

A Decade of Regulating Private Higher Education in South Africa

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Globally, the growth and expansion of public higher education have been accompanied by the decline in public resources for higher education. This has impacted negatively on the quality of public higher education—thus prompting students to look for alternatives, including private higher education institutions. South Africa is no exception to these developments and has, since the end of apartheid in 1994, experienced a rapid expansion of private higher education activities. This happened given the availability of a limited number of places in public higher education institutions for high school graduates. This created a fertile ground for the growth in the number of private providers. From a pre-1994 period, whereby under apartheid private higher education was outlawed, the number of private institutions grew rapidly—to about 300 in 1999. Many of these institutions, especially foreign private providers, were operating in partnerships with public institutions.

ENTER THE REGULATIONS

The proliferation of private higher education institutions led this sector to government's focus on legislative and regulatory action. This happened against the backdrop of reported stories of the public losing money to bogus private institutions that would

open their doors at the beginning of the academic year and the owner(s) disappearing without trace within a few months. In 1997, government passed the Higher Education Act that legalized private higher education. In 2002, the regulations for the registration of private higher education institutions were passed and were implemented since 2003. The regulations made it mandatory for private and public higher education institutions to register their programs with the South African Qualifications Authority. These programs should be quality assured and accredited by the Higher Education Quality Council.

The purpose of registering private higher education institutions was to ensure that they offer an acceptable quality of education; students receive higher education from institutions that have the resources, capacity, and/or expertise to deliver quality programs; students enrolled with these institutions obtain qualifications that are aligned with the National Qualifications Framework; and the education system continues on a path of transformation in accordance with government policy.

The regulations outlawed franchising arrangements. This led to many providers disappearing from the scene. Out of a reported 300 private higher education institutions that were operating in South Africa in the late 1990s, about 89 applied for reaccreditation of their programs with the Higher Education Quality Council in 2002.

PRIVATE FOREIGN INSTITUTIONS IN SOUTH AFRICA

The regulations made provision for the registration and operation of foreign private higher education institutions. However, a foreign applicant was required to submit proof that: (a) its parent institution operates lawfully as a higher education institution

and is accredited by the appropriate accrediting body in its country of origin; (b) a qualification awarded in its name will be fully recognized by its parent institution and by the appropriate state authorities in its country of origin; and (c) a student who is awarded its qualification will suffer no disadvantage if she/he applies to enroll for an appropriate advanced qualification in the parent institution.

These requirements were also responding to reported cases of foreign institutions offering qualifications that were not recognized by a parent institution. Many foreign providers that had entered South Africa, through franchising arrangements or in their own right, withdrew as a result of these requirements. By mid-2004 there were only six foreign providers that remained operational in South Africa.

OVERVIEW OF THE IMPLEMENTATION OF THE REGULATIONS

The latest register of private higher education (August 2011), shows that, since 2003, the government has dealt with about 177 institutions (both local and foreign), which applied for registration. Eighty-six of these institutions are currently registered; 31 are provisionally registered; 3 have been given notice of cancellation; and 57 had their registration canceled. The reasons for cancellation of institutions include the resistance to submit a financial surety agreement, failure to submit audited financial statements, and loss of accreditation status of their programs that are some of the conditions for registration. Sometimes, cancellation would be at the request of an institution.

South Africa's adoption of this regulatory framework has not gone without challenges. During the period of the implementation of these regulations, government has faced litigations from three providers that were all won by the plaintiffs. Pressure

also came from the negotiations of the General Agreement on Trade in Services (GATS) where South Africa received requests for market access to its higher education “market” from countries such as New Zealand, Norway, Kenya, and the United States. South Africa has refused to accede to these requests, on the grounds of the potential danger such action would pose on its efforts to transform higher education, and in particular to strengthen the public sector so that it can participate effectively in a globalizing environment. This stand was also inspired by the principled position of seeing higher education as “public good,” and subjecting it to the GATS agenda would undermine this position.

LESSONS

In many developing countries, private higher education has grown faster than public higher education—mainly given that governments have not been able to make adequate provision of quality higher education. South Africa has been able to regulate private higher education and in so doing weeded out unscrupulous providers and maintained control over the activities of legally registered providers. The application of these regulations, many of which are also applicable to public institutions, also accounts for the reputation South African higher education has in terms of quality and stability.

How has South Africa succeeded where many countries have failed? The case of South Africa demonstrates that it is possible to use the law supported by sound policies to achieve one’s objectives. South Africa requires private institutions to have sound financial systems, subject their programs to quality check, and ensure that awarded qualifications have global relevance and application. South Africa has further been

principled and consistent in its view of education as a public good, and this has enabled it to enforce its policies and withstand the pressure for deregulation of private higher education that other developing countries have been unable to do. Through these policies the public has been protected even during the global financial crisis as it had registered credible and financially sound institutions that could weather off the financial storm. South Africa's principled position on private higher education further supports the assertion that globalization (of education) is not happening in spite of the state but with the collusion and active participation of the nation state. South Africa remains an active player in the global financial and multilateral institutions that shape global economics and politics, although this trend has not deterred it to also develop and pursue policies consonant with the national interest. Thus far, there has not been any evidence of South Africa having been disadvantaged by the pursuit of its education policies.