

PF Iya

## Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?\*

### Summary

In a paper published in the International Journal for Clinical Legal Education of 2000 (No 1 of November 2000), the result of a survey that was carried under the sub-title "country studies" relating to the provision of clinical legal education in a number of African countries, was analysed. In the concluding remarks, an argument was made for a "progressive integrated and holistic skills development programme in university law school curricula" possibly in Africa. The question which now needs serious reflection is whether such an integrated and holistic clinical legal education programme for Africa and indeed around the world is practically possible, given such diverse factors like structures, mechanisms and other variables employed in delivering clinical legal education in the different jurisdictions globally. In this study, therefore, we shall examine inter alia diversity as a concept; explore the possibility of contextualising the debates on diversity in the arena of curricula for CLE; establish and analyse the strengths and weaknesses of diversity in the context of CLE; and showcase the experience of some universities in Africa engaged in streamlining their curricula for clinical legal education. In particular, we shall focus the discussion by examining the challenges and lessons to be learnt in developing an integrated CLE curriculum in South Africa. This is contextually significant, given issues and factors relating to globalisation in the context of South Africa's emerging new dispensation characterised by a highly multicultural society and her new constitutional and democratic order. By engaging in such a debate and addressing the above and other related issues it is hoped that sufficient arguments will have been generated and will continue to be developed to provoke more thoughts and deeper reflection in the area of diversity and curriculum development in South Africa in particular and in other jurisdictions generally.

### Diversiteit in die voorsiening van kliniese regsopleiding: 'n Sterk punt of 'n swak punt in 'n geïntegreerde opvoedingsprogram

In 'n artikel in die International Journal for Clinical Legal Education (Nr 1 van November 2000) is die resultate gepubliseer van 'n studie aangaande die voorsiening van kliniese regsopleiding in 'n paar lande in Afrika. In die laaste gedeelte van die artikel is die stelling gemaak dat "n progressiewe geïntegreerde en holistiese vaardighedsprogram in die universiteitsregskool kurrikula" moontlik is in Afrika. Die vraag wat egter ernstig oor besin moet word, is of so 'n benadering prakties moontlik is in Afrika en selfs wêreldwyd

\* Acknowledgement: In developing this paper, the author remains grateful to the North-West University (Mafikeng Campus) for availing the necessary funds and facilities without which this achievement would not have been attained. The same sentiment of gratitude goes to Mr. Njuh Fuo, a Tutor and Research Assistant in the Law Faculty.

Iya/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

gegewe sulke diverse faktore soos strukture, meganismes en ander veranderlikes wat gebruik word in die lewering van kliniese regsopleing wêreldwyd. In hierdie studie ondersoek ons inter alia “verskil” as ’n konsep; die moontlikheid word ondersoek om die debatte te kontekstualiseer as dit kom by kurrikula vir kliniese regsopleiding; vas te stel en te analiseer wat die sterk punte en swak punte is; en te toon wat die ondervinding van sommige universiteite in Afrika was in die verband. In besonder sal daar gefokus word op die uitdagings en lesse wat geleer kan word wanneer ’n geïntegreerde kliniese regsopleidingsprogram ontwikkel word in Suid-Afrika. Dit is kontekstueel van belang gegewe faktore soos globalisering in die konteks van Suid-Afrika se nuwe bedeling met haar multi-kulturele samelewing en nuwe konstitusionele en demokratiese bestel. Deur hieroor te debatteer en bogenoemde aan te spreek word vertrou dat voldoende argumente aangevoer sal word en stof tot nadenke sal lewer in die area van diversiteit in die ontwikkeling van ’n kurrikulum in Suid-Afrika in besonder en in ander jurisdiksies oor die algemeen.

## 1. Introduction<sup>1</sup>

“Unity is strength” has continuously remained a statement seldom challenged and most times taken for granted. But would the same degree of acceptance also apply to a related phrase: “Diversity is (*a fortiori*) a weakness”? How then would one reconcile the apparent dichotomy in the phrase “unity” in “diversity”: The former word supposedly “strength” while the latter supposedly a “weakness”? In the context of clinical legal education, the area of focus for the present conference, would one consider “diversity” a strength or a weakness?

Given these questions, what concerns the present writer most, is not so much the issue of the truth or falsity about the dichotomy between unity and diversity together with their implications (debatable issues in their own right), but rather the issue whether the concept of diversity can, by its nature, be a source of strength or a weakness or even both — more so when applied to efforts directed to developing an integrated clinical legal education (CLE) programme.

For the purposes of this discussion, the term “integrated CLE programme” needs some explanation. Firstly, the term “clinical legal education” (CLE) as broadly understood and used refers to the method of instruction in which students engage in varying degrees in the actual practice of the law. This is where students get the opportunity to apply the theoretical aspects of their training to real-life or simulated situations.<sup>2</sup> The concept of an “integrated CLE programme” derives from an earlier, but related, discussion to the present one in which it was argued that in South Africa, although there is a general agreement on the need to strengthen clinical legal programmes at law faculties/schools, the specific nature of and the level at which such programmes should be offered has remained contentious, hence the quest for a “progressive, integrated and holistic skills development programme in university law school curricula”.<sup>3</sup> The rationale for such a quest is stated as follows:

1 This paper was originally presented at the *International Journal of Clinical Legal Education* Conference held from 9 to 11 July 2007 at the University of the Witwatersrand in Johannesburg, South Africa.

2 See Iya 2000:16.

3 Iya 2000:29-30 where details of such a programme have been argued.

Developments in legal education have tended to compartmentalise the study of law into stages; academic, vocational and continuing education and have created dichotomies which have placed a wedge between scholars and practitioners. However, what is generally recognized is that, such division of legal education into stages or compartments is arbitrary, unnecessary and confusing. More importantly, it confuses the objectives of legal education and encourages division within the legal profession instead of abolishing it. In the eyes of those who view legal education as a continuum such divisions are more distractive than constructive.<sup>4</sup>

The significance of the above quotation is to underscore the conceptualisation of the term “integrated CLE programme”.

While in search for some answers to the above concerns, and faced with the existence of today’s global village so intricately infested with a wide range of issues of diversity, the following statement was discovered and found to be a relevant beginning to addressing issues of diversity when training lawyers of tomorrow in a global context.

The challenges of the twenty-first century are daunting for humankind as a whole. Rapid developments in technology, changes in the geopolitical climate and the recognition of issues of global concern among other things, will demand that the legal processes respond in an appropriate manner. Despite the many problems associated with globalisation, I believe that it is a trend that is irreversible. This will, in turn, require more effective and sensitive unilateral legal regulation in many areas. As a result, it is important to put in place an educative process that will best equip the lawyers of tomorrow to operate effectively in this changing environment and allow them to preserve the important and relevant role of law in the conduct of contemporary transnational relations.<sup>5</sup>

The presence at this conference of many participants from different universities, communities, regions and continents is clear evidence of the result of globalisation (an irreversible phenomenon), which forms the gist of what the above statement is all about. But the more important point in the same statement, for the purpose of this conference, relates to “the many problems associated with globalisation” (including problems of diversity), which require not only a more effective and sensitive response but the need to put in place an educative process that will best equip the lawyers of tomorrow to operate effectively in this changing environment. (See underlining above). The emerging question therefore is: how should we, as legal educators, approach the stated educative process that will best equip lawyers of tomorrow to operate effectively in this globalised world of the twenty-first century highly infested by issues of diversity? How can we have a more effective and sensitive response in the area of clinical legal education to this irreversible phenomenon called globalisation? Can we achieve unity in diversity? Can we do so as we constantly engage in issues of reviewing and developing an appropriate CLE curriculum for lawyers in the 21<sup>st</sup> century and beyond in the emerging globalised village?

---

4 Iya 1998:142.

5 Freeland 2004:36. Also note that the underlined words represent my emphasis.

Iya/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

Given the above situation, this paper starts with the contention that one possible response to the above challenges of globalisation to the legal education process is to focus our attention on working towards an integrated system of curriculum development for CLE that aims at best equipping the lawyers of tomorrow to operate effectively in the changing environment. Besides, we have to also seriously address those negative forces, which hinder our efforts in attempting to develop the kind of an integrated curriculum of the nature and purpose addressed by Freeland's in his statement indicated above. This paper proceeds to contend further that diversity, much as is often considered a weapon of unity and strength, can also be proved to be a tool of frustration and impediment to the development of the desired integrated curriculum for CLE for a changing world due largely to globalisation characterised by diversity. Hence the concern whether diversity is in fact and by practice, a strength or a hindrance in the process of developing an integrated curriculum for CLE for transnational lawyers of tomorrow.<sup>6</sup> Integration here refers to the act of combining all different aspects of the teaching and learning processes into one desired goal for CLE.

In 2000 an article on clinical legal education for the twenty-first century analysed the result of a survey (country studies) relating to how many African countries have used programmes of clinical legal education for "fighting Africa's poverty and ignorance". In concluding that discussion, it was argued that what African University law faculties or schools need is a progressive integrated and holistic skills development programme i.e. CLE curriculum for fighting the evils of poverty and ignorance.<sup>7</sup> What is very characteristic about the discussion is the emergence of issues of diversity in the programmes for clinical legal education in the identified countries, just as much as issues of integration and unification. Regrettably, no adequate attention was paid to addressing these issues in terms of their specific complexities when it comes to provision of CLE. Hence the need here to reflect more seriously on whether the proposed integrated system of CLE curriculum for Africa and globally is practically possible given their present diversity in the different universities, countries, regions and continents. The obvious expectation is, therefore, a discussion on the issue of diversity, analysing its nature and degree of complexity in the context of provision of CLE and posing the question whether an integrated and holistic programme for lawyers in Africa or globally in the 21<sup>st</sup> century is achievable. This, in turn, begs the question whether diversity in provision of CLE is strength worth the effort to achieve or a weakness undeserving of that effort.

In view of the above, this discussion aims to highlight the following issues:

1. Acknowledging the complexities and importance of diversity;
2. Analysing the application of diversity in CLE curriculum development;
3. Establishing and analysing specific strengths and weaknesses in applying diversity to CLE;

6 In this paper the term "transnational" is preferred to "international" or "multinational" due to a possible limitation presented by the other two terms.

7 Iya 2000:13-32 (read especially 29-31).

4. Showcasing the experiences of South African universities in developing an integrated programme, given their degree of diversity in CLE programmes;
5. Considering the emerging lessons and plotting a road map for the future.

It is hoped that by highlighting the main issues involved in the above themes, sufficient arguments will be generated and developed to provoke more thoughts and additional research on the debates relating to the goal of an integrated and holistic curriculum for CLE for a changing environment caused by globalisation during the 21<sup>st</sup> century and beyond.

## 2. Acknowledging the complexities and importance of diversity as a concept

The simplicity with which most people view diversity tends to ignore its ambiguity and related complexities. While it is easy to appreciate that the term diversity derives from the word “diverse” meaning unlike in nature or qualities, the complication starts to emerge when a narrow perspective is attributed to diversity as a concept. For example there are those who limit diversity to gender and race.<sup>8</sup> South Africa is one country where the word “diversity” is commonly used (especially after the new dispensation) by most people who associate it with different race groups.<sup>9</sup> Logical as these approaches may be they remain simplistic, narrow and incomplete.

Over the years, and more particularly in current discussions the world over, diversity has taken a more comprehensive description, transgressing far beyond the limits of gender and race. Viewed broadly, therefore, diversity refers to any mixture of items characterised by differences and similarities some of which include race, gender, age, culture, class, language, affiliation, education, experience, sexual preference, physical ability and geographical location — to mention but a few of the relevant variables.<sup>10</sup> As correctly concluded, diversity is about differences in lifestyles, thinking, education, processing information and ensuring how agreements are reached. It is about individual contributions, personal growth, acceptance and appreciation, trust, respect and sharing of information.<sup>11</sup>

Consistent with the above broad view, diversity has accordingly been conceived as “referring to human qualities that are different from our own and those of groups to which we belong, but that are manifested in other individuals and groups”.<sup>12</sup> More importantly, three crucial features of diversity have been offered, namely:<sup>13</sup>

- 8 See Thomas H 2004. “University dons and warriors chieftains: Two concepts of diversity” in Fordham School of Law Research Paper No. 45 (accessed on 14 June 2007) at SSRN: <http://ssrn.com/abstract=514302>.
- 9 Rosmarin 2000:497.
- 10 Rosmarin 2000:499.
- 11 See <http://www.dla.mil/dimensions> (Defense Logistic Agency — DLA) (accessed on 14 June 2007).
- 12 For further discussion on the definition refer to <http://hrweb.berkeley.edu/seads/diverse.htm> (accessed on 14 June 2007).
- 13 Rosmarin 2000:499.

lya/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

1. Diversity is not synonymous with differences, but encompasses differences and similarities, i.e. it does not only deal with, for example, how people or things are different but also how they are similar.
2. Diversity refers to collective (all-inclusive) mixture of differences and similarities, i.e. when dealing with diversity, you are focusing on the collective picture, not just pieces of it.
3. Diversity deals with varied perspectives and approaches.

In addition to acknowledging the complexities of diversity as a concept, it is also necessary to appreciate the importance of the value of diversity and the modalities for managing it. However, before we deal with these issues especially in the context of providing clinical legal education, we first have to contextualise and explore the application of diversity as a concept to issues of CLE, the focus of the subsequent discussion.

### 3. Diversity in CLE curriculum design, application and development: Analytical perspective

A quick reference to our earlier recognition of the presence of conference participants from different universities, regions, and continents is significant in appreciating the application of diversity in provision of CLE. While on the one hand we, as legal educators, are all involved in or concerned about provision of CLE (our similarities), we are nevertheless different not only in geographical terms, i.e. where we come from, but also different in our respective roles in providing CLE. Hence, a clear evidence of diversity in provision of CLE. Another typical example to illustrate application of diversity in the context of CLE relates to the students participating in CLE programmes. Students from different geographical and family backgrounds characterise most law faculties/schools. In addition, there are students whose mother tongue is not English and who have different cultural traditions. This is not to mention the existence of students of different gender and age groupings. The point being emphasised, therefore, is that many of us provide CLE in the context of student diversity.

The range of diversity identified above should not lead one to conclude that diversity is limited only to the various backgrounds of providers and recipients of CLE. The wide range of the different features of diversity include areas like policies and regulations, structures and mechanisms, content, i.e. teaching, learning and assessment methods, materials, duration, educational environment, resources, facilities etc., the details of which can provoke new issues for further debate. Besides, it has further been argued elsewhere that in most instances, 60% or more of the client base for law clinics consists of indigents (minorities in the United States and majority blacks in South Africa) with cultural and economic backgrounds, education levels, view points, and sensibilities different from the student-lawyer.<sup>14</sup> Indeed, these clients constitute the critical mass of diversity in

---

14 <http://clrn.law.cunmy.edu/clea/clea.html> (accessed on 14 June 2007)

the law faculty/school CLE experience i.e. the people with whom law students relate and interact on day-to-day basis.<sup>15</sup>

The list of the aspects of diversity may be short or long depending on each institution of CLE's approach to the application and management of diversity in their peculiar circumstances. However, the critical issue remains whether diversity plays an important role when applied in the context of providing CLE. That, in turn, depends on the advantages and disadvantages derived from the same application, an issue that requires detailed insight discussion in the subsequent paragraphs.

#### 4. Strengths and weaknesses in application of diversity to CLE

##### 4.1 General viewpoints

It is in the management of diversity that one can establish its strengths and weaknesses. The problem, however, is that one finds no clear and available information on what constitutes an effective system for managing diversity and how it can be applied in CLE. In an attempt to respond to the problem, one author writing on managing organisational diversity argues that throughout the world, greater attention is being paid to the importance of the individual in organisations and society and that managing diversity supports the notion that an individual's contribution to an organisation should be appreciated.<sup>16</sup> According to this author:

The management of diversity is being able to work with individuals from different backgrounds in a manner that enables them to reach their full potential in pursuit of organizational objectives, without anyone being disadvantaged by irrelevant considerations. It is a process to develop an organisational environment that works for all employees, one that does not control or contain diversity, but enables members of the workforce to perform to their potential.<sup>17</sup>

The critical points raised by the author about managing diversity related to:

- being able to ensure that those individuals from different backgrounds are accepted and appreciated;
- being able to ensure that those individuals referred to above reach their full potential in pursuit of organisational objectives without excluding them because of their diverse backgrounds;
- being able to develop an organisational environment that works for all.

---

15 For further arguments on the point read the case of *Grutter v Bollinger* 2002, Case No. 02-0241, which challenged the University of Michigan Law School's consideration of an applicant's race as one factor in its admission process. The case is also found in: <http://clrm.law.cuny.edu/clea.html> (accessed on 15 June 2007).

16 Rosmarin 2000:500.

17 Rosmarin 2000:500.

lya/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

Of course the natural emerging question remains whether we accept the above attributes as important for managing diversity. If we do, how then can we apply them to managing diversity when providing CLE? What strengths and weaknesses, advantages and disadvantages are available to those faced with managing diversity in CLE programmes? If unity is strength, is diversity a weakness? The importance of these questions to our present debate need no over emphasis.

The contention here though is that on the one hand, by managing diversity in the most effective and efficient way, the following advantages will be realised:

1. It can ensure that individuals or groups of individuals, from the different backgrounds rally around a common vision, mission or objectives despite their respective differences. A case in point is the statement in the Preamble to the South African Constitution of being “united in our diversity” for purposes of achieving the national vision, mission and objectives set out in the Preamble. It is a call to all South Africans, with their diverse backgrounds, to be united and to forge forward to achieve a common national purpose or cause. In that respect, therefore, diversity properly managed can result in bringing everybody together to work for a common goal.
2. It can ensure that individuals, or groups of individuals, from different backgrounds but with a common purpose begin to work towards improving a particular organisation, institution or society generally by challenging the way in which work is done, the values which the organisation (institution or society) supports and jointly developing the most effective functions, systems, policies, strategies and structures. When allowed to do so, individuals will begin to identify fully with the organisation and develop greater motivation to add value and to make contribution for improvement.
3. It can ensure an environment of better understanding and appreciating diverse viewpoints and experiences exchanged among individuals or groups, thereby expanding their horizon for managing even better external/global conflicts and challenges.
4. It can ensure and encourage equal opportunities by promoting inclusiveness.
5. It can ensure adequate responsiveness and capacity to cope with change within an increasing diverse world resulting from globalisation.
6. It can ensure a response to the challenge of proper management of conflicts and all forms of diversity.

However, if on the other hand diversity is poorly managed, the result can be disastrously counterproductive in the following ways:

1. It can cause miscommunication due to failure in understanding other peoples’ backgrounds.
2. It can cause mistrust and suspicion due to failure in appreciating other peoples’ viewpoints and practices.
3. It can cause diverseness due again to failure to appreciate and accommodate others with different backgrounds.



4. It can be a cause of potential conflict due to failure to adjust to and take cognisance of other people's values and practices.
5. It can be a cause of xenophobia due to deep dislike of others with different backgrounds.
6. It can be a cause of stressful conditions due to failure to compromise and/or agree by mutual concession.
7. It can reduce productivity or attainment of vision and goals.
8. It can cause stereotype thinking and behaviour due to conforming to an unjustifiably fixed or standardised mental picture on account of one's background.

## 4.2 CLE specific approaches

With particular reference to the benefits that CLE programmes will derive from diversity, the case of *Grutter v Bollinger* provides a list, some of which include the following advantages or strengths:<sup>18</sup>

1. Awareness of diversity can assist students to interact more positively with the environment and to respond more directly to clients' needs.
2. Interacting within a diverse environment can generate different viewpoints and experiences, which, in turn, encourage and prepare students to better understand the external world and global trends and to become better future lawyers.
3. Educating lawyers in a diverse environment can assist clinicians to train law students to work with clients from different cultural and economic backgrounds, educational levels, etc.
4. Experiencing a wide variety of perspectives which often reflect different racial and ethnic backgrounds, allows each individual law student, whether from a majority or a minority, to consider his or her own perspectives in a larger context, to gauge assumption, to evaluate possible bias and to confront difference through dialogue.<sup>19</sup>

A good conclusion on this issue is the statement that diversity in a law school student body benefits all law students but more particularly the students on the CLE programme in the sense that:

In preparing clinical law students (student lawyers) to navigate today's increasing multi-cultural, diverse national law practice and the growing complex global law practice, law schools in general, and law school clinics in particular, must teach student lawyers the skills to understand, embrace, and respond to difference in education, socio-economic background, culture, and opinion, whether in their future clients, fellow counsel, judges, witnesses or juniors. These skills cannot be imparted without a diverse law school body.<sup>20</sup>

18 *Grutter v Bollinger* 2002. Read specially "Summary of the argument" where these advantages are outlined in greater details.

19 Refer also to <http://webapps.acs.carleton.edu/voice/department.php3id=287> (accessed on 13 June 2007).

20 *Grutter v Bollinger* 2002.

lya/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

Our conclusion from the above analysis is therefore that diversity can be a strength. However, despite the apparent high degree of advantages advanced in support of the strengths of diversity both generally and with particular reference to law schools/faculties and their CLE programmes, a number of drawbacks have also been identified where the environment is not homogeneous. They include the following i.e. lack of diversity results in:

- non-exposure of students to the different viewpoints generated by diversity;
- absence of skills development for managing diversity when it comes to students understanding of multi-cultural, social and economic issues;
- ignorance about understanding others, including clinics, clients, members of the profession, the legal system etc all of whom are so closely entangled in the cobweb of diversity;
- developing a legal education system that is insensitive to a pluralistic global world;
- destroying rather than enhancing public confidence in the legal system, legal profession and legal education to which there is so much expectation and benefits the world over.<sup>21</sup>

## 5. Experiences of South African university law schools in developing an integrated CLE programme<sup>22</sup>

### 5.1 A micro-level experience at North-West University

It is a well-known fact that North-West University became a legal entity on 1<sup>st</sup> January 2004 when the then University of North-West and Potchefstroom University for Christian Higher Education merged to form a single new University in terms of Section 23 of the *Higher Education Act* No. 101 of 1997.<sup>23</sup> The staff and students of Sebokeng Campus of Vista University in terms of Section 24 of the same Act No. 101 of 1997. Currently the University has three campuses at Potchefstroom, Mafikeng and Sebokeng.<sup>24</sup>

More important for this discussion is the emerging development, notably in the transformation agenda and process resulting in the formal legal process for establishing merged institutions and the substantive integration of the merged institution in terms of academic programmes and structures. According to the given agenda and processes, legally it is provided that the new North-West University will continue with all academic programmes offered by the old

<sup>21</sup> *Grutter v Bollinger* 2002.

<sup>22</sup> In this discussion the terms “CLE programme” and “CLE curriculum” are used interchangeably to refer to the same concept.

<sup>23</sup> It may be recalled that University of the North-West was born out of the then University of Bophuthatswana which ceased to exist by virtue of the new dispensation.

<sup>24</sup> Additional details on the merger can be found in the North-West University institutional Plan 2007-2009. Read especially the “Background” in Section A to the Plan.

universities in terms of the rules that applied immediately before the merger of the respective universities until such time as those programmes and rules are changed by the Council of the new University.<sup>25</sup>

Consistent with the above agenda, 2006 witnessed the approval by both the Institutional Council and Senate of academic programmes alignment as outlined and discussed in the White Paper dated 10 May 2006.<sup>26</sup> The necessity for the White Paper arose as a result of the realisation that there was too much diversity in the programmes offered by the old universities and so it came as no surprise that the White Paper recommended an academic programmes alignment process as one of the several means of achieving the new University's mission of working towards a co-ordinated integrative institutional approach to the merger.<sup>27</sup> In compliance with the approved transformation agenda of aligning all academic programmes, the two law faculties from the Potchefstroom and Mafikeng Campuses (no law faculty on the Sebokeng Campus) met in August 2006 and discussed the strategies of implementing the alignment agenda. The resulting process was meant to ensure that by end of 2007 the law curriculum at both Campuses in Mafikeng and Potchefstroom will have been integrated or aligned in accordance with the mission of the merger referred to above.

What makes the above background so significant to this discussion relates to the emerging challenges presented to the two law faculties, and indeed to other faculties of the merged universities, in ensuring a successful integration, given the diverse historical and other related factors characterise each of the merged institutions.<sup>28</sup> Faced with the task of developing an integrated curriculum for the two law faculties, meetings were initiated during which discussions focused on integrating subject modules, teaching materials especially study guides, teaching methods, assessment criteria and methods to mention but a few. The experience of the challenges of diverse and similar programmes and measure of the effort to come to some consensus has indeed been a daunting one.<sup>29</sup>

Of particular interest is the experience of the clinical team from the staff at Mafikeng Campus in attempting to overcome the following areas of diversity between the two law faculties:<sup>30</sup>

25 Section 23 (2h) (1) of Act 101 of 1997.

26 For details read the White Paper dated 10 May 2006 on "Academic Programme Alignment at NWU".

27 For example, the then Potchefstroom University was a White, Afrikaans Christian University with students from elite, mostly rich family backgrounds; the then University of the North-West (previously of Bophuthatswana) was a black, African and secular university with mostly black students from poor family backgrounds. The diverse cultural and pedagogical principles which determined the educational programmes at these institutions were so vast and complex as to merit a separate discussion.

28 The author of this paper was directly involved in the discussions between the two law faculties in his capacity as Director of the Undergraduate School at the Mafikeng Campus of the Law faculty.

29 This information was provided by the team from the Mafikeng Campus who are tasked with the responsibility of driving the process of integration of the CLE programme for both campuses.

30 The general commitment by university law School of Community outreach under which CLE is provided has already been argued. See Iya 2000:15.

lya/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

1. The background of the students on the CLE programme at both campuses is remarkably diverse in terms of demographics, family and educational orientation, language, cultural traditions, economic backgrounds etc.
2. The clients that come to the respective law clinics also different in similar proportions like the CLE student population.
3. As to the location of the clinics, on one campus the clinic is situated within the law faculty while on the other it is located away from the faculty in some place near the city centre.
4. The resources to run the CLE programme also differed as evidenced by the size of the clinics and the facilities available.
5. On one campus CLE was offered only to the final fourth-year students while on the other the programme is offered to all the different years of the LLB programme.
6. The content of the programmes also differed in that on one campus the emphasis is on criminal cases while on the other campus the students handle both civil and criminal cases.
7. With reference to teaching and learning methodology, one campus utilises a method known as “round-table discussion” of cases and formal presentation by small groups of students, a method not used on the other campus.
8. As to teaching materials, one campus has developed an elaborate study guide or teaching manual, which is not available on the other.
9. A remarkable difference also exists in the methods of assessment in that on one campus both formative and summative methods of assessment are enforced while on the other only the formative method is in place.
10. There is also a significant difference in the staff profile in terms of demographics, teaching experience and status at the university.

By identifying and focusing on the above aspects of diversity, there is no intention of minimising the strong aspects of similarities that are also evident. They include adherence to the broad objectives of CLE, enforcement of strict professional ethics and standards of practice, clear management structures and mechanisms, adequate resources and many other matters commonly found in most CLE programmes.<sup>31</sup>

Whether the above aspects of diversity with the identified differences and similarities by and large constitute strengths and/or weaknesses for the development of CLE programme at the North-West University faculties of law remains to be seen as it may be too early to pass any judgment in that regard. Nevertheless the micro experience at this university in matters of diversity serves as a useful tool or yardstick to measure what happens at a macro level in South Africa, Africa and globally. A brief survey to provide a wider macro perspective of diversity in the area of CLE may prove useful for better understanding the complexities of diversity in developing the desired integrated CLE programme where possible.

---

31 Read the Preamble to the *Constitution of South Africa* 106/1996.

## 5.2 Perspectives at the macro levels

### 5.2.1 The South African experience

It is important to note here that the discussion on the micro elements of diversity experienced at the North-West University only mirrors a similar experience at a macro level first in South Africa and perhaps in Africa as well. It is not by accident that the South African Constitution puts so much emphasis on Unity in Diversity.<sup>32</sup> What South Africa went through in building its peculiar history is a matter of common knowledge undeserving of repetition here. The critical point to emphasise is that the internationally condemned discriminatory system which has characterised the country's history led to an uneven landscape for education generally and legal education in particular resulting in a range of an integrated and unevenly diverse system of delivery of educational programmes, including those for CLE. The new landscape that emerged post apartheid was the contentious, but largely successful reconfiguration of higher education in terms of size and shape commonly referred to as "the merger system" the impact of which was felt when the North-West University was established as earlier discussed.

Like with the scenario at the North-West University, the merger of universities in the country introduced the mission of integrating academic programmes. But unlike the North-West University, the magnitude of diversity to deal with, let alone the complexities of the issues of integration, do not appear to urge any prospects of an integrated CLE for University law faculties/schools in the country. Aware of these challenges, the umbrella body of legal aid institutions in the country, known as The Association of University Legal Aid Institutions (AULAI) was established to, among other things, achieve some level of integration and benchmarking standards and procedures through promoting high quality CLE programmes at universities in South Africa.<sup>33</sup> Promotion of high quality CLE programmes at university law clinics may not be easy to achieve in a diverse and heterogeneous environment for CLE. The question, though, is whether an environment of integrated CLE in South Africa and elsewhere in Africa is achievable, given the complexities of diversity derived from and perpetuated by historical factors. All the same, the phrase "Unity is diversity" will continue to be the guiding star along the dark and difficult road to integrating not just the society generally but also CLE programmes in South Africa and beyond.

### 5.2.2 Experiences in Africa and beyond

It is common knowledge that determined efforts are being rigorously applied in developing different aspects of integration at regional, continental and global

---

32 Refer to the preamble of the Constitution.

33 See the Mission of the Association in Section 3 of the Constitution. Furthermore, in reaching these conclusions, the writer relies not only on the points raised in the discussion but on suggestion from such other sources like the arguments advanced in the case of *Grutter v Bollinger*.

ly/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

levels.<sup>34</sup> However, these efforts are being frustrated by hurdles, which have to be overcome before a meaningful integration can be achieved. Evils like crimes, diseases, illiteracy, wars at both national and regional levels, debt crisis, unemployment, corruption and many other challenges to integration continue to divide Africa even more.

Given the above barriers, will a meaningful integration be achieved? Meaningful in the sense of deriving optimum advantages associated with the strengths of diversity. What kind of “Unity in diversity” can work in these circumstances? How do we extend if at all, the notion to developing an integrated CLE programme in response to the challenges of globalisation?

### 5.3 Towards a principled approach to diversity management

The earlier discussion and the acknowledgement of different experiences, whether at micro or macro levels, goes to confirm the assertion that diversity as a concept and in its application is a very complex process. It is like a two-edged sword: if well managed it becomes productive (a strength) and if not, it becomes counter-productive (a weakness). However, given the notion that unity in diversity presents the positive aspects of diversity, it becomes necessary to explore when and how (approaches to) diversity can lead to productive results. In that regard many approaches have been advanced.

One approach emphasises that to manage the diversity of the workforce, individual needs and aspirations must be matched to the attainment of organisational goals and must be “in tune” with market needs. This means unity of purpose must be emphasised in managing diversity.<sup>35</sup> Another approach emphasises the value of accepting differences in people and by so doing fostering an environment of mutual trust and respect. This is a human rights approach where individuals are respected and valued regardless of their background thereby creating a sense of community where each individual has a role to play or contributions to make because it is the respect and value that you have for others which indeed is the essence of diversity.<sup>36</sup>

A more comprehensive approach has been offered within the umbrella of “Diversity, human rights, tolerance and values”. Under this heading the various important elements have been identified;<sup>37</sup> they include:

- \* nurturing and maintaining a culture of human rights and respect for shared values, ensuring that students understand and appreciate the importance of human rights, patriotism and serving the country and all its people;

---

34 Examples include SADC, ECOWAS, EAC and the African Union.

35 Rosmarin 2000:501.

36 A point argued by the Defense Logistic Agency in their document available at: <http://www.dla.mil.dimensions/septoct99/sep98/div-insert/diversity-page-1.htm> (accessed on 14 June 2007).

37 This is the approach adopted by North-West University as part of their institutional plan. See North-West Institutional Plan 2007-2009 *supra*:8.

- \* developing an organisational climate of understanding, appreciation and tolerance of all cultural practices, beliefs and ways of living among members of the North-West University (NWU) community;
- \* protecting the NWU as an entity where values and principled thinking are important;
- \* ensuring that the NWU is driven by a single set of constitutionally based values, especially human dignity, equality and freedom;
- \* ensuring that the NWU develops a unique institutional culture and ethos based on the unity and value system of the University.

Finally there is the constitutional approach, which not only acknowledges the complexity of diversity but ensures that the values of diversity in South Africa are part of core values entrenched in the Constitution.<sup>38</sup>

In own view, it would be correct to assume that the student population in most law faculties/schools the world over are heterogeneous in terms of multi-culturalism and related variables. Therefore, a total commitment to a comprehensive approach to diversity management in dealing with issues of legal education generally and CLE in particular, would be the most appropriate. Moreover, as countries, regions, continents and indeed the whole world is becoming more and more multi-cultural, the practice of law, just as much as the legal systems and legal education, too are becoming more diverse. After all in a competitive global environment multi-cultural, multi-disciplinary and multi-dimensional approaches cannot be avoided. Hence, the need for a comprehensive approach to diversity management for CLE.

## 6. Emerging lessons and plotting the road map for the future

### 6.1 Emerging lessons

On offer are a variety of lessons that can be learnt by legal educators in the context of attempting to develop an integrated CLE programme. They include:

- \* accepting that globalisation is irreversible and putting in place an educational process including CLE programmes that will best equip the lawyers of tomorrow to operate effectively in the changing environment of the twenty-first century;
- \* understanding and acknowledging the importance and complexities of diversity;
- \* appreciating the benefits of managing diversity based on sound and clear principles to achieve common vision, mission and goals;
- \* understanding the value of diversity and being aware of its strengths and weaknesses;

---

38 See Preamble to the Constitution, Cap 106 of 1996.

itya/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

- \* contextualising diversity to issues of CLE by acknowledging that CLE aims at educating the lawyers of tomorrow to enter into a multi-cultural world and legal profession;
- \* accepting that the legal profession is increasingly becoming global in the context of lawyers being faced with arrays of problems that involve multi-cultural considerations;
- \* acknowledging the fact that a diverse class of law students creates opportunities for those students, in their clinical, classroom, journal, and social interactions, to confront stereotypes and prejudices and gain the ability to better critically analyse their own views;
- \* sharing the experiences of those who have or are constantly faced with challenges of diversity.

## 6.2 Lessons for curriculum development

The challenges of globalisation resulting in the search for general transformation of legal education in the context of emerging challenges has necessitated the revisiting of the status and role of clinical programmes of law faculties/schools the world over. In that regard, South Africa continues to demonstrate a good showcase of such challenges, given the context of an emerging new dispensation characterised by a highly multicultural society and a new constitutional and democratic order. That notwithstanding, one may note that although there can be a general agreement on the need to strengthen clinical programmes, the specific nature of the level at which such programmes should be offered will remain contentious, thereby provoking debates on issues of interrogating further issues of the different aspects of an integrated CLE curriculum. In that respect, the position taken here is that an acceptable integrated CLE curriculum has to take into account the society within which it is meant to operate. This is important because a curriculum does not develop in a vacuum. Therefore, in designing it one must also consider the values, traditions, beliefs and the whole culture or ways of life of the society concerned. At the same time, one has to also consider the broad philosophical and pedagogical issues relating to the aims and objectives of legal education in particular and of education in general.

Applying the above to issues of diversity in the context of designing an integrated CLE curriculum, the desire to engage in developing such a curriculum cannot ignore the existing inevitable context of diversity in a society so intricately infested with those issues at all levels. In that regard, one may benefit from a few relevant tips or lessons when considering the development of an integrated curriculum aimed at educating lawyers of tomorrow to enter into a multicultural world and legal profession. Among the lessons to be considered is included the suggestions that diversity when well managed can lead to the development or emergence of diverse learning styles;<sup>39</sup> it can also lead to a renaissance

---

39 Sylvia Hurtando, How diversity affects teaching and learning: Climate of inclusion has a positive effect on learning outcomes. [www.diversityweb.org/research\\_and\\_trends\\_evaluation\\_impact/benefits.html](http://www.diversityweb.org/research_and_trends_evaluation_impact/benefits.html) (accessed on 02/09/2007).



in curriculum development;<sup>40</sup> and it certainly will help in generating additional viewpoints and ideas and expanding the sources of creativity, talent and experience so much needed by lawyers of tomorrow.

### 6.3 The way forward

With the above lessons in mind and considering the fact that diversity is so critical to CLE in a changing world, it is imperative that legal educators generally and providers of CLE have to first acknowledge that the changing world has serious implications on legal education. Apart from the acknowledgment, legal educators and all those concerned need to urgently address the issue of curriculum review to match the multi-cultural context of the changing world.

In case of CLE an urgent need also arises for reassessment of the goals of legal education and CLE in particular. This is an on-going exercise, which should take place at least every three to four years in response to the continuously changing legal practice.

More importantly, whatever strategies are intended for the way forward, the same should not be done in isolation. In that respect the need for strengthening mechanisms for information sharing, capacity building, collaboration and co-operation should not only be emphasised but effectively and efficiently driven.

In pursuing the above and other related strategies, research will continue to play a critical pivotal role. Funding research projects in the area of CLE should, therefore, receive a priority consideration, a point we have consistently advocated in all our past discussions.

## 7. Conclusion

The issue of diversity conceptually and in its application to the legal education landscape, whether at a micro or macro levels remains the cornerstone of this paper. CLE has been singled out in the discussion not so much because it forms the focus of the present conference, but more importantly, because diversity by its very nature plays a critical role for CLE and this should always constitute a core thinking and application through proper management of CLE programmes.

Emerging challenges and new experiences of law faculty/schools in response to the global challenging environment have to take centre stage of all concerned. Hopefully the arguments advanced in this discussion have addressed all these and other related issues.

---

40 Debra Humphrey, Diversity and the college curriculum: How colleges and universities are preparing students for a changing world (1998). [www.diversityweb.org/diversity\\_innovations/curriculum\\_change/principleshtml](http://www.diversityweb.org/diversity_innovations/curriculum_change/principleshtml) (accessed on 02/09/2007).

ly/Diversity in provision of clinical legal education (CLE): A strength or weakness in an integrated programme of curriculum development?

It is further hoped that by highlighting the main issues, sufficient arguments have been generated and developed to provoke more thoughts and additional reflections on what the writer had started thinking about and researching in the past years. Whether we, singly or collectively, like it or not, the issues of integration and development of a holistic curriculum to address the challenges of diversity will continue to engage legal educators for many more years to come.

Streamlining CLE curriculum will ensure an efficient and relevant education for lawyers of the twenty-first century and beyond.

## Bibliography

DEBRA H

1998. Diversity and the college curriculum: How colleges and universities are preparing students for a changing world. [www.diversityweb.org/diversity\\_innovations/curriculum\\_change/principleshtml](http://www.diversityweb.org/diversity_innovations/curriculum_change/principleshtml) (accessed on 02/09/2007).

FINNEMORE M AND VAN RENSBURG R

2000. *Contemporary labour relations*. Durban: Butterworths.

FREELANDS S

2004. "Educating lawyers for transnational challenges — the globalisation of legal education". Conference Proceedings on Educating Lawyers for Transnational Challenges. AALS Publication: 31-36.

HURTANDO S

2007. How diversity affects teaching and learning: Climate of inclusion has a positive effect on learning outcomes. [www.diversityweb.org/research\\_and\\_trends\\_evaluation\\_impact/benefits](http://www.diversityweb.org/research_and_trends_evaluation_impact/benefits) (accessed on 14 June 2007).

IYA PF

2000. Fighting Africa's poverty and ignorance through clinical legal education: Shared experiences with new initiatives for the 21<sup>st</sup> century. *International Journal for Clinical Legal Education*:13-32.

ROSMARIN K

2000. Managing diversity in South Africa. In Finnemore M *et al*, *Contemporary labour relations*. Durban: Butterworths: 495-519.

THOMAS H

2004. University dons and warriors chieftains: Two concepts of diversity. Fordham School of Law Research Paper No. 45 SSRN. <http://ssrn.com/abstract=514302> (accessed on 14 June 2007).

<http://www.dla.mil/dimensions/septoct99/sep98/div-insert/diversity-page-1.htm> (accessed on 14 June 2007).

<http://webapps.acs.carleton.edu/voice/departments.php3id=287> (accessed on 13 June 2007).

<http://www.dla.mil/dimensions> (Defense Logistic Agency — DLA) (accessed on 14 June 2007).

<http://hrweb.berkeley.edu/seads/diverse.htm> (accessed on 14 June 2007).

<http://www.clrm.law.cuny.edu/clea.html> (accessed on 14 June 2007).