinical practice component (although some do give credit for the clinic course, in cases where such a course is required to participate).

**Quality and standardization of training and supervision.** The interviews and reviews of training materials showed huge variation across clinics in training methods, classroom

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<sup>174</sup> Soros Foundation Kyrgyzstan carried out a 3-year grant project from 2011–2014 providing support in the amount of approximately \$10,000 per year to six university-based legal clinics in Bishkek. ABA ROLI signed an MOU with several of the same clinics in 2012, agreeing in part to provide technical and financial support for the clinics' functioning. Both projects conclude in 2014. American Bar Association, *Overview of 20 Years Programming in Kyrgyzstan 2* (2013), available at [http://www.americanbar.org/content/dam/aba/directories/roli/kyrgyzstan/kyrgyzstan\\_overview\\_twenty\\_years\\_anniversary\\_2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/kyrgyzstan/kyrgyzstan_overview_twenty_years_anniversary_2013.authcheckdam.pdf).

<sup>175</sup> А.Б. Гутников, «Развитие юридических клиник в современном мире», in *Юридическая клиника: Выпуск II*, *supra* note 97, at 106.

requirements (or lack thereof), amount of supervision and feedback, and ethical standards such as confidentiality. This variability carries through not only to the quality of training that students receive as future lawyers, but also affects the quality of legal aid rendered by students working in legal clinics. While there is reason to be concerned about students with little or no adequate training being placed before clients with no supervision from experienced attorneys, this situation could be addressed by the standardization of supervision requirements via an order by the Ministry of Education (as in Ukraine) or through the cooperation of the clinics themselves in adopting universal requirements.

Models of clinical legal education that tend to provide higher quality legal aid include both 1) a rigorous and extensive training component, generally meaning a semester-long course prior to the beginning of service provision (in the second semester, for example); and 2) constant oversight, supervision, guidance, and feedback from an experienced supervisor. Needless to say, the vital need for both of these components will limit the number of clients assisted; at the same time, it will ensure that services to those clients is of a high quality and that students are gaining the skills and experience appropriate to lawyers who will go on to graduate and serve clients in the outside world.

As described above, the establishment of an association of legal clinics can be tremendously useful in improving the quality of national legal clinical education by creating a forum in which clinics work together to develop and accept standardized training materials and supervision practices. Quality of training and service provision could also be improved by the wide-scale adoption by all clinics in Kyrgyzstan of certain best practices followed by a few, such as 1) a rigorous application process to ensure that only the most committed students are participating in the clinic; 2) an apprentice-style system that channels 2<sup>nd</sup>-year students through a street law program<sup>176</sup> first (or some system of assisting older students) before students actually serve clients; and 3) a requirement that at least one practicing, licensed attorney is employed as an instructor by the clinic.

**Lack of clients.** Difficulty in finding clients was an issue expressed by about half of the clinics, particularly those that had not initiated any large-scale advertising system and with locations that were not immediately visible to the public.

Physical accessibility to the legal clinics currently poses another challenge to their ability to effectively serve clients. Observations made during the course of conducting interviews showed that all but a couple of the legal clinics visited were housed inside the secure perimeter of a university; some of the legal clinics were on the second or third floor.<sup>177</sup> Given that many clients are pensioners or disabled, reaching such a clinic may for some potential clients be a

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<sup>176</sup> Because this report focuses on the role of clinics as service providers, it does not describe in detail the street law programs in use at about half of the legal clinics interviewed. Through these programs, (usually younger) students receive training in basic legal questions and human rights issues and then travel around to various secondary schools making presentations and answering questions. Generally both students and professors expressed a high level of satisfaction with the use of these programs to provide students with basic legal knowledge and also provide important information to the general population. This is particularly important in Kyrgyzstan given that poor knowledge of the law or one's rights is consistently identified as a major barrier to justice in the country. See, e.g., UNDP, ACCESSING JUSTICE IN C. ASIA AND THE SOUTH CAUCASUS, *supra* note 24, at 18. Legal clinic students interviewed for the present study consistently identified ignorance of the law as one of the main social problems they identified through their clinical work.

<sup>177</sup> One clinical director even noted that the location of their office (which was provided by the university administration) was very difficult to access for elderly (pensioners) and disabled clients.

physical impossibility. Security checkpoints present another substantial barrier to potential clients. Some clients may be denied entry because they lack identification or are unsure of the location of the clinic they seek.<sup>178</sup> Even if security guards are instructed to admit clients who seek to visit the legal clinic, some potential clients may simply be unwilling to risk interaction with the guards, especially clients who have had unpleasant experiences with the security sector in the past.

**Image and prestige of clinics.** Most students reported that their clients were initially skeptical of their abilities as students, but that once they demonstrated their professionalism and knowledge, clients treated them in a more professional manner. Several students and a few instructors also noted that state officials, including police officers and judges, do not always take student-clinicians seriously. Those students who had done client representation in court reported mixed reactions from judges and other court officials. One student told me: “My first time in court representing a client, I was 19 years old. The judge thought I was the daughter of the client. I think that the judge felt uncomfortable with me at first, but after the third hearing, the judge started to treat me as a professional. He saw me not just as a little girl, but as a lawyer. And the same with the opposing counsel, they started to treat me as a lawyer.”

As suggested by this student’s comment, part of improving the level of prestige and public perception of legal clinics will simply involve the ongoing work of clinics such that increasing numbers of clients and officials know and understand the quality of their work. The public image of clinics would also be greatly improved by the standardization of training and performance requirements, as described above. Once again, a legal clinics association could play a critical role both in the standardization process and in raising awareness about the clinics’ work.

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<sup>178</sup> I (the researcher) was in fact denied entry to one legal clinic due to security concerns.

#### IV. RECOMMENDATIONS FOR LEGAL CLINICS AND LEGISLATORS

##### A. Recommendations for legislators:

Based upon the successful experiences of the countries described in this report, as well as the current legislation in the Kyrgyz Republic and the state of development of the country's legal clinics, legislators should:

- **Include consultation and representation in civil and administrative matters for vulnerable segments of the population in the revised SGLA law.**
  - o The rights guaranteed to Kyrgyz citizens under the Constitution and international law cannot be realized without meaningful representation in civil and administrative cases. Many of the most common problems Kyrgyz citizens face concern civil matters that substantially impair their abilities to live free and productive lives. The right to state-guaranteed legal aid in civil matters has been recognized by numerous other countries in their modernized SGLA laws, including several cases discussed above.
- **Adopt a mixed-model system of legal aid provision in the revised SGLA law, including provision of aid in certain types of cases by non-governmental organizations and university-based legal clinics in order to expand access to justice.**
  - o The United Nations, in its Guidelines on the Provision of Free Legal Aid, along with countless other international experts, has emphasized the importance of government cooperation with non-governmental actors such as civil society, private law firms, and university legal clinics in order to extend access to legal assistance to the maximum number of individuals in need. The Kyrgyz government should acknowledge the presence of numerous, active, and well-regulated legal aid NGOs and university-based legal clinics operating in the country by authorizing their provision of legal aid under revisions to the SGLA law.
- **Establish a legal aid coordination council under the Ministry of Justice to facilitate cooperation between governmental and non-governmental providers of free legal aid.**
  - o The establishment of such a council, comprising representatives from a range of relevant governmental and non-governmental bodies, would increase the effectiveness of cooperation efforts between the Ministry of Justice, municipalities, non-governmental organizations, universities, and other actors involved in the provision of free legal aid. Furthermore, the council could reduce the duplication of efforts by actors currently working independently towards similar goals of providing access to justice, while enforcing universal standards for service provision. Lithuania's Legal Aid Co-ordination Council provides an interesting model for such a coordinating body.<sup>179</sup>

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<sup>179</sup> The Co-ordination Council includes representatives from the Committee on Legal Affairs and several state ministries, the local authority association, the Lithuanian Bar Association, and other governmental and non-

- **Establish a system of accreditation for service providers and sign agreements with NGOs and legal clinics to provide legal aid as provided by the SGLA law.**
  - o In order to ensure a standard level of quality for the rendering of legal aid by government agencies and non-governmental partners, the Ministry of Justice should establish procedural standards for service providers and enter into official agreements with state-authorized providers, who agree to be bound by the regulations provided.
  
- **Together with the Ministry of Education, set minimum operational requirements and minimum educational standards for legal clinics.**
  - o Ukraine's 2006 Ministry of Education Order provides a helpful model for the establishment of standards and universal requirements for clinical operation. This would be a helpful first step in Kyrgyzstan for maximizing the potential of legal clinics to assist in the state-guaranteed legal aid system.
  
- **In consultation with the legal clinics, the Ministries of Justice and Education should develop student practice rules that would allow students to participate in the representation of criminal defendants under the supervision of qualified, licensed advocates.**
  - o Kyrgyzstan faces a critical shortage of qualified, well-trained criminal attorneys in order to establish a truly effective free legal aid system in criminal defense cases. Increasing the pool of advocates available to staff this system will require not only improvements in criminal law education, but also increasing interest in young law students to enter the field of criminal defense law. Allowing legal clinic students to become actively involved in limited aspects of criminal cases (for example, in the preparation of documents, interviewing of the client, attending court hearings, etc.), under the careful supervision of a licensed advocate, would accomplish both of these goals. The government of Kyrgyzstan should look to the example of South Africa, where law students and recent law graduates have long been successfully utilized as assistants in certain criminal law matters, serving thousands of indigent clients annually.

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governmental entities involved in the provision of free legal aid in the country. CAPE & NAMORADZE, *supra* note 68, at 208.

**B. Recommendations for legal clinics and law faculty administrations:**

In light of the foregoing best practices and challenges presented to the clinics at this time, in order to improve the overall quality of clinical education and service provision to clients (particularly in the light of the possibility of participating in the state-guaranteed legal aid system in the future), legal clinics should:

- Establish a legal clinics association with the purpose of enhancing cooperation between clinics, standardizing clinical practices, developing training materials, and fundraising for clinical education in Kyrgyzstan.
- Standardize training and curricula requirements to create a universal set of guidelines and preparation standards expected of clinical instructors and students.
- Develop and sign commitments to adhere to universal rules of ethics for legal clinics in Kyrgyzstan.
- Develop specialized criminal clinical programs in certain universities, where licensed advocates are working as faculty members and are available to supervise students.
- Ensure that each clinic is staffed by at least one full-time, dedicated faculty member.
  - o Hire at least one practicing attorney to work as an instructor in the clinic.
  - o Hire at least one licensed, practicing advocate to work in clinics specializing in criminal work.
- Increase recruitment efforts for academically meritorious, motivated students, and require a rigorous application process for admission to the legal clinic.
- Introduce a mandatory, semester-long course component for the legal clinic, using interactive teaching methods and awarding academic credit (or a grade on a transcript) to participants.
- Award academic credit for the practical aspect of legal clinic work, and require a set number of weekly hours for working on cases (including research and consultation drafting time).
- Hold required weekly reflection meetings for all clinical students and instructors in order to discuss case work, ethical issues, and other challenges arising in client counseling and representation.
- Pair younger, less experienced students with returning clinical students in order to enhance supervision by experienced clinicians.
- Continue and increase the scope of cooperative training programs and competitions between clinics, such as the annual client counseling competition (formerly sponsored by ABA ROLI).

