

REGULATION AND ACCREDITATION OF ACADEMIC LAW PROGRAMMES: COMPARATIVE PERSPECTIVES FROM SOUTHERN AFRICA

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1. Introduction

The regulation and accreditation of academic law programmes in the Southern African Development Community (SADC) has been a feature of the management of law programmes since the inception of legal education in the 19th Century¹. In most countries of the region the regulation and accreditation of academic law programmes has been statute based, with law schools and the governance of their programmes introduced by legislation. Many law schools have been set up under specific legislation establishing particular national universities with accreditation flowing from it. In recent years however, the proliferation of private law schools has pointed to the need to have additional quality assurance mechanisms.

This paper is a very brief survey of the prevailing and emerging trends regulation and accreditation framework in Southern Africa. It is a preview of a forthcoming full length paper on the topic.

2. Emerging trends in accreditation

The SADC region as indicated above consists of fifteen member states in some respects bound together by common historical and colonial ties while in other respects are very different in outlook, consisting as they do of British, Belgian, French and Portuguese colonial traditions². It is important to understand this context from the outset in order to appreciate both the opportunities and constraints facing the region in the search for a common framework of regulation and accreditation in the regional integration agenda of the SADC region.

The current SADC regional block was established in 1992. It emerged out of the predecessor grouping of the Southern African Development Coordination Conference (SADCC). SADCC consisted of nine 'front line' states created in 1980 largely as part of the political liberation movement in the region, to reduce dependence on South Africa before her democratization. SADC as the post-Apartheid organization's overall objective is to promote social, economic and political development and cooperation.

Legal education is by implication a necessary part of the process of regional development and integration.

It is also significant for our present purposes that the ultimate objective of SADC is "... to build a Region in which there will be a high degree of harmonization and rationalization to enable the pooling of resources to achieve collective self-reliance in order to improve the living standards of the people of the region"³.

Quality assurance in which regulation and accreditation are a means is rooted in the SADC Protocol on Education and Training. In September 1997, a Technical Committee on Certification and Accreditation was established⁴. It was the task of the Committee to develop policy guide lines, instruments, structures and procedures to facilitate harmonization and standardization of accreditation and configuration of qualifications⁵.

The emerging trends of the regulatory and accreditation of legal education in the SADC region has to be considered within the broader context of quality assurance in higher education in Africa⁶. Historically such quality assurance in Africa dates back to the founding of the first universities. Many of the earlier universities came with a particular model of quality assurance modelled on the metropolitan universities with which they were affiliated⁷. A few others such as the University of Cape Town established in 1829 and University College of Addis Ababa, 1951, were not affiliated.

One other significant factor of these universities that continued to the post-independence era was that they were largely established under statute either as extensions of metropolitan universities charters or their own specific legislation. The legislation governing the universities was key to their governance and therefore their regulation and accreditation. Thus if you consider SADC counties, the relevant legislation provides for statutory bodies or ministries responsible for the accreditation of higher education. Taken country by country, in Angola it is the *Ministerio do Ensino Superior e Ciencia e Tecnologia*; in Botswana it is the Tertiary Education Council; in Democratic Republic of Congo it is *Ministere de L'Enseignement Superieur et Universitaire*; in Lesotho it is the Ministry of education and Training, in Madagascar it is the *Agency of Evaluation of Ministere de l'education Nationale*; in Malawi it is the Ministry of education and Technology; in Mauritius it is the Tertiary Education Commission, in Mozambique it is the National Commission for Quality Assurance of the Ministry of Education and Culture; in Namibia it is the National Council for Higher Education and the National Qualifications Authority; in the Seychelles it is the Ministry of Education; in South Africa it is the Higher Education Quality Committee/Council of Higher Education and the South African Qualifications Authority; in Swaziland it is the Ministry of Education; in Tanzania it is the Tanzanian Commission for Universities; in Zambia it is Ministry of Higher Education, Science and Technology; while in Zimbabwe it is the Zimbabwe Council for Higher Education.

All such regulatory and accreditation bodies are limited to specific legislation, usually linked to laws establishing respective public universities. Whereas in most countries such laws are generally for the entire higher education sector, in a number of countries, for example, Malawi, Swaziland, Zambia and Zimbabwe, such legislation is directly linked to the establishment of particular national universities. In the latter countries, public universities established in later years have been created under specific legislation⁸.

The picture that emerges is that in most SADC counties the regulation of law programmes such as it is flows from legislative instruments and is based in ministries of education. In many instances it is augmented by professional legal bodies⁹. For the most part such regulation is directed at law programmes in public schools. In recent years, there has been an increase in private universities offering law programmes. There are hardly any autonomous national assurance systems, with only South Africa and Namibia having functioning national qualifications frameworks¹⁰. Even in the two countries, the quality assurance is not specific to law programmes but rather applies to higher education generally.

At the regional level, efforts to establish a region-wide system seem to have stalled. The last time the issue was considered it is reported that the Technical Committee on Certification and Accreditation was given a new mandate rather than the budget it had requested¹¹. Hayward further reports that among factors mitating against the development of SADC region-wide accreditation are the variation of institutional autonomy from country to country, proliferation of private colleges and lack of statutory framework to regulate them, and most importantly, lack of capacity in the establishment of both national and SADC-wide quality assurance systems.

3. Outlook and prospects

Although there is an increasing realisation of the need for regulatory frameworks to enhance quality assurance, progress towards the improvement of national accreditation and quality assurance, let alone the development of SADC – wide harmonized regional system is slow. What seems to have better potential is the Southern African Regional Universities' Association (SARUA)'s indirect benchmarking through cooperative initiatives. Efforts of SARUA are matched at the national level by professional bodies, sometimes in association with law schools and law teachers' associations such as in South Africa. In other respects, the 'market factor' benchmarking by the legal profession exerts pressure on law schools to improve the quality of their graduates¹².

The current national frameworks and efforts at the SADC regional level however provide a basis for incremental minimalist approaches, which as Hayward points out, "... can be built upon in the course of time, as circumstances change and conditions improve, and as users become more comfortable with what is on the ground"¹³.

ENDNOTES

¹ SADC consists of fifteen member states, namely Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

² Of the 15 member states the overwhelming majority are former British colonial territories of varying designations (that is to say colonies or protectorates) while two (Angola and Mozambique) are former Portuguese colonial territories and one (Democratic Republic of Congo) was a Belgian colony and another, Madagascar, a French colony. Besides, French influence is apparent in Mauritius and Seychelles, the two countries having been in the French zone at one time or the other, despite being British 'possessions'.

³ Fred M. Hayward, *Quality Assurance and Accreditation of Higher Education in Africa*, p. 43; see also <http://www.sadc.int/english/about/history/index.php?media=print> (accessed by Hayward 15 March, 2006).

⁴ Hayward, *ibid*.

⁵ *Ibid*.

⁶ See for example, report of Conference on Higher Education Reform in Francophone Africa: Understanding the Keys of Success, Ouagadougou, Burkina Faso, 13-15 June 2006.

⁷ For instance Hayward refers to the founding of a number of such prominent universities as affiliates of metropolitan universities in Europe such as Fourah Bay College in Sierra Leone (1827), Liberia College (1852), Makerere (1922), University of Ghana, Legon (1948) and the University of Dakar (now Cheikh Anta Diop University), (1957), Hayward, *op. cit.* p. 10.

⁸ Nancy Keteku, *Accreditation Systems in Sub-Sahara Africa*, NAFSA 2010.

⁹ For instance under similar legislation governing legal practice in Botswana, Malawi, Zambia and Tanzania, to mention a few countries.

¹⁰ Hayward, *op. cit.* 44; on increasing number of private institutions of higher education, see Keteku, *op. cit.* p. 3.

¹¹ Hayward, *ibid*.

¹² Such market benchmarking is apparent in Zambia where the legal professional accreditation body will only permit approved law schools graduates to enrol at the practical legal training institution leading to licensing. See N. Simbyakula in *National Colloquium of the Future of Legal Education in Zambia*, 2008, P. 122.

¹³ Hayward, *op. cit.* P. 45.