

CHAPTER 1

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The Zimbabwean University Clinical Movement in the Context of Legal Education

1.1 Introduction

This chapter looks at the historical development of clinical legal education in Zimbabwe. It analyses the background, historical development and touches on the current state of clinical law in Zimbabwe. Clinical legal education development in Zimbabwe can be traced from the period 1973 when the first Legal Clinic was set up at the University of Rhodesia as a students' initiative.² Another major milestone in clinical legal movement was the attainment of political independence and the broadening of many rights to the indigenous people of Zimbabwe. The socio-economic and rights abuses that were meted on black people by the white settler regime came to an end, meaning that demand for legal aid in politically related criminal cases was reduced.³ The need for criminal legal aid defences on racist and trumped up charges was reduced after independence. On the other hand, legal aid in civil cases was still sought by the urban poor.⁴ However, with regard to the available law clinics the immediate post-independence period did not change much. The University of Zimbabwe remained the sole law degree awarding university throughout the 80s and 90s.⁵ These developments will be dissected in more detail in the following sections.

1.2 Historical Background of Clinical Legal Education in Zimbabwe

This section looks at the law curriculum that was offered to lawyers trained in the then Rhodesia before independence and the situation that ensued after independence in 1980. There was a major change in the training approach as well as in the content of the curriculum that was exposed to the law students after independence. Prior to independence the system was largely racist and discriminatory⁶ while after the independence the system became more open to all races. According to Tshuma the Department of Law's admission policy prior to political independence discriminated against Blacks.⁷ Those who made it through the discriminatory admission policy had to contend with further discrimination in teaching and the conduct of examinations.⁸ This is echoed by Austin who says "consistent with the discrimination against black citizens which characterised Rhodesian settler rule, access to legal education and the legal profession was deliberately and almost totally

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² L. Tshuma, 'Twelve Years of Legal Education in Zimbabwe', 9 & 10 *Zimbabwe Law Review* (1992) p. 173

³ R.H.F. Austin, 'Access to the Legal Profession: the Challenge at Independence', 9 *Zimbabwe Law Review* (1987) pp.172-188

⁴ Ibid

⁵ Tshuma note 2 *supra*

⁶ The colonial rule that was in place was discriminatory and racist in nature. It propagated the inferiority of the African race. Tshuma *ibid* cites an example where a departmental chair in the law programme made a startling argument that "Africans as a class find it more difficult than non-Africans as a class to make the transition from school work to a University Law course." This was in defence to a higher failure rate by Africans in the law programme.

⁷ See particularly p. 172

⁸ *Supra* note 2

denied to blacks until Zimbabwe's independence in 1980"⁹. Legal aid of some sort though was available during the colonial and post-independence eras. More pertinent was the fact that the legal aid initiative was not driven by the law teachers or the law curriculum, rather it was a student led initiative to assist the poor black people that were on the receiving end of the racist system.¹⁰ It is therefore safe to say that clinical legal education was birthed by students in Zimbabwe.

Law students at the University of Rhodesia decided to legally assist black people that were being arrested on flimsy and sometimes trumped up charges for exercising their political rights. The Rhodesian police brutally assaulted and injured participants in any public gatherings. Those arrested were taken to court where there was no form of state provided legal aid.¹¹ As a result the bulky of the accused persons appearing before the Magistrate Courts were without legal representation in cases that had serious penalties. The brutal suppression of Africans was done through laws such as the Law and Order Maintenance Act.¹² This law criminalised all forms of political and related activity such as association and movement and had serious penalties for the offences.¹³ This law was introduced in 1960 to curtail the nationalist sentiment that was rising in the country. In addition, to the Law and Order Maintenance Act, there was a battery of other racist laws that the settler regime used to brutalise the Africans. One such laws was the Pass Laws which required Africans to have a pass in urban areas. This law resulted in the arrest and detention of many Africans. As a result places of detention were always full with arrested Africans.

The students participating in the Legal Aid scheme visited police stations and other places of detention to see and interview arrested blacks. In due course, willing lecturers joined in the activity by supervising the students that were providing legal aid to the arrested blacks.¹⁴ Initially the service was limited to providing legal advice at the detention centres. Lecturers who were participating in the legal aid scheme rendered the service on a voluntary basis.¹⁵ From a small number the numbers of both the students and staff providing legal aid grew. The service rendered by the students was needed because there was no form of Legal Aid that was available to Africans in criminal cases outside cases of murder and other capital offences.¹⁶ There was therefore a complete lacunae in the provision of legal aid services to the public in general and to Africans in particular. This was happening in an environment where there were racist criminal legislation that had severe penalties in the event of conviction. At that time over half of the Africans lived

⁹ R.H.F. Austin, 'Access to the Legal Profession: the Challenge at Independence', 9 *Zimbabwe Law Review* (1987) pp.172-188

¹⁰ P.C. Norris, 'Legal Leper or Midwife,' *Rhodesian Law Journal*, (1978) p. 122.

¹¹ Ibid

¹² Ibid p.124

¹³ Law and Order Maintenance Act of 1960

¹⁴ Norris supra note 10.

¹⁵ Ibid

¹⁶ See the High Court Act [Chapter 7:06] and the Magistrates Court Act [Chapter 7: 10] in so far as it addresses who qualifies to Legal Aid in a criminal case. Likewise the Magistrates Court Civil Rules, the High Court Rules and the Rules of the Supreme Court make provision for in forma pauperis aid in civil cases. However, that regime is very limited.

under the poverty datum line. There was therefore abject poverty among the black population. As a result many could not afford expensive legal services to protect their rights. There was therefore a real need for legal aid at that time, which need was satisfied in part by the law students from the University of Rhodesia. To that extent the development of legal aid clinics in Zimbabwe through the University of Rhodesia compares very with what happened in South African universities such as Witwatersrand where the movement was started by students.¹⁷

1.2.1 Law Education before Independence

Before independence and for most part of the post-independence era the University of Rhodesia (now Zimbabwe) was the sole law degree awarding university in Zimbabwe.¹⁸ As a result, the history of the study of law in Zimbabwe is intimately connected with the developments at the University of Zimbabwe. Thus, any discussion of legal education in Zimbabwe is restricted to the experiences of the former Department of Law and later the Faculty of Law at the University of Zimbabwe. At its inception, the Department of Law offered a three-year Bachelor of Laws (LLB) degree in Roman-Dutch Law of the University of London. This degree had no legal aid component in its curriculum. Students were not exposed to practical law situations such as legal aid work. Holders of the degree were not entitled to practise law without additional training. Additional training in vocational courses was necessary before the graduates were allowed to practice law. Graduates were required to do either Articles or the Advocates qualifying examination for them to qualify¹⁹. Those wishing to be advocates had to undergo a period of pupillage while those aspiring to be attorneys had to undergo a period of articulated clerkship.²⁰

This arrangement survived until 1968 when the Department of law at the University of Rhodesia was given the responsibility of teaching a Postgraduate Diploma which entitled holders to practise as advocates. By the end of 1969 the Postgraduate Diploma had been upgraded to become a one-year Bachelor of Laws (LLB) degree, the three year degree having been renamed the Bachelor of Law (BL) degree.²¹ Thereafter, attempts were made to progressively develop the one-year LLB degree with a view to replacing the Attorneys Admission Examination as well.²² At that stage, the operating legal framework that regulated the operations of advocates and attorneys were the Advocates Act (Chapter 216)

¹⁷ D. Holness, 'Improving Access to Justice Through Compulsory Student Work at University Law Clinics', Potchefstroom Electronic Journal (2016) p. 1

¹⁸ See Tshuma note 2 supra, Austin note 3 supra.

¹⁹ Austin *supra* note 4.

²⁰ *Supra* note 4 pp 171-173. See also R.H.F. Austin, 'Access to Legal Education and the Legal Profession in Zimbabwe', in Dhavan et al, (Eds), *Access to Legal Aid & the Legal Profession*, (Butterworths, London, 1989) at p. 248. This was in line with the Advocates Act (Chapter 216) and the Attorneys, Notaries and Conveyancers Act (Chapter 218) which regulated the legal profession.

²¹ W. Ncube, 'Legal Education and Access to the Legal Profession in Zimbabwe Past, Present and the Future', unpublished paper presented at the Inaugural Meeting of Law Teachers under the BLSZ Roman-Dutch Common Law Project, April 16-20, 1989 and R.H. Christie, 'A Teaching Court' Editorial, *Rhodesian Law Journal*, (1974) p. 82.

²² *Ibid*

for advocates and the Attorneys, Notaries and Conveyancers Act (Chapter 218) for attorneys. This statutory arrangement ensured that the legal profession was not merged into one distinct profession. What is noteworthy is that there was no form of legal aid at the university.

As a consequence of the socio-political situation at the time the Legal Aid Clinic at the University of Rhodesia started in 1973 as a student initiative to provide advisory services to the public.²³ The socio-political context at that time was characterised by rising nationalist sentiment, racist and brutal suppression of Africans, discrimination and lack of any form of state provided legal aid to those facing criminal charges outside capital offences.²⁴ With this background Law students at the University of Rhodesia decided to legally assist black people that were being arrested for exercising their political rights. The police brutally beat and injured participants to any public gatherings²⁵, take them to court where there was no form of state provided legal aid. As a result of lack of legal aid and poverty among the blacks the bulky of the accused persons were appearing in court without legal representation in cases that had serious penalties. The brutal suppression of Africans was done through laws such as the Law and Order Maintenance Act.²⁶ This law criminalised all forms of political and related activity such as association and movement and had serious penalties for the offences.²⁷ In addition, to the Law and Order Maintenance Act, there was a battery of other racist laws that the settler regime used to brutalise the Africans. As a result places of detention were always full with arrested Africans who had no access to legal representation of their choice because they could not afford legal services. The bulk of the Africans lived in poverty hence could not afford legal services of any form.

The participating students providing legal services visited police stations and other places of detention to interview arrested blacks. In due course, willing lecturers joined in the activity by supervising the students that were providing legal aid to the arrested blacks.²⁸ The lecturers were rendering the service on a voluntary basis. From a small number the numbers of both the students and staff providing legal aid grew. The service rendered by the students was needed because there was no form of Legal Aid that was available to Africans in criminal cases outside cases of murder and other capital offences.²⁹ There was therefore a real need for legal aid at that time, which need was satisfied in part by the law students from the University of Rhodesia. However, a large majority of criminal

²³ P.C. Norris, 'Legal Leper or Midwife,' *Rhodesian Law Journal*, (1978) p. 122

²⁴ Ibid

²⁵ Especially those that were judged to be of a political nature by the authorities.

²⁶ Ibid p.124

²⁷ Law and Order Maintenance Act of 1960

²⁸ Norris supra note 10.

²⁹ See the High Court Act [Chapter 7:06] and the Magistrates Court Act [Chapter 7: 10] in so far as it addresses who qualifies to Legal Aid in a criminal case. Likewise the Magistrates Court Civil Rules, the High Court Rules and the Rules of the Supreme Court make provision for in forma pauperis aid in civil cases. However, that regime is very limited.

defendants in Zimbabwe then, appeared before the courts without legal representation to the detriment of their legal rights.

From its unplanned establishment legal aid developed and was integrated into the curriculum of the LLB degree in 1976.³⁰ This integration of the clinic into the curriculum made it a core component of the final year of the post-graduate LLB degree that was in place at that time. This development is in line with McQuoid Mason's observation that modern forms of live client university law clinics developed in South Africa and Zimbabwe among other African countries during the 1970's.³¹ At the University of Rhodesia the curriculum now required law students to do a Bachelor of Laws for three years and thereafter do a post graduate LLB degree for one year.³²

The Legal Aid Clinic worked in conjunction with the Citizens Advice Bureau to provide advice to indigent members of the community.³³ The Citizens Advice Bureau was limited in terms of its coverage and budget to render an efficient service. However, despite its shortfalls the Bureau was a good starting point for rendering legal assistance to Africans. The university run legal aid scheme dealt more with criminal cases as opposed to civil cases. However, legal challenges for the poor were more acute in civil disputes. This point is highlighted by Holness³⁴ where he says; "[i]n the South African civil justice system many ordinary people cannot afford to use the courts because of the expense involved, or because they are ignorant of their rights. This is particularly the case in civil as opposed to criminal matters". This observation applies with the same force in Zimbabwe. Issues of poverty, lack of awareness of rights and non-affordability of legal services applies in Zimbabwe. Therefore, in Zimbabwe there is a need for legal aid in civil cases outside the limited *in forma pauperis* system currently in place. To operate the legal aid clinic, the university assigned members of staff who were registered practitioners to a group of students. These provided supervision to students assigned to them in the legal aid clinic.³⁵

The provision of legal services and access to justice programmes has been the driving force for the establishment of university law clinics involving live clients in most African countries³⁶. Such clinics are often termed 'live client' clinics to distinguish them from simulated clinics and from practical legal training courses which tend to use simulated clients instead of real clients. The push towards a live client client at the University of Rhodesia was that the university was surrounded by a sea of poverty and acute

³⁰ P.C. Norris *ibid* and Austin *supra* note 4.

³¹ D. McQuoid-Mason, 'Law clinics at African universities: An overview of the service delivery component with passing references to experiences in South and South-East Asia', *Journal for Juridical Science Special Issue*, (2008) p. 11

³² Norris note 28

³³ *Ibid*

³⁴ D. Holness, 'Improving Access to Justice Through Compulsory Student Work at University Law Clinics' *Potchefstroom Electronic Journal* (2016) p. 1

³⁵ Tshuma *supra* note 1.

³⁶ *Supra* note 10

discriminatory practices. As a result it was necessary to assist the surrounding community with their legal problems particularly racist laws and discriminatory laws.

1.2.2 Law Education at Independence

It has been correctly noted by Tshuma *supra* that the major features of legal education at independence were a curriculum based on the 1965 University of London with minor changes; discriminatory access to education based on race and the teaching of law from an expository or black-letter tradition. One of the major changes introduced by the black government in the legal fraternity after independence was the introduction of the Legal Practitioners Act of 1981³⁷. This did away with the Advocates Act and the Attorneys, Notaries and Conveyancers Act that had applied before independence. For clinical legal education this change meant that students were required to be exposed to practical legal skills while in the university.

The introduction of the Legal Practitioners Act of 1981 resulted in fusion of the attorneys and advocates professions. This law did away with the distinction between advocates and attorneys. All practising lawyers became known as legal practitioners and had to undergo the same legal training programme at the university. As alluded to above, at independence the Department of Law offered two degrees — the three- year Bachelor of Law (BL) degree and the one-year Bachelor of Laws (LLB) degree. Substantive law subjects made up the curriculum of the Bachelor of Law degree while procedural ones made up the Bachelor of Laws curriculum. In order to meet with the new realities the LLB programme had to be transformed³⁸. New procedural courses and legal aid work were added to the curriculum. These provided a kind of vocational or practical training to the law student. This also broadened the place of clinical legal education at the University of Zimbabwe.

By 1988 at the University of Zimbabwe, the department of Law became the Faculty of Law, comprising the Departments of Private, Public and Procedural Law and a Legal Aid Clinic under the Faculty. At the same time, a new degree structure and a new curriculum were also introduced. A four year integrated degree was introduced to replace the three year Bachelor of Law (BL) and one year Bachelor of Laws (LLB) degrees. The new programme integrated the teaching of substantive and procedural courses. Prior to the change, wide ranging consultations were held with the legal profession, government and academics from other countries.³⁹ The new degree was called the Bachelor of Laws Honours (LLB Hons) degree. This is the degree with some changes that is still being offered at the University of Zimbabwe. It includes a

³⁷ Act No 15 of 1981.

³⁸ Courses offered under the transformed LLB degree were Civil Procedure in the High and Supreme Courts, Civil Procedure in the Inferior Courts, Criminal Procedure, Bookkeeping and Accounts, Interpretation of Statutes, Legal Writing, Conveyancing, Notarial Work and Legal Aid Work.

³⁹ *Supra* note 1 and R. Austin note 2 above. It must be noted that in 1985 the Minister of Justice, Legal and Parliamentary Affairs set up a Committee to Inquire into the Qualification of a Legal Practitioner. This committee was chaired by a Supreme Court Judge, Justice McNally. It recommended some changes to the structure of the law programme.

component of voluntary legal aid work for students. For clinical legal education the new programme amounted to a regression of some sort in that legal aid work became voluntary. However, despite the relegation to a non-core course legal aid was still offered and taken by willing candidates. After 1985 the University of Zimbabwe law degree was the only means of direct admission to the legal profession in the country. This was in line with the McNally committee recommendation. This meant that the LLB degree became a practical degree offering both substantive, practical and procedural modules. The law clinic was required to provide practical training for law graduates before they entered the legal profession.⁴⁰

In recent years, although first year students are excluded from participating in the legal clinics, they begin to work on cases in their second and third years. During the summer breaks, University of Zimbabwe's law students go through internship where they join private law firms, the Attorney General's office and other private sector law workplaces such as insurance companies.⁴¹ In the other law campuses in the country instead of a four year programme law students undertake the law programme in five years. In these campuses students go for internships at the courts and in private law firms for a year as part of work related learning. This internship programme enhances clinical skills in the students.

1.2.3 Current State of Clinical Legal Education in Zimbabwe

As of September 2021 Zimbabwe has four law campuses at the University of Zimbabwe (UZ), Midlands State University (MSU), Great Zimbabwe University (GZU) and Zimbabwe Ezekiel Guti. Africa University (AU) was in the process of finalising the accreditation of its law programme with the regulators. All the existing campuses have functional legal aid clinics at their campuses, offering various services to the public. Some programmes such as the MSU offers specialist services in the form of disability rights legal aid work while others are general in nature. All these activities are done under the auspices of access to justice programme.

The Midlands State University clinic runs a disability-specific clinic⁴² for which students volunteer in the clinic in their fifth and final year of undergraduate education. In addition to that, the university offers Practical Legal Skills course to all students. This course teaches practical skills to students. While the clinic has been running for a while, it was officially launched in February 2020.⁴³ The clinic works on a mix of individual advice and referral matters. The Clinic specifically targets matters on the right to legal capacity, access to justice, the right to independent living, the right to education and the right to political participation. An average of 10 cases are handled per semester.⁴⁴

⁴⁰ D. McQuoid-Mason *supra* note 31.

⁴¹ Ibid

⁴² Midlands State University website.

⁴³ Ibid see also Chronicle Newspaper of 26 February 2020

⁴⁴ Ibid

At the Zimbabwe Ezekiel Guti University Legal Aid Clinic provides general legal education and legal aid to members of the community. This means that as part of the clinical legal education, the clinic carries out awareness campaigns on various legal topics as well as running street law programmes. The legal clinic was officially launched in November 2018. The clinic is run by students in their fourth and final year of study as part of their clinical legal education programme. The clinic adopts a street law approach where it goes out to the communities and provide legal education and legal advice free of charge.⁴⁵ This helps to improve access to justice and educate the students about the social justice needs in their community. The clinic inculcate a sense of responsibility in the students to provide free legal services to the indigent as students and later as professionals. It enables the students to undertake practical lessons where they work on legal and social issues they are studying enriching their learning outcomes.⁴⁶

The UZ Legal Aid Clinic is one of the running units in the Faculty. Student teams take turns to advice indigent members of the public on a variety of legal problems ranging from family law to inheritance disputes. Emphasis is placed on civil law as opposed to criminal law work. The student's participants carry out legal aid work activities on a voluntarily basis. Working in the legal aid clinic is not a compulsory at the UZ nor is clinical legal education a compulsory course for students.⁴⁷ Despite that, the university states that a large number of students work in the clinic. To assist and supervise the students, the university has employed two full time registered legal practitioners to work in the clinic.⁴⁸ These attorneys are over and above the director of the legal aid clinic and procedural law lectures who have roles in the clinic. Apart from offering free legal education the clinic provides advice to citizens who cannot afford the services of commercial lawyers. The Legal Aid Clinic is used for practical skills training and demonstrations to students. On average the Clinic handles between 150 to 200⁴⁹ cases per annum and with a significant number of these cases being satisfactorily resolved.

The Great Zimbabwe University (GZU) in turn runs a general service legal aid clinic offering services to the indigent members of the surrounding community.⁵⁰ It is run as a live client clinic which takes up matters from disadvantaged members of society. The University has a registered attorney working in the clinic to provide support and supervision in the clinic. In addition, the programme regulations at GZU has clinical legal education as one of the core courses that candidates have to undertake in their undergraduate law studies.

⁴⁵ ZEGU official website for the law programme.

⁴⁶ Ibid

⁴⁷ See the UZ LLB Programme regulations and the Law Faculty Website for UZ.

⁴⁸ University of Zimbabwe Law Programme website.

⁴⁹ Ibid

⁵⁰ Great Zimbabwe University law programme website.

Once approved Africa University will offer clinical legal education as a core compulsory course in its law undergraduate programme. The approved programme regulations for Africa University have Clinical Legal Education as a distinct compulsory module which requires all students to participate in the Legal Aid clinic as part of their training. A live client clinic with offices in town will be set up so that clients will have easy access to the facility.

1.2.4 Council for Legal Education

One of the key additions made by the Legal Practitioners Act of 1981 was the creation of the Council for Legal Education whose main mandate is the determination of the qualifications necessary for one to enter the legal profession.⁵¹ The Council is composed of legal practitioners from the various branches of the profession including the Faculties of Law, Judiciary, lawyers in practice, and lawyers in government employment. It has power to designate certain subjects as necessary for registration as a legal practitioner. Consequently, all students wishing to register as legal practitioners have to study the subjects designated by the Council. The Council has legal and statutory authority to oversee the professional training of lawyers in Zimbabwe. The role and place of the Council in professional legal training is further expanded below in section 1.3.4.

1.3 Statutory Regulatory Framework of Law Clinics in the Higher Education Sector

Since 2006 the Higher Education sector in Zimbabwe is regulated by the Zimbabwe Council for Higher Education⁵² (Zimche). Prior to that the sector was supervised by the National Council for Higher Education. ZIMCHE has the general oversight over the operations of higher education institutions. The purpose of the Council is to oversee quality assurance in the institutions of higher education. In order to guarantee and sustain quality in university education the ZIMCHE carries out registration, audits and accreditation of all higher education institutions and their programmes/courses.

Zimbabwe is among the countries that embraced quality assurance in higher education as far back as 1990 through the establishment of the National Council for Higher Education⁵³ (NCHE). In 1990 the National Council for Higher Education (NCHE), was established with the main task of receiving and considering applications from would-be higher education private providers⁵⁴ and make recommendations to the Minister for possible approval of private university charters. This was followed up in 2006 by the setting up of ZIMCHE which was set to guarantee and sustain quality in university education in Zimbabwe. Garwe explains the justification for setting up of a quality assurance authority in the higher education sector in the following way:

⁵¹ With the creation of Zimbabwe Council for Higher Education (ZIMCHE) in 2006 there appears to be a clash in this respect. Both entities have a similar mandate in terms of legal training in Zimbabwe. For Zimche the mandate is general while for the Council it is special.

⁵² See the Zimbabwe Council for Higher Education Act [*Chapter 25:27*].

⁵³ This was done through the National Council for Higher Education Act of 1990.

⁵⁴ Africa University being the first private university to be set up in 1991 through the new legislation.

“The establishment of ZIMCHE came as a logical consequence in developing university education. Formal higher education was first introduced into Zimbabwe, then Southern Rhodesia, in 1957, with the establishment of the University College of Rhodesia and NyasalandThe phenomenal expansion of educational provision embarked upon by the new government from 1980 to correct historical imbalances and promote socio-economic development led to massive expansion at UZ, which was done by way of increasing enrolments and the introduction of new faculties, departments and programmes required to meet the socio-economic needs of the new nation”⁵⁵.

Zimche has a broader mandate than the National Council for Higher Education whose mandate was limited to private universities only. Zimche now regulates both public and private universities as well as other higher education institutions such as teachers colleges and polytechnics. Zimche was thus introduced as the regulator and quality assurance entity of Zimbabwe higher education sector. In this regard to the extent that clinical legal education is part of a university curriculum it does fall under the oversight of Zimche. It is however not addressed by name in the ZIMCHE Act. The processes that one has to follow to get accreditation for a university as well as for programmes is dealt with below.

1.3.2 Zimche Applications for Registration

The ZIMCHE Act⁵⁶ separately deals with the registration requirements of public and private universities in Zimbabwe. Private universities are registered in terms of Part III of the Act while public universities are registered in terms of Part IV of the same law. The formalities to be followed by either of the two are likewise different for the two types of universities. Registration of a private institution is dealt with in terms of s10 (2) which provides that:

“Any person wishing to register a private institution or an arm of a foreign institution shall apply to the Council by submitting to the Chief Executive Officer the prescribed form accompanied by the draft charter of the institution and such other documentation and fee as may be prescribed.”

One of the key documentation to be supplied to ZIMCHE with the application is the proposed charter of the university.⁵⁷ The Charter as the source legal document for the proposed entity must contain key information of the institution such as the name, objects and functions of the institution, membership and governance of the institution, the administration of the institution, the finances and business plan of the institution, and the general academic regulations of the institution.⁵⁸ Operation of a higher education institution without proper registration is a criminal offence⁵⁹ in terms of the law. Once an application is made, it is evaluated by the Council and may or may not

⁵⁵ E.C. Garwe, ‘Quality Assurance in Higher Education in Zimbabwe’, *Research in Higher Education Journal*, (2014) pp. 1-10.

⁵⁶ The Zimbabwe Council for Higher Education Act [Chapter 25:27].

⁵⁷ Section 10 (2) of the Zimbabwe Council for Higher Education Act.

⁵⁸ As per section 12 of the Act.

⁵⁹ See for example s 11(1) of the Act.

be granted. As can be seen from the above these processes apply to the registration of institution/university itself and not to academic programmes. As a result, specific programmes such clinical legal education are not dealt with. In terms of s11 of the Act an institution may be provisionally registered by the Council or may be receive full registration approval. Once registered a private higher education institution is free to operate and offer accredited programmes.

Judging by the requirements for registration it is apparent that Zimche must be satisfied with a number of things before granting approval for the setting up of a private institution. These include the objects and functions of the institution which addresses the purpose for which the institution is set up, the nature and composition of the membership and governance of the institution as well as the administration of the institution. To ensure the operational going concern status of the proposed entity the finances and business plan of the institution must also be satisfactory. On the academic side the general academic regulations of the proposed institution must also meet the standard and quality set for different programmes. Matters related to staff and students affairs must also be satisfactorily spelt out in the charter.

The procedure for registration of public institutions is dealt with by sections 15 and 16. The procedure is more direct and simple as compared to registration processes for private higher education institutions. The sections provide that:

15 Establishment of public institutions

The Council may advise the Minister, either at his or her request or on its own initiative, on the establishment of a public institution.

16 Declaration of institutions of higher education

The Minister may, with the advice of the Council and by notice in the *Gazette*, declare any-

- (a) government educational institution operating under the Education Act [*Chapter 25:04*] or to the Manpower Development Act [*Chapter 28:02*];
- (b) statutory body offering degrees as to be an institution of higher education.

offering degrees to be an institution of higher education.

What this means is that with a declaration from the Minister and the requisite publication processes a public institution may be set up. Once set up the rights and privileges of a higher education institution will accrue to it. The simple process may be justified on the ground that government has more resources at its disposal hence once an official statement is made there is no need for serious scrutiny on whether the institution will be able to run will be carried out unlike with private institutions.

1.3.3 Zimche requirements

Section 16 of the ZIMCHE Act permits the Council to publish institutional quality assurance standards and to evaluate higher education institutions in Zimbabwe. These institutional quality assurance standards govern the performance, operations and general conduct of all institutions of higher education in Zimbabwe. These standards can address issues to do with the human resources, educational resources such as hard and soft copy library materials, information technology services available at an institution, the adequacy or otherwise of physical facilities such as libraries, classrooms, lecture halls and the quality thereof. With regard to human resources the Council can set the minimum qualifications of staff, their experience and quantity of staff per programme or course. All these processes from physical spaces, libraries, learning areas and human resources apply to clinical legal education as they apply to any other programme. This means in terms of clinical education there must be adequate physical and non-physical resources such as moot courts, well resourced libraries and staff to teach in the programme. To meet the human resources requirement in the law clinics universities such as UZ and GZU have employed qualified lawyers to work in the legal aid clinics.⁶⁰ For Zimbabwean institutions that development was a first.

Zimche is also empowered to evaluate the performance of institutions regularly in the light of the institutional quality assurance standards set out in the law. For legal aid clinics this exercise is done in conjunction with the Council for Legal Education. These evaluations and institutional audits can reveal whether or not an institution is in compliance with its accreditation certificate or has strayed. Section 16(3) says “after the evaluation in terms of subsection (2), the Council shall issue or refuse to issue an accreditation certificate to the institution.” Obviously, the withdrawal of an accreditation certificate is a serious drawback to any higher education institution as it would signal the potential closure of an institution or a course. The accreditation process also helps an institution to appreciate where it is missing it or if it is carrying out its mandate appropriately. By operation of subsection 5 of s16 the Council is required to indicate in writing the specific steps to be taken by an institution to meet the required standards. To that extent the process also provides a chance to learn to the affected institution.

The processes indicated above, also takes place in the context of law programmes. However, the discipline of law is subject to more scrutiny. As a professional programme law has a number of stakeholders and regulators that have interest on the quality and standards that are offered in law faculties across the country. Therefore, after undergoing the Zimche process or concurrently with the Zimche accreditation an assessment of the proposed law programme is done by the Council for Legal Education (CLE) and the Law Society of Zimbabwe (LSZ). The Council for Legal Education has the mandate to set quality standards in the training of legal professionals.⁶¹ It is specifically given the mandate to determine the qualifications necessary for one to enter the legal profession.

⁶⁰ See note 45 and note 47 above.

⁶¹ See s35 of the Legal Practitioners Act.

In addition to the Council for Legal Education, the LSZ, which has oversight over practising lawyers also has an interest in the study of law in Zimbabwe. This stems from the fact that once trained the Law Society then accepts the graduates into the profession. The rigour and depth of the programmes offered by law schools has a bearing on who ultimately becomes a member of the legal profession. As a result, these twin entities have an oversight role over the training of legal professionals in Zimbabwe. The CLE has a direct statutory mandate while the LSZ has an indirect role in the whole process. With the abolishment of legal clerkship in Zimbabwe at independence the professional training given to students at law schools becomes the sole learning that candidates receive before they enter legal practice. The twin regulators have of late insisted that law programmes must have enough practical components.⁶² One of the key practical components required for law programmes is a clinical legal education component⁶³ and some procedural courses such as Advanced Practical Skills and Civil Procedure for Superior courts. In this regard, clinical legal education as a core course is one subject that is now a must for law programmes to be accepted for accreditation.⁶⁴ To that end, clinical legal education and other practical skills modules have a key role in moulding the law student into a legal professional. This is because these modules provide vocational and practical skills that are essential for a practice of law for any student. This applies with more force in Zimbabwe's context where there is direct admission into the profession⁶⁵. In Zimbabwe students from designated institutions gain direct entry into the legal profession without undergoing further training or studies.

1.3.4 Zimche Assessment & Accreditation

Overall institutions and programmes are assessed by Zimche. If an institution meets the set criteria it is issued with an accreditation certificate. Before programmes and courses are offered by higher education institutions they are assessed for quality. In terms of s19 of the Act an institution of higher education shall be issued with a certificate of accreditation "if it demonstrates the achievement of acceptable standards in terms of physical, human, financial and material resources, management and operational procedures and an acceptable standard of academic life focusing on teaching, research and public and expert service." This requirement touches on a number of resources from the teaching staff, infrastructure, information technology services, financial standing of the institution and facilities among others.

In terms of section 19(2) of the ZIMCHE Act programme accreditation takes into account the following –

- “(a) the academic qualifications for all members of staff employed by the higher education institution during the period assessed and those expected to be employed by the higher education institution;

⁶² The Zimbabwe Minimum Bodies of Knowledge for Law & Commerce published by ZIMCHE.

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ This is in line with the Legal Practitioners Act and regulations made thereunder. A fuller discussion of this is done below in section 1.3.5.

- (b) the total number of students that have been enrolled in each programme of instruction offered at the institution of higher education and the standards attained by those that have graduated during the period assessed;
- (c) Information and Communication Technology infrastructure and provision for training;
- (d) the size and quality of the library and equipment, which have been developed;
- (e) the financial resources that are available for the exclusive use by the institution of higher education, certified by its auditors;
- (f) the physical facilities including land that are available for the exclusive use by the institution of higher education concerned.”

The accreditation process is a long and involving process that employs both internal ZIMCHE resource persons and external subject specialists to assess an institution as well as programmes or modules. Subject specialists from different institutions are used to assess the adequacy or otherwise of a particular programme or subject at any one of the accredited institutions in Zimbabwe. Once all the boxes are ticked positively an institution receives an accreditation in the case of institutional accreditation or a programme accreditation in the case of a specific programme assessment.

Related to above, section 20 demands that qualifications awarded in respect of programmes of instruction offered by an accredited institution of higher education shall be recognised as comparable and of equivalent merit to similar qualification awarded in respect of programmes offered by all other accredited institutions in Zimbabwe. This requirement for comparability has led Zimche to come up with the requirement of minimum bodies of knowledge (MBKs). In line with this Garwe⁶⁶notes:

“ZIMCHE is in the process of determining the minimum body of knowledge (MBK) which must be learnt by students who undertake each study programme at the higher education institutions in Zimbabwe. The determination is done by experts in each of the study areas....This work will help in achieving comparable standards in what is learnt by students embarking on similar degree programmes at different universities”.

This process has been operationalised through the minimum bodies of knowledge handbook from Zimche.⁶⁷ This handbook in relation to clinical legal education adopts what the Council for Legal Education recommends. Among the Council for Legal Education recommended modules are practical courses like Clinical and Practical Skills course and Professional Legal Ethics.

1.3.5 Council for Legal Education Role

The CLE is created by s34 of the Legal Practitioners Act. This Council was an invention of the 1981 Legal Practitioners Act. Prior to that there was no similar institution in

⁶⁶ See note 52 above.

⁶⁷ See for example the Zimbabwe Minimum Bodies of Knowledge and Skills volume 4 Commerce and Law Cluster handbook.

Zimbabwe. The CLE is a body corporate with powers to sue and to be sued in its own name. The functions and powers of Council for Legal Education are provided in s35. The main functions are:

- “(a) to ensure the maintenance of appropriate standards in legal education and training in Zimbabwe;
- (b) to determine the qualifications for registration in terms of this Act;
- (c) to determine syllabuses for and to set, either by itself or through examiners, professional examinations to qualify persons to be registered in terms of this Act;
- (d) to consider and grant or refuse applications from persons seeking exemption from any professional examination or any part thereof.”

Using those powers the CLE can consider the content and standard of legal qualifications granted inside and outside Zimbabwe and to determine whether, and subject to what conditions, such qualifications should entitle their holders to registration and can provide courses of study and training for persons who wish to be registered or who are registered in terms of the Act. The minimum bodies of knowledge handbook by Zimche acknowledges the central role of the CLE by saying that “all law schools are strictly regulated and supervised regularly by the Council for Legal Education, a statutory body created by the Legal Practitioners Act”⁶⁸. In addition, the Law Society of Zimbabwe has a statutory mandate to enhance the quality of legal education in Zimbabwe. Accordingly, these two institutions play a critical regulatory and supervisory role that ensures quality legal education provision by HEIs in Zimbabwe, and have comprehensively shaped the nature of law degree programmes in the law teaching universities.

The CLE has power to advise the Minister of Justice and any educational institutions concerned on matters relating to legal education and training and may review legislation relating to legal qualifications, education and training and to advise the Minister on amendments that it considers should be made to the law. It is apparent that the CLE has wide powers in so far as legal training, supervision, entry into the legal profession, the operation of institutions offering legal training and in regulating those who have been admitted into the profession. Through its role of regulating legal education, the Council regulates clinical legal education in law schools across Zimbabwe. In fact, a satisfactory result on the standards of practical legal training is a basis for a positive designation by the Council of a law programme. Designation allows direct entry into the profession by graduates of a particular university.⁶⁹

⁶⁸ *Ibid* note 27.

⁶⁹ This is done in terms of s49 (2) of the Legal Practitioners Act as read with SI 447 of 1992. In terms of section 4 of the Legal Practitioners (General) Regulations of 1999⁶⁹ the CLE has directed that after registration a legal practitioner has to undergo 3 years of practical training before they can practice on their own account or in partnership with another. This practical experience is gained through employment by a qualified person for three years and attendance at prescribed seminars and activities.

1.3.6 Council for Legal Education Requirements

Any institution that plans to offer a law degree must be accredited by the CLE. Prior to the law degree commencing an application has to be made with the CLE. Essentially that application requires the applicant institution to submit among other things the proposed regulations of the law programme with course synopsis, proposed teaching staff, the organogram of the faculty and the available facilities for the Law programme. In particular, the CLE places emphasis on the law programme being offered in a standalone Faculty or College of Law as opposed to a situation where the law programme is subsumed in another discipline. After carrying out a documentary assessment of the available resources, both human and others the Council then carries out a site visit of the institution to check on the available facilities. Of concern to the CLE is the availability of qualified teaching staff, necessary facilities⁷⁰ and support services like information technology services. The existence of a standalone law library and a moot court are key condition precedents for a successful assessment of the proposed programme. Once the institution is given the nod it may then start its law programme. However, as noted above a separate application to commence a law programme must also be made to Zimche, who also carries out an independent review process. Both reviews must be successful for an institution to start its law academic programme.

Designation of a law programme is the epitome of a positive assessment of a programme. In the assessment of programmes by the Council for Legal Education practical courses like Clinical Legal Education features very well. The CLE has powers to determine who can enter the profession, it does this through designation of law programmes offered in Zimbabwe.⁷¹ Designation is a process where the CLE certifies that a particular law degree in Zimbabwe is of an acceptable quality and standard and the holder of same is equipped with adequate knowledge to practice law in Zimbabwe.⁷² If a programme is designated as such then the holders of that degree would get direct entry into the legal profession. For the non-designated programmes as well as for candidates coming from foreign universities they have to sit and pass some bar exams for them to be ready for law practice in Zimbabwe⁷³. Section 3(1) of SI 447 of 1992 says that one qualifies for registration as a legal practitioner through obtaining either a designated legal qualification or by passing or being exempted from undertaking any professional examinations set out in the rules. Designation is a result of a satisfactory assessment of a law programme. The assessment of law programmes relies more on the practical skills through courses such as clinical legal education, legal ethics and Practical Skills Training that candidates receive in their training programme.

⁷⁰ Such as Moot Courts, a well-furnished law library (with both hard and online resources), adequate teaching space in terms of classrooms/lecture halls and offices for staff.

⁷¹ This it does through rules made in terms of s49 (2) of the Legal Practitioners Act.

⁷² This is done in terms of SI 447 of 1992.

⁷³ See section 3(1) of SI 447 of 1992.

Using these powers CLE has designated certain law degrees offered in Zimbabwe. The CLE has power in terms of s6 of SI 447 of 1992 to designate legal qualifications. Rule 6 says “the Council may, by notice in the Gazette, declare any law degree, diploma or certificate to be a designated legal qualification, if the Council is satisfied that holders of the degree, diploma or certificate, having passed or been exempted in terms of rule 7 from all or any of the professional examinations, will have adequate knowledge to practise law in Zimbabwe.” This means CLE must be convinced that a person who underwent a particular programme acquired adequate knowledge to be able to competently practise law in Zimbabwe. For example in terms of SI 111 of 2016 the Law degrees offered by University of Zimbabwe and Midlands State University were designated for direct admission into the legal profession.

1.3.7 Council For Legal Education Assessment

As explained in the previous section CLE carries out a documentary and physical assessment of the facilities, staff, academic programme as well as the administrative structure of the proposed law faculty before approving a proposed law programme.

Since the CLE carries a continuous oversight over law programmes offered in Zimbabwe, its mandate does not end with approval of a law programme. Assessments extend beyond the commencement of the programme because CLE mandate is continuous throughout the life cycle of a law programme in Zimbabwe. The oversight role continues for law programmes that are in operation. During the implementation of the law programme, the Council for Legal Education may carry out site visits cum site audits of the law programme in operation. The nature of the assessment that is done follows a similar pattern to the initial assessment. Key to the scrutiny is the resources available to support the programme viz lecturers, facilities, library resources and adherence to the promises made at the initial site visits. At these onsite visits the curriculum offered in various modules is scrutinised. For practical courses like clinical legal education an assessment of the overall resources supporting such programmes is done. As a result such processes help in the overall improvement of the clinical legal education offering at universities.

One key area of interest in site assessments is the curriculum of various modules offered in the law programme particularly programmes that impart practical skills to law students. To that extent procedural modules such as Advanced Civil Procedure, Criminal Procedure and Clinical Legal Skills are areas of interest during such audits.⁷⁴ The assessment report given at the end of the session deals with both positive and negative issues gleaned during the site visit. The school gets advice on areas requiring improvement and areas where it is doing well. The outcomes of site visits and assessments becomes an important factor in the designation process of a university law programme. Therefore positive assessment reports are a plus for a law school in Zimbabwe. Consistent positive reports provide a good basis for a positive designation of a programme in the future.

1.3.8 Accreditation by Council for Legal education

⁷⁴ See note 69 supra. The MBKs emphasise the place of practical and clinical courses in the law curricular.

Law programmes that have gone through initial approval and successfully goes through periodic assessments by CLE will have their programmes accredited. This state of affairs allows the institution to run its law programme and if meeting requirements for designation, have its programme designated by Council. As previously discussed, having a programme designated is a highly advantageous state of affairs for a university and its students. For an institution the designation is a stamp of approval of the quality it offers in its law programme and for the students it offers a direct and hassle less entry into the learned profession of law in Zimbabwe. Therefore, for Zimbabwean institutions it is an important step to ensure designation of a law programme and to maintain that status. This is because in terms of rule 6(4) designation status may be withdrawn if standards are not maintained by the institution.⁷⁵ Such an unfortunate development will be catastrophic to an institution and may be very damning to the reputation of an institution and its students.

1.3.10 Chapter Summary

This chapter traced the historical development of clinical legal education in Zimbabwe and noted that this development was student initiated. From that student inspired process clinical legal education later became part of the legal education curriculum at the University of Zimbabwe and later to other universities too. Other law campuses that have emerged across Zimbabwe have adopted clinical legal education as an important module for the training of law students in Zimbabwe. As of 2021 all law degree offering universities in Zimbabwe were offering clinical legal education of some sort at their campuses. Legal aid clinics offers practical and clinical skills to law candidates during their training and gives candidates a chance to experience the practice of law before they officially join the profession. This state of affairs has so many advantages to the law student and the wider community that receives services from law students and universities. The chapter also considered the requirements for registration of an institution's law programme all the way to the processes that are required to have a law programme assessed and ultimately accredited by the twin regulatory authorities namely Zimche and Council for Legal Education in Zimbabwe. Both the CLE and Zimche play an oversight role in the training of legal professionals in Zimbabwe. The Council for Legal Education is a specialised statutory body with a mandate to consider standards for legal training and entry into the legal profession, while ZIMCHE has overall academic oversight for all academic programmes in Zimbabwe. In their respective roles the regulators complement each other for the good of legal education in Zimbabwe.

⁷⁵ Subsection 4 of rule 6 states if the Council is satisfied that any degree, diploma or certificate designated in terms of sub rule (1) should no longer be so designated, the Council may, by notice in the Gazette, withdraw the designation.