

EXTRAPOLATING THE ROLE OF TRANSFORMATIVE CONSTITUTIONALISM IN THE DECOLONISATION AND AFRICANISATION OF LEGAL EDUCATION IN SOUTH AFRICA

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Abstract

This article extrapolates the role of transformative constitutionalism in the decolonisation and Africanisation of legal education in South Africa. In a constitutionally mandated transformative context, the systematic approach to the decolonisation and Africanisation of legal education advanced in this article emanates from the four drivers of curriculum transformation set out in the 2017 document entitled ‘Reimagining curricula for a just university in a vibrant democracy – Work stream on curriculum transformation at the University of Pretoria’. These four drivers are: responsiveness to social context; epistemological diversity; renewal of pedagogy and classroom practices; and an institutional culture of openness and critical reflection. Presently, South African universities do not have an existing national framework for a decolonised and Africanised legal education. The article therefore argues that the UP Document contains valuable guidelines on curriculum

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transformation of legal education as it resonates well with the objectives of both the National LLB Standard and transformative constitutionalism itself. As result, the universities which offer legal education in conjunction with key stakeholders and role-players in the legal fraternity can incorporate its valuable guidelines in National Review of the LLB programme through a proper design of constitutionally transformed framework for a decolonised and Africanised legal education.

Key words: *Africanisation; curriculum transformation; decolonisation; legal education; South Africa; transformative constitutionalism.*

1 Introduction

Central to South Africa's famed transition from apartheid to a democratic society is transformative constitutionalism,¹ wherein the main quest was to establish a society based on democratic values, social justice and fundamental rights.² The end of the apartheid system resulted in considerable structural changes to higher education in South Africa. Before 1994, higher education had 'a fragmented and structurally racialised system of 36 public and more than 300 private institutions'.³

The merger of public universities commenced in the early 2000s and as of 2015, higher education increasingly transformed into a more integrated system of 26 public universities – comprising of traditional, comprehensive and universities of technology,⁴ and 95 private higher education institutions. Of the 26 public universities, 17 have law faculties or schools offering legal education,⁵ principally, the undergraduate Bachelor of Laws (LLB) degree which is South Africa's legal qualification for admission and enrolment to practise as an Advocate or an Attorney.⁶

1 M Rapatsa 'South Africa's transformative Constitution: from civil and political rights doctrines to socio-economic rights promises' (2015) 5 *Juridical Tribune* 208.

2 Preamble of the Constitution of the Republic of South Africa, 1996.

3 Department of Justice and Constitutional Development (DoJCD) 'Reflections on higher education transformation' (2015) 1 <http://www.justice.gov.za/committees/FeesHET/docs/2015-HESummit-Annexure05.pdf> (accessed 21 June 2019).

4 Traditional universities offer theoretically-oriented university degrees; universities of technology ('technikons'), which offer vocational oriented diplomas and degrees; and comprehensive universities, which offer a combination of both types of qualifications.

5 The names of South African public higher education institutions with law faculties and/or schools that provide legal education, in the context of this article, LLB degree in particular are: University of Venda, University of Limpopo, University of Pretoria, University of the Western Cape, University of the Witwatersrand, North-West University, University of Cape Town, University of Fort Hare, Walter Sisulu University, University of the Free State, University of Johannesburg, University of KwaZulu-Natal, Nelson Mandela University, Rhodes University, University of South Africa, University of Stellenbosch, and University of Zululand.

6 Preamble of the Qualification of Legal Practitioners Amendment Act 78 of 1997.

Against this backdrop, over the last 25 years, impressive strides have been made with regards to transforming South Africa into a democratic society based on social justice and the constitutional values of human dignity, equality, human rights and freedoms.⁷ However, exclusion, marginalisation and social injustice are still deeply engrained in the society, including the racial disparities in higher education.⁸ More profoundly, the stagnated transformation of higher education in general and legal education in particular, has made it difficult to overhaul the knowledge systems in the legal discipline at most South African universities which ‘remain rooted in colonial and western worldviews and epistemological traditions’.⁹

The Qualification of Legal Practitioners Amendment Act steered the changes of legal education in South Africa.¹⁰ Among other provisions, the Act provides for the requirement of a four-year undergraduate LLB degree for admission as an advocate or attorney. The objective for the changed legal framework was to provide greater access to the profession for people from historically disadvantaged backgrounds. It was further believed that the new law curriculum would incorporate constitutional values and infuse a pervasive human rights culture and social justice discourse as part of the transformation.¹¹

More so, in post-apartheid South Africa, legal education ‘remains firmly in the grip of restricted jurisprudence’, which entails having the majority of law courses which Modiri perfectly described as follows:

[They] focus exclusively on law as an exercise in technical rule-application and they are structured around what the legal rules and principles currently are; in which cases they were decided or from which legislation or other source of law they are derived and what, if any, exceptions are applicable to them.¹²

- 7 JN Wanki ‘When the rule of law and constitutionalism become a mirage: An analysis of constitutionalism and rule of law in post-independent Cameroon against post-apartheid South Africa’ unpublished LL.D. thesis, University of Pretoria, 2015 5.
- 8 Draft Framework Document: Reimagining curricula for a just university in a vibrant democracy – Work stream on curriculum transformation at the University of Pretoria (2017) 1 (hereafter ‘UP Transformation Document’); see also DoJCD (n 3 above) 1.
- 9 The 2019 call for papers from the University of Venda and South African Law Deans’ Association (SALDA) for the Law Students’ Conference on the Decolonisation and Africanisation of Legal Education.
- 10 The Qualification of Legal Practitioners Amendment Act 78 of 1997.
- 11 L Greenbaum ‘Re-visioning legal education in South Africa: Harmonising the aspirations of transformative constitutionalism with the challenges of our educational legacy’ (2014) 6 <http://www.nylslawreview.com/wp-content/uploads/sites/16/2014/11/Greenbaum.pdf> (accessed 25 August 2019).
- 12 J Modiri ‘The crises in legal education’ (2014) 46 *Acta Academica* 6.

Zitzke completely labels this kind of legal teaching as conceding to ‘a conservative legal culture.’¹³ As South Africa celebrates 25 years of its constitutional democracy ‘with the wisdom of hindsight and experience’, it is proper to review whether the current state of legal education is sufficient to propel and produce ‘law graduates with the requisite attributes and skills to fulfil the pivotal role that they are required to play in advancing constitutional democracy.’¹⁴ Inevitably, the role of transformative constitutionalism in the decolonisation and Africanisation of legal education needs to yield practical results.

Thus, the immediate objective of this article is to extrapolate the role and significance of transformative constitutionalism in the decolonisation and Africanisation of legal education in South Africa. In a constitutionally mandated transformative context, the systematic approach to the decolonisation and Africanisation of legal education advanced in this article stems from the following four drivers of curriculum transformation: (a) responsiveness to social context; (b) epistemological diversity; (c) renewal of pedagogy and classroom practices; and (d) an institutional culture of openness and critical reflection.¹⁵

These four drivers of curriculum transformation have been borrowed from a 2017 finalised draft framework document entitled: ‘*Reimagining curricula for a just university in a vibrant democracy – Work stream on curriculum transformation at the University of Pretoria*’ (UP Curriculum Transformation Document).¹⁶ The UP Curriculum Transformation Document contains valuable guidelines on curriculum transformation across different academic disciplines, including legal education and it resonates well with the overall objectives of both the National LLB standard and transformative constitutionalism itself.

The article is organised as follows: first, having identified the issues in the previous section, it poses key questions which assist in setting out the overall argument of the article; second, a construction to the meanings of decolonised and Africanised legal education is provided; thirdly, within the parameters of decolonisation and Africanisation of legal education, transformative constitutionalism is defined; fourthly, the article gauges whether the UP Curriculum

13 E Zitzke ‘Stop the illusory nonsense! Teaching transformative delict’ (2014) 46 *Acta Academica* 52.

14 LA Greenbaum ‘The undergraduate law curriculum: Fitness for purpose?’ unpublished PhD thesis, University of KwaZulu-Natal, 2009 1.

15 UP Curriculum Transformation Document (n 8 above) 2.

16 It is worth to highlight from the outset that the aim of the article is not to reflect and refract on the progress to which the UP Curriculum Transformation Document has been implemented at the University of Pretoria but seeks to utilise its valuable guidelines on curriculum transformation in order to make significant contributions in the efforts for decolonising and Africanising legal education in South Africa.

Transformation Document sets a model on how to design a national framework on the decolonisation and Africanisation of legal education; and finally, the article presents some of the possible implications of decolonisation and Africanisation of legal education.

2 Identifying and addressing key questions

A general consensus about some of the crucial attributes of a complete law graduate encompasses graduates who flourish in knowledge creation and original thinking as stimulated by the desire to be active contributors rather than being passive recipients of knowledge.¹⁷ From a student-centred approach, this desire hinges on self-directed learning while addressing the invisibility of students' voice in the renewal of legal pedagogy. Hence, to demonstrate independent and critical thinking, the following key questions are similarly aimed at critiquing the genuineness of objectives decolonisation and Africanisation of legal education in South Africa.

The main question in this discourse interrogates the role of transformative constitutionalism in the decolonisation and Africanisation of legal education. Subsequently, a further three-faceted inquiry is crafted with the aim of developing the primary question by firstly, interrogating the definition of a 'decolonised' and 'Africanised' legal education, secondly, evaluating whether the UP Curriculum Transformation Document provides a suitable lead on how to properly design the transformative framework for the decolonisation and Africanisation of legal education in South Africa and finally, investigates the possible implications for the decolonisation and Africanisation of legal education.

2.1 Constructing the meanings of decolonised and Africanised legal education

Decolonisation and decoloniality 'means working towards a vision of human life that is not dependent upon or structured by the forced imposition of one ideal of society over those that differ, which is what coloniality does and hence, where decolonisation of the mind should begin.'¹⁸ After all, a principal success of colonialism is to make the

17 R Spronken-Smith 'Experiencing the process of knowledge creation: The nature and use of inquiry-based learning in higher education' (2012) 1, 5 & 13. https://pdfs.semanticscholar.org/3fee/07e7280a7404e5dd99b88965be3e60b42e93.pdf?_ga=2.262527368.583208458.1581579661-29176745.1581579661 (accessed 22 August 2019).

18 MW Mignolo 'Delinking: The rhetoric of modernity, the logic of coloniality and the grammar of de-coloniality' (2007) 21 *Cultural Studies* 459.

colonised think epistemically like the coloniser.¹⁹ According to Motshabi, the importation of legal ideas falsely portrays that the minds and knowledge of Africans have nothing significant to offer the international fellowship of scholars.²⁰ Motshabi further argues that the Western theories used in Africa are inadequate in solving local problems.²¹

Decolonisation therefore requires an outlook embodied in a set of perspectives and the question of what decolonisation is does not admit a single or one-dimensional answer.²² One perspective is an inside-out vision from Africa into the world, founded on an African context with a prime focus on Africa and in which the continent and people are central. This is to situate ourselves in African epistemologies and knowledge production, interpreting existing bodies of knowledge and providing cognitive justice.²³

Scholars committed to substantive decolonisation are bound to decolonise knowledge through the decoloniality of knowledge itself, and thus the true liberation of the academy, becomes a realistic operational possibility, though requiring considerable application.²⁴ Motshabi argues that this effort is vitally important given the deep alienation of South African university students.²⁵ Decolonisation transcends 'identity' and 'liberation' politics to require 'epistemic' and 'academic' change. As Maldonado-Torres observes:

What I am saying, and what intellectuals seeking to advance the discourse of decolonization make clear, is that beyond the dialectics of identity and liberation, recognition and distribution, we have to add the imperative of epistemic decolonization, and in fact, of a consistent decolonization of human reality. For that one must build new concepts and being willing to revise critically all received theories and ideas.²⁶

Colonial education misrepresents a variety of phenomena, including peoples, lands and knowledge. It impedes access to the full range of knowledge and it prevents free inquiry and the search for truth, and it destroys other knowledge, inconsistent with the nature of colonialism.²⁷ In her recent article, Chikaonda laments the current state of legal education as follows:

19 Indeed, decolonisation and decoloniality are not the same; see KB Motshabi 'Decolonising the university: A law perspective' (2018) 40 (1) *Strategic Review for Southern Africa* 104.

20 Motshabi (n 19 above) 110.

21 Motshabi (n 19 above) 104.

22 Motshabi (n 19 above) 109.

23 As above.

24 Motshabi (n 19 above) 104.

25 As above.

26 N Maldonado-Torres 'Thinking through the decolonial turn: Post-continental Interventions in theory, philosophy, and critique – an introduction' (2011) 1 *Transmodernity* 4.

27 Motshabi (n 19 above) 105.

One wonders how the well-being of the African can be pursued in future when the LLB curriculum fails to trace for students how the law on the continent was used and perceived as a tool for social, economic and political cohesion since the past and until now.²⁸

The prolonged debate on the existence of an African legal theory, African legal philosophy or alternatively an African jurisprudence has silently been raging in a small corner of legal scholarship. In Oche Onazi's work in *African Legal Theory Contemporary Problems*,²⁹ scholars explore the concept of African jurisprudence in some depth. Included in the definitions of African legal theory or African jurisprudence, terms used interchangeably, are the following ideas: 'the ways in which law, legal concepts and institutions embody or reflect the most salient and common attributes of life in sub-Saharan Africa, attributes which are most often called Afro-communitarian.'³⁰

Himonga and Diallo define decolonisation in the context of legal education in their work *Decolonisation and teaching law in Africa with special reference to living customary law*. They define decolonisation as a 'move from a hegemonic or Eurocentric conception of law connected to legal cultures historically rooted in colonialism (and apartheid) in Africa to more inclusive legal cultures.'³¹

Thus, the numerous and varying degrees of descriptions outlined above constitute a concerted effort in the quest of finding a continentally-agreed and precise definition concepts of the exact nature of a decolonised and African legal education. It is reasonable to assume that a decolonised and African legal education needs to obliterate Eurocentric conception of law and fully embrace the African epistemological ideas and practices that resonates well with the African society altogether. That entails an African legal theory or African jurisprudence having precedence over the knowledge system that emanates centrally from Europe.

2.2 Decolonisation and Africanisation of legal education: Transformative constitutionalism in context

The significance of entrenching transformative constitutionalism in the curriculum renewal of the LLB qualification requires the

28 GP Chikaonda 'To decolonise our LLB degrees, we have to understand and incorporate the roots of African law' 9 July 2019 <https://www.dailymaverick.co.za/opinionista/2019-07-09-to-decolonise-our-llb-degrees-we-have-to-understand-and-incorporate-the-roots-of-african-law/> (accessed 10 July 2019).

29 O Onazi *African Legal Theory Contemporary Problems: Critical Essays* (2014) 1.

30 As above.

31 C Himonga & F Diallo 'Decolonisation and teaching law in Africa with special reference to living customary law' (2017) 20 *Potchefstroom Electronic Law Journal* 5.

advancement of constitutional principles of transformation in order to systematically decolonise and Africanise legal education in South Africa. Hence, this will enable the possibilities of setting uniform national objectives, norms and standards in reinvigorating the LLB curricula in order to create just universities which produce law graduates who immensely contribute in a vibrant constitutional democracy.

According to Greenbaum,³² the potential for developing curricula for legal education to fulfil the possibilities of educating, transforming and contributing to a vision of a new constitutional democracy, and a society in which lawyers would play a leading role in enhancing access to justice for all, is a debatable issue. In this context, like any other academic discipline and profession, law graduates are required to immensely contribute in the constitutional democracy. This argument resonates with the words of South Africa's struggle icon Nelson Mandela who once said:

It is our hope that ... you shall put your knowledge at the service of society and community; and that with the help of your contributions South Africa shall become a winning nation ...³³

An important step that best captures the extent to which the role of transformative constitutionalism could be situated in the decolonisation and Africanisation of legal education arises from the Preamble of the LLB Qualification Standard which provides as follows:

The South African constitution is transformative in nature. "Our constitutional democracy seeks to transform our legal system. Its foundational values of human dignity, the achievement of equality and the advancement of human rights and freedoms, introduce a new ethos that should permeate our legal system." Therefore, legal education cannot be divorced from transformative constitutionalism.³⁴

Thus, law graduates possess 'comprehensive and sound knowledge and understanding of the South African Constitution and basic areas.'³⁵ In terms of critical thinking skills, graduates, according to the document, have to 'recognise and reflect on the role and place of law in South African society and beyond.'³⁶

Therefore, the concerted efforts to decolonise and Africanise legal education should not solely be confined to how graduates must fare in legal profession, especially in the corporate world, 'but rather how it contributes to a new jurisprudence suited to the legal, social and political transformation of South Africa.'³⁷ Accordingly, the

32 Greenbaum (n 14 above) 1.

33 Graduation address by President Nelson Mandela as chancellor of the University of the North University of the North, Saturday 20 September 1997.

34 Council on Higher Education (CHE) 'Higher Education Qualifications Sub-Framework: Qualification Standard for Bachelor of Laws (LLB)' (2015) 6.

35 CHE (n 34 above) 7.

36 CHE (n 34 above) 9.

reviewed and consolidated symbiotic relationship between transformative constitutionalism and the decolonisation and Africanisation of legal education should be aimed at producing law graduates with the requisite attributes and skills to fulfil the pivotal role that they are required to play in advancing constitutional democracy. In fulfilment of the constitutional obligations based on the values of human dignity, equality, human rights and freedom, universities must transform themselves socially, culturally and in terms of the curriculum. In this context, it is also relevant that the curriculum provides critical spaces and opportunities for students 'to develop ways of seeing which are different from those provided by dominant discourses'.³⁸

2.3 Quintessential model on decolonisation and Africanisation of legal education

Library research was conducted with the aim of finding out whether or not the theories of pedagogical framework which form the basis of the subject-matter under discussion have been given prominence in the re-curriculisation of legal education. Although there are universities which have commenced with the groundwork initiatives of re-curriculisation through the lens of decolonisation and Africanisation, thus far, it has been established that the efforts to transform legal education could be on the cards of almost all universities but the usage of the terminologies of 'decolonisation' and 'Africanisation' of legal education seldomly features. Accordingly, the UP Curriculum Transformation Document could present itself as quintessential model on decolonisation and Africanisation of legal education.

2.4 Assessing UP Curriculum Transformation Document

This section succinctly discusses the four drivers of curriculum transformation contained in the UP Curriculum Transformation Document.

2.4.1 Responsiveness to social context

The UP Curriculum Transformation Document envisages an increased and broader participation together with responsiveness to societal interests and needs that are regarded as essential features of a transformed system.³⁹ Hence, under this driver, the transformed

37 Modiri (n 11 above) 1.

38 V Bozalek *et al* 'A pedagogy of critical hope in South African Higher education' in Bozalek V (ed) *Discerning critical hope in educational practices* (2013) 43.

39 Greenbaum (n 14 above) 9.

curriculum must require the development of a compulsory foundational course for all first-year students in African history, thought and society, political economy and human rights.⁴⁰ In addition, social transformation must be prioritised by focusing on ways in which legal education can contribute to the development of society and the realisation of a dignified and sustainable life for all South Africans. More specifically, the empowerment of law students has to encourage their active participation in the transformation of legal education, which should transcend the academic discourse. It aims at ultimately reshaping the nature and scope of the legal profession and society as a whole.

The driver for responsiveness to social context further envisions thoughtful students who are part of a greater and diverse public. It foresees students who are able to contribute meaningfully to different communities and society. This can be drawn from critical thinking, which entails ‘the ability to problematise received wisdoms within disciplines and to question old and new frameworks, to exercise judgement and engage in reasoned debate’.⁴¹ In addition, their meaningful contribution must stem from critical literacy, which involves the ability to independently read, analyse, reflect, evaluate, conceptualise and synthesis arguments, approaches and solutions.⁴²

2.4.2 Epistemological diversity

The driver of epistemological diversity asserts that ‘diversifying epistemology means bringing marginalised groups, experiences, knowledge and worldviews emanating from Africa to the centre of the curriculum.’⁴³ This involves challenging the hegemony of Western ideas and paradigms and foregrounding local and indigenous conceptions and narratives. Equally important, it states that:

Honestly and critically reckoning with the histories of all disciplines and dominant traditions within disciplines to examine their underlying colonial biases and exclusionary cultural norms at the intersections of race, gender, sexuality and class, as well as the complicity of disciplinary knowledges with various forms of violence and oppression over time. This involves, among others, the acknowledgment that even those few historically white universities that admitted a limited number of black students operated on the principle of racial segregation and that black people were mostly excluded from Higher Education, bar the Bantustan universities and two universities set aside for ‘coloured’ and ‘Indian’ students.⁴⁴

40 UP Curriculum Transformation Document (n 8 above) 3.

41 As above.

42 As above.

43 As above.

44 UP Transformation Document (n 8 above) 4.

The aim is not merely to add voices and theories but reconceptualising the way in which knowledge and sources of knowledge are organised, valued and represented within the discipline and subject area of law.

2.4.3 *Renewal of pedagogy and classroom practices*

The transformation of the curriculum involves the continuous rethinking and re-evaluation of the ways in which learning and teaching take place.⁴⁵ This includes responsiveness to and training in new pedagogical methodologies and approaches in legal education. It further entails pursuing inquiry-led teaching and learning. Rather than testing for memory, students must be encouraged to do more writing and research.

Additionally, this driver seeks to address the invisibility of certain groups by critically interrogating the composition of students and staff, especially in disciplines historically dominated by one sex, gender and/or race, and removing pedagogical and classroom hindrances in a way of diversification. From a human rights perspective, there is also a need to create a robust learning space that is affirming and sensitive to student diversity by actively including students across differences such as race, sex, gender, sexuality, socio-economic class or disability.

2.4.4 *An institutional culture of openness and critical reflection*

With regards to institutional transformation, Gutto states as follows:

Every social institution, like every living organism, undergoes changes necessitated either by subjective self-will and initiative or by objective circumstances and pressures lying outside of the social institution or living organism itself. The point is therefore not whether reform or change is desirable.⁴⁶

The driver for institutional culture of openness and critical reflection states that transforming curriculum exhibits understanding that a 'hidden curriculum' can be found in the spaces, symbols, narratives and embedded practices that constitute the university and in the diversity, or lack thereof, of the staff and student cohort.⁴⁷ Transformation requires exposing and resisting the subliminal practices of the hidden curriculum that are part of South Africa's legacy of discrimination.

45 As above.

46 S Gutto 'The reform and renewal of the African human and peoples' rights system' (2001) 2 *African Human Rights Law Journal* 175.

47 UP Curriculum Transformation Document (n 8 above) 6.

2.5 Possible implications of decolonisation and Africanisation of legal education

Decolonial theory has been criticised for being too general.⁴⁸ According to Gutto, the question to be asked relates to the extent of the change and whether the reform or change embarked upon leads to the renewal and reinvigoration of the institution, or to degeneration and ruin.⁴⁹ With regards to the possible implications ensuing from transforming higher education, Quinot and Greenbaum caution that 'reform in higher education can, however, be dangerous and counterproductive if it is driven purely by policy agendas and in the absence of sound pedagogical considerations.'⁵⁰

It is hereby submitted that Quinot and Greenbaum's argument is justifiable, and that the debates about reform of legal education in South Africa should take place within the broad contours of a legal pedagogy rather than purely on policy and political grounds.⁵¹ It is commonplace that in some quarters of the society, the decolonisation and Africanisation of legal education is the unfinished business of the liberation struggle. In turn, the quest for the decolonisation and Africanisation of legal education can be deemed to be a smokescreen to disguise the unfinished business of liberation struggle that has permeated the legal fraternity and which therefore threatens academic independence.

Presently, there is no any fully existing and functional pedagogical national framework for the transformation of legal education. The vast majority of intellectual engagements reveal so far that the efforts to devise, design and implement strategies for the decolonisation and Africanisation of legal education have proven to be intricate, cumbersome and with possible far-reaching repercussions. This is a consequent of an array of factors which are discussed below.

It is imperative to note that the first Law Students' Conference on the Decolonisation and Africanisation of Legal Education took place at the backdrop of a disconcerting truth concerning the state of legal education in South Africa. During the LLB Summit held in 2013, the key stakeholders and role-players in the legal fraternity such as Council for Higher Education (CHE), the South African Law Deans Association (SALDA), General Council of the Bar (GCB) and the Law Society of South Africa (LSSA) decided that a national review of the LLB programme should be conducted.⁵² The outcomes of the national review of the LLB qualification in April 2017 have led to the

48 Motshabi (n 19 above) 107.

49 Gutto (n 45) 175.

50 G Quinot & L Greenbaum 'The contours of a pedagogy of law in South Africa' (2015) 1 *Stellenbosch Law Review* 29.

51 Quinot & Greenbaum (n 50 above) 30.

52 M Sedutla 'Legal education in crisis?' (2017) 573 *De Rebus* 3.

declaration that legal education in South Africa is in a state of ‘crisis’. In the process, four universities: North-West University, Walter Sisulu, University of South Africa and the Free State were found initially to be non-compliant with the required standards set by the Council on Higher Education in the LLB Qualification Standard.⁵³ As a result, the four were at risk of losing their accreditation for the LLB qualification if the quality of their programmes would not improve in specific areas.⁵⁴ The quality of their programmes defaulted in issues relating to staffing, the curriculum, teaching and learning assessment.

While recently other universities were grappling to meet the LLB Qualification Standard, the question is whether the decolonisation and Africanisation of legal education will provide a broad solution to these challenges or will aggravate the crisis of legal education. This confluence of factors must be fully considered in the renewal of legal education including the need ensure that there is a high level of congruency between the existing LLB Qualification Standard and the University LLB curriculum.

The review of legal education should place the best interest of society in whole as the paramount deciding factor. A general view is that these theories of curriculum transformation have the potential of misdirecting the purpose of law, to a similar degree to the apartheid era style where legal education played a central role in structuring and supporting the ideology of apartheid.⁵⁵ However, if well implemented, transformative constitutionalism may enhance decolonisation and Africanisation thereby contributing to the transformation of legal education in South Africa.

3 Conclusion

This article extrapolated the role and significance of transformative constitutionalism in the decolonisation and Africanisation of legal education in South Africa. South African universities do not have an existing, functional and clear-cut national framework for the decolonisation and Africanisation of legal education. The article submits that the UP Curriculum Transformation Document which presents four drivers of curriculum transformation are in alignment with the objectives of transformative constitutionalism and the National LLB Standard. These four drivers are: responsiveness to social context; epistemological diversity; renewal of pedagogy and

53 As above; see also B Macupe ‘Eight universities get full LLB accreditation; five more in the balance’ 22 June 2018 *Mail&Guardian* <https://mg.co.za/article/2018-06-22-00-eight-universities-get-full-llb-accreditation-five-more-in-the-balance> (accessed 21 June 2019).

54 Sedutla (n 51 above) 3; NWU, UNISA and UFS were subsequently accredited. The LLB programmes at 16 out of the 17 law faculties are now accredited.

55 Greenbaum (n 14 above) 9.

classroom practices; and an institutional culture of openness and critical reflection.⁵⁶

It can be concluded that within the spirit of transformative constitutionalism, the 'Reimagining curricula for a just university in a vibrant democracy – work stream on curriculum transformation at the University of Pretoria' can be a quintessential model which can guide the transformation of legal education in South Africa. As a result, the universities which offer legal education in conjunction with key stakeholders and role-players in the legal fraternity can incorporate its valuable guidelines in National Review of the LLB programme through a proper design of a constitutionally transformed framework for a decolonised and Africanised legal education.

56 UP Curriculum Transformation Document (n 8 above) 1.