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Legal Frameworks for Tertiary Education in Sub-Saharan Africa

The Quest for Institutional Responsiveness

William Saint
Christine Lao
with Peter Materu

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Foreword

Prospects for future economic growth in Sub-Saharan Africa will depend in significant measure on the continent's capacity to cultivate the higher order skills and expertise needed to acquire knowledge and utilize it to advance economic and social development. Recognition of this reality is leading policy makers and politicians across the region to renew their attention to the role that tertiary education can play in undergirding knowledge-based strategies for growth and competitiveness. As this awareness has grown, fuller understanding of the relationship between human capital formation and economic growth, the types of tertiary education policies that can nurture this relationship, and the national-level conditions that shape the possibilities for success in these endeavors has been pursued by the World Bank through a series of analytical studies. Since 2004 the Bank's Africa Region Human Development Department has undertaken 16 studies of tertiary education topics and published the results in English and French.

This analytical work culminated in 2008 with the completion of the region's flagship report entitled *Accelerating Catch-Up: Tertiary Education for Growth in Sub-Saharan Africa*. This report examined the human resource implications of more knowledge-intensive strategies for growth in Africa within the context of globalized competition and argued the need for more conscious management of education policies in order to align education sector outputs, especially postsecondary graduates and research, with national strategies for economic growth and poverty alleviation. In doing so, the report issued a clear call for more autonomous, flexible, and responsive institutions of tertiary education capable of adjusting their missions and programs to fast-paced changes in the technologies, economic relations, and trade regimes that can spell the difference between a nation's competitiveness and stagnation within the global economic arena. It also highlighted the critical role of governance arrangements at the level of tertiary education systems as well as individual tertiary institutions in determining capabilities for flexibility and responsiveness that enable timely adaptation to change.

In this context, the present study, *Legal Frameworks for Tertiary Education in Sub-Saharan Africa: The Quest for Institutional Responsiveness*, was undertaken to explore the range of tertiary education governance arrangements currently employed within Sub-Saharan Africa and the formal legal basis of their mandates and structures. Experience in Africa and in other regions has shown that tertiary education reform initiatives will sooner or later need to be officialized through new laws or acts for the subsector, and new statutes or decrees for individual tertiary institutions. Yet comparative analysis of tertiary education legislation is very rarely undertaken as a conscious preparatory step in the reform process. The value of this report lies in its exploration of this relatively uncharted territory, the detailed understanding that it gleans from this effort, and the reference resource it constitutes for reform-minded policy makers in the tertiary subsector.

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This paper expands on an initial survey completed by Christine Lao in April 2007. Both authors served as consultants to the Africa Region Human Development Department of the World Bank.

Executive Summary

Change is the theme of our times. Change permeates economies, reshapes societies, and modifies our views of the world. It also brings uncertainty and instability, causing all institutions to scramble in efforts to adapt. Institutions of higher learning play an important role in helping their societies to understand change and respond appropriately. The rising social value now accorded to tertiary institutions in many countries reflects recognition of their influential role in shaping the innovation systems that undergird national economic competitiveness, the mounting public interest in global rankings of the best tertiary institutions, the international tension surrounding the General Agreement on Trade in Services (GATS) discussions on trade in tertiary education services, and in the growing economic rates of return to investments in the higher levels of education now observable in a number of countries. As this occurs, the performance of tertiary education institutions becomes the object of impassioned public and political interest.

The performance of tertiary institutions in meeting public expectations is influenced by various factors, all of which can be enhanced or diminished by the legal frameworks that shape institutional capabilities to respond, adapt, and maintain flexibility in the face of change. The importance of these legal frameworks for tertiary education is often recognized more in practice than in theory. Indeed, proposals to modify these frameworks regularly become politically contested ground. Yet efforts to analyze the legal frameworks for tertiary education have generally not matched the levels of energy found in the discourse that surrounds initiatives to change them.

The shortage of research on the legal frameworks for tertiary education is particularly evident in the case of Sub-Saharan Africa. Understanding is increasingly sought as countries and institutions update their legal frameworks for tertiary education in response to changing parameters of competition, market demand, and social expectations. Out of 49 Sub-Saharan countries surveyed, roughly half of these countries either had no legal framework for tertiary education at all or one that was at least two decades old.

This review is a preliminary attempt to analyze and compare the national tertiary education legislation and individual statutes of selected public universities in 24 countries of Sub-Saharan Africa for which this documentation could be obtained. It seeks to identify the range of practice and most common approaches in these documents with regard to the specific matters of governance and institutional diversification within the national tertiary education systems. These two subjects are frequently identified as key variables for determining the responsiveness of tertiary education systems, and ultimately their capacity to manage change and maintain relevance under continually shifting conditions. Policies for governance and diversification are major forces in shaping tertiary education systems in the world today, and the legal frameworks that define and delimit university governance and diversification can be important instruments for achieving policy objectives seeking to promote greater responsiveness in tertiary education.

Governance

The legal frameworks that set the parameters for governance and management within the tertiary system are directly relevant to reform initiatives, where debate frequently focuses on issues of autonomy and accountability. A key principle that guides many recent tertiary education reforms is "autonomy with accountability." When assessing autonomy it is important to take into account the outside controls that can affect the independence of a higher education institution. Most often, it is the government that creates these controls. But constraints on autonomy can also be applied by other sources such as powerful academic staff unions, militant student organizations, or strong dependence on a particular source of international financial assistance. Whatever their source, these constraints tend to stifle innovation, facilitate rent-seeking, and politicize the education system.

In return for increased autonomy, governments, parliaments, and societies are asking for greater accountability from public institutions in their performance and use of public resources. Accountability mechanisms often take the form of stakeholder representation in decision-making bodies, external evaluation by impartial experts, and publicly available reports on activities and accomplishments. These instruments constitute feedback loops that enable decision makers to enact appropriate adjustments to shifting circumstances. Thus, accountability mechanisms are a critical aspect of institutional responsiveness. At the international level, the major trends in university governance are: (i) withdrawal of the state from institutional control functions; (ii) creation of system oversight or 'buffer' bodies to manage sector finances, supervise standard functions, and provide sector-wide services; (iii) adoption of funding models that give institutions greater flexibility and encourage them to develop new sources of income; (iv) establishment of external agencies to monitor educational quality; (v) development of new forms of accountability through reporting on performance and outcomes; (vi) affirmation of the university governing board as the institution's highest decision-making body, although accountable to the minister or buffer body; and (vii) gradual withdrawal of the state from direct decision making on the appointment of university governing board members and chief executives.

Newer legal frameworks for tertiary education in Sub-Saharan Africa reflect these international trends. for example, whereas the head of state commonly served as the chancellor of each public university, this has become less and less the case. likewise, the direct appointment of the chief officer of the university by the head of state or prime minister is becoming less frequent. Various countries have established buffer bodies to guide policy implementation, mediate conflict, monitor performance, and ensure accountability. Governing boards are being empowered to preside over university affairs without the need to obtain ministerial approval for their decisions. Likewise, universities are being given greater control of their financial management, including income generation, the authority to set student fee levels, internal reallocation within approved budgets, and the carryover of unspent funds from one year to the next.

System Governance

As tertiary education in Africa has expended from a handful of public institutions to hundreds of public and private institutions, many governments have seen it prudent to establish intermediary—or "buffer"—bodies to oversee these increasingly large and complex systems. Buffer bodies are more commonly found in the English-speaking countries. Within the French-speaking countries, the tendency has been to create separate ministries of higher education to manage their growing tertiary systems. At present, 15 of 42 Sub-Saharan African countries possess semi-autonomous buffer bodies, and an additional 15 countries have dedicated ministries of higher education. The number of members on the governing boards of buffer bodies ranges from 7 to 28, with an average of 16. Membership composition often reflects a rough balance among the public sector, the academic community, and the private sector.

The power to appoint persons as members of buffer body governing boards tends to be reserved for the highest levels of government. In a number of countries, appointments are held under close government control and made directly by the head of state, prime minister, or minister of education. In other cases, a blended procedure is followed whereby some members are appointed and others are elected democratically from within legally designated stakeholder groups such as university leaders, the chamber of commerce, or the academy of arts and sciences.

The vast majority of countries—12 out of 15—remunerate governing board members for their service to the buffer bodies. Half of countries surveyed mandate three-year terms of service for governing board members; the remainder has either four- or five-year terms. Roughly half of the countries surveyed require their buffer body governing boards to meet at least four times a year, while the rest were obliged to meet less frequently.

Institutional Governance

Tertiary institutions tend to be structured along similar lines of governance. Usually, a governing board is charged with formulating the institution's strategic direction, approving internal statutes, accepting budgets and accounting for use of funds, setting terms of employment for staff and approving the employment of senior officers, managing the institution's property and assets, and safeguarding the institution's interests. Two models predominate. The first, characteristic of the French-speaking and Portuguese-speaking universities, is made up entirely (or almost entirely) of internal university representatives. Chaired by the chief officer, it governs with considerable autonomy and very little involvement of external stakeholders. This model gives considerable authority to the chief officer. The second model, found mainly in the English-speaking universities, incorporates various types of external members within the board. The most common group is government officers, followed by those drawn from the private sector and representing a wide range of stakeholders.

Governing Boards

The number of governing board members varies considerably from one African country to another, and even among institutions within the same country. It ranges from a low of 11 to a high of more than 40. Recent legal reforms in this area are consistent with international trends towards smaller size boards and a larger portion of external stakeholders. The procedures used in appointing members to the governing boards provide insight into the lines of political accountability (or control) formalized within the legal frameworks. In French-speaking and Portuguese-speaking countries where the board members are usually university employees, they serve on the board as a result of the position they occupy in the university (for example, chief officer, deputies, deans, academic staff, administrative staff, and so forth). Thus, an internal formula defines board membership. In several English-speaking countries, board members are appointed by the head of state or the minister of education. In this case, a portion of board positions is often designated for senior university staff. In eight countries representing all language groups, board appointments are made on the basis of a "stakeholder representation formula." Legal frameworks are often silent with regard to the right of board members to be remunerated for their service to the institution. In most cases, their term of service is three or four years.

Senior Officers

The chief officer is a highly visible and politically sensitive position in most African countries. For this reason, and to make the lines of accountability clear, the head of state appoints the chief officer in 9 out of 22 cases. In just four countries is the governing board invested with the authority to choose the institution's chief executive officer without approval from government. Government control over other senior university positions is somewhat less stringent, with the governing board authorized to make these choices in 10 of the 22 countries. In 8 out of 18 countries, deans and directors are elected by their academic peers, making these positions possibly the most democratically chosen within the university. Election is employed less commonly in selecting department heads, where the chief executive is more likely to make the choice.

Academic Governance

The institution's academic affairs are managed by an academic board. These boards are normally accountable to the governing board and responsible for institutional policies concerning curriculum, educational quality, admissions, examinations, award of degrees, research, and the creation or closure of academic programs. They often advise the governing board on decisions concerning academic employment, promotions, and the establishment of new academic units, and may have responsibilities for preparing a preliminary budget for academic activities. Academic boards tend to be fairly large deliberative bodies, sometimes numbering 50 or more, and are generally chaired by the university's chief officer.

Financial Autonomy

The ability to obtain operating revenues from a wide range of sources is an important way of enhancing the decision-making autonomy of tertiary institutions. In virtually all cases, universities in Africa are permitted to receive financial resources from government, donations, income generation activities, and student fees. The legal provision permitting universities to demand and receive student fees is nearly universal (17 out of 21 countries), although this authority may be curbed in practice by political pressures. Whether a university can employ or dismiss staff, and set the terms for their employment, is also a gauge of financial autonomy. In the Portuguese-speaking countries, the chief officer is accorded this mandate. Within the English-speaking countries, the governing board is often empowered to make these decisions. The French-speaking countries are more likely to assign this authority to the chief executive or to the Minister. On balance, it appears that tertiary institutions in English-speaking countries enjoy a somewhat higher degree of financial autonomy than those in French-speaking and Portuguese-speaking countries.

Accountability

Accountability is a necessary companion of autonomy. When governments cede greater autonomy to tertiary institutions, they face the challenge of finding ways to ensure that the institutions remain accountable to them for adherence to approved policies and for responsible use of the funds provided. Legal frameworks for higher education in Sub-Saharan Africa commonly contain five mechanisms for ensuring accountability.

- *Strategic plans*. Ministries and buffer bodies often monitor an institution's performance against the goals it sets for itself in its strategic plan. In some French-speaking systems, performance contracts are used. In all cases, institutions are expected to reach specified output levels or indicators of good performance.

- *Stakeholder representation*. The accountability of an institution to its various stakeholder groups is achieved by including representatives of these groups on the institution's governing board. Recent years have witnessed a trend towards expanding the number of board members drawn from outside the university community and for these external members to be the elected representatives of specified constituencies. For example, recent legislation in Tanzania requires 75 to 80 percent of board members to be external to the institution, whereas Lesotho and South Africa stipulate that 60 percent of board membership be external. In French-speaking countries, the Université de Thiès in Senegal and the Kigali Institute of Science and Technology in Rwanda require 35 percent of their board members to be external. An emerging new practice is the use of stakeholder representation within the academic boards of universities.
- *Auditing*. Financial and quality audits seek to reassure government and the general public that their funds are being used efficiently and effectively, and that they are receiving educational value in return for their monetary investments. Thus, university legislation in virtually every country requires institutions to produce annual statements of income and expenditure and have them audited to ensure veracity. Normally, these audits are conducted by the government's auditor general, but in some countries universities may contract independent external auditors. In terms of academic audits, governments are moving quickly to set up national quality assurance agencies to evaluate educational inputs and learning outcomes and periodically accredit tertiary institutions. Sub-Saharan Africa now hosts 17 national quality assurance agencies for higher education, 10 of them established since the year 2000.
- *Reporting*. Likewise, institutions are usually required to produce publicly available reports on their yearly activities and future plans. Universities in 19 out of the 24 countries surveyed are legally obliged to do so. In most cases, these reports are submitted to the parliament or national assembly through the minister's office.
- *Performance-based funding*. To steer tertiary institutions toward policy goals while respecting institutional autonomy, governments have devised new mechanisms for this purpose. Among them are performance contracts, benchmarking, and performance-based budgeting formulae. The approaches provide specified amounts of financial resources in return for institutional achievement of stipulated performance targets.

Diversification

Diversification is the process whereby distinct types of tertiary educations emerge in response to a country's need for educational programs that respond to a widening range of students with divergent abilities and interests. Seeing new opportunities, tertiary institutions develop specialized missions and profiles in order to exploit them, progressively leading to a more diversified tertiary education system that becomes more effective as a whole.

Within Africa's higher education systems, diversification is clearly apparent, although the nature of it varies from country to country. These differences originate in the varieties of colonial experience and post-independence political economy. But they also reflect how countries have subsequently positioned themselves in relation to the internationalization of higher education and to the market forces associated with globalization. A prominent contributor to diversification in Africa has been the recent explosion of private higher education.

Private Higher Education

While public universities doubled from roughly 100 to nearly 200 between 1990 and 2007, the number of private tertiary institutions in Africa surged during the same period from two dozen to an estimated 468. Non-university tertiary institutions have been the fastest growing segment within the private tertiary sector. Not surprisingly, governments have felt a responsibility to regulate this growth. Where government regulation of private tertiary education is enabling rather than controlling, it can play an important role in assuring consumers that they are obtaining educational value for money and in expanding to access to education more quickly than would otherwise be possible solely on the basis of public funding. But in some countries, the legal frameworks surrounding the provision of private tertiary education can be controlling or even punitive. For example, private tertiary education may be required to operate on a not-for-profit basis. Elsewhere, the charter to operate a private tertiary institution may be granted by the head of state, requiring what seems to be an unnecessarily high level of administrative decision making that could create considerable inefficiency and time delay. Some application requirements appear to run the risk of being onerous and of limited utility, even when they are well-intentioned. Examples include excessive detail on organizational, academic, and staffing plans, and multi-year financial plans that exceed the time frame of what can be realistically projected.

Concluding Observations

In general, our review of the legal frameworks that orient tertiary education in Africa finds apparent tendencies to increase institutional autonomy, strengthen accountability mechanisms, shift from appointment to elective representation processes in the filling of higher governance and management positions, favor merit over political affiliation in the criteria for choosing senior officers, and construct broader linkages with civil society, the private sector, and sister institutions in the region and beyond. The expansion of tertiary system buffer bodies and growing regulatory attention to private higher education are notable phenomena. Interestingly, recent legislation seems to give greater attention to explicit statements of principles as guides for decision making. In the ebb and flow of such legislative changes, however, it is our impression that, although there are clear exceptions, tertiary systems and institutions in French-speaking countries may be progressing more slowly on these fronts. Finally, several suggested needs for future research are offered. To facilitate future research and comparative learning on the legal frameworks that orient the tertiary education systems of Sub-Saharan Africa, the Association of African Universities might encourage its 200 members to post current copies of relevant higher education acts, university statutes, and associated decrees or regulations on their websites.

CHAPTER 1

Context

Change seems to have become the watchword of our times. Change permeates economies as the intense competitive dynamics of globalization take hold. It re-shapes societies and their expectations as expanding access to information and worldwide instant communication erode political boundaries, create cyber relationships, and generate the powerful potential for almost instant social mobilization. Changes in attitudes and behavior sharply distinguish the new generation from the old, while the race between growing environmental problems and new technological solutions raises questions of life style sustainability that humankind has never previously been forced to address. Change brings uncertainty, and this uncertainty reduces predictability, thereby creating openings for instability. In this context, all of society's institutions, both public and private, scramble to respond and adapt, and to reduce the organizational and procedural rigidities that impair the effectiveness of their processes of adjustment.

Institutions of higher learning play an important societal role in generating the impulses for change and in helping their societies to understand it and respond appropriately.[1] They impart to students the understanding, skills and mental tools that facilitate transformative adaptations to change even as they set in motion the possibilities for further changes through new research and applications. The rising social value attached to tertiary institutions reflects recognition of their influential role in shaping the innovation systems that undergird national economic competitiveness, the mounting public interest in global rankings of the best tertiary institutions, the international tension surrounding GATS discussions on trade in tertiary education services, and in the growing economic rates of return to investments in the higher levels of education now observable in a number of countries. As this occurs, the role and performance of tertiary education institutions becomes the object of impassioned public and political interest.

The performance of tertiary institutions in meeting public expectations is influenced by several factors. Among them are institutional leadership, governance structures, management capacity, accountability, human resources, financial means, incentive systems, and the regulatory environment in which they operate. In different ways, however, each of these variables can be enhanced or diminished by the legal frameworks that condition institutional capabilities to respond, adapt, and maintain flexibility in the face of change.

In one of the very few comparative assessments of higher education legal frameworks in Sub-Saharan Africa, Bjarnason and Lund (1999) conclude:

> "The way governments manage their university systems is now seen as one of the key factors in the success of those institutions. This management relationship embraces a wide range of issues: the frequency of intervention, the scale of reporting and control

> frameworks, the extent of power over university appointments and the style and coverage of policy directives. Those governments that wish to exercise tight control have a wide range of mechanisms available. If they decide to do this aggressively, their restrictions can limit the potential of their sector to respond and, worse, can lead to the demoralisation of the senior staff involved."

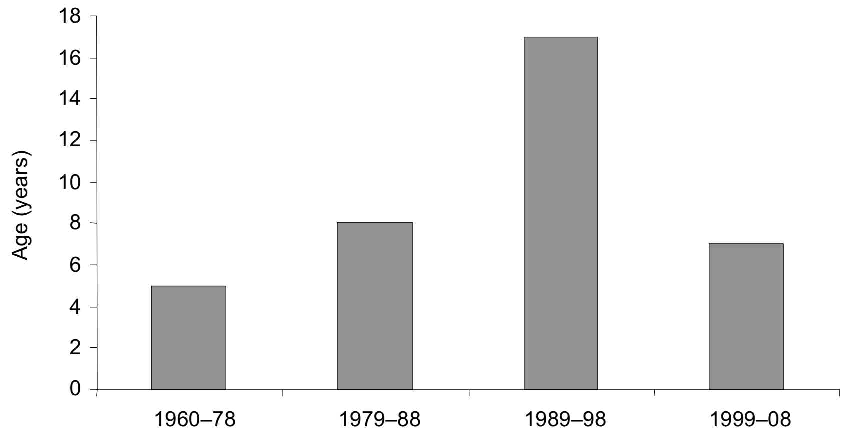
The importance of these legal frameworks for effective performance of a tertiary education system and its individual institutions is often recognized more in practice than in theory. Modifications to the laws and regulations that affect tertiary education are often contested ground, with high-level commissions, studies, public debate, and political compromise all contributing to the final outcome. Yet systematic analysis and comparative assessment of these legal frameworks have generally not been commensurate with the energy of the discourse that surrounds reform initiatives.

The shortage of analyses of the legal frameworks for tertiary education is particularly evident in the case of Sub-Saharan Africa. A search of some 1,100 references specifically related to Sub-Saharan African tertiary education topics found only *four* that dealt with the legal frameworks that guide tertiary institutions (Moja and Cloete 1996; Bjarnason and Lund 1999; Bitzer 2002; Mubangizi 2005). Three of these concern specifics of South Africa's transformation efforts in higher education; the other compares university-government relations in three African countries. It therefore seems reasonable to conclude that any other reports, evaluations, or recommendations regarding legal frameworks for tertiary education in Africa—if they exist—are not accessible in the public domain. As a result, few references are available to guide reform proposals for legal frameworks in African tertiary education.

This type of information is increasingly sought as countries and institutions update their legal frameworks for tertiary education in response to changing parameters of competition, market demand, and social expectations. In fact, the need for such information is likely to become more intense in the future. Out of 49 Sub-Saharan countries surveyed in 2006 (Bloom et al. 2006, Appendix B), some 37 of them (76 percent) had tertiary education legislation in place. But in 13 of these countries, the prevailing laws or decrees were 20 years old or more. Thus roughly half of African countries either had no legal framework for tertiary education at all, or else one that was at least two decades old. As a result, structures designed for a different age and for smaller, more intimate institutions have lost pace with changing times and become unable to manage the growth and complexity that have occurred (Daniel et al. 2007).

The full distribution of African higher education legislation by decade according to date of enactment is presented in figure 1.1.

Figure 1.1. Age Distribution of Higher Education Legislation in Africa by Decade



Source: Bloom et al. 2006, Appendix B.
Note: Data as of 2006.

Subsequent to the survey by Bloom et al., new legal frameworks for tertiary education have been put in place in eight of these countries—Botswana, Democratic Republic of Congo, Djibouti, Mauritania, Namibia, Sudan, Tanzania, and Zimbabwe (IAU 2007)—and are reportedly under consideration in Kenya.

The purpose of the review that follows is to analyze and compare the national tertiary education legislation and individual statutes of selected public universities in 24 countries of Sub-Saharan Africa for which this documentation could be obtained. It seeks to identify the range of formal practice as defined in these legal documents with regard to specific matters of governance within the national tertiary education systems. Governance is frequently pointed to in English language literature as the key variable for determining the responsiveness, adaptability, and flexibility of tertiary education systems, and ultimately their capacity to manage change and maintain relevance under continually shifting conditions.[2] It should be noted, however, that the present review makes no attempt to compare the legally stipulated structures, allocation of responsibilities, and procedures contained in national higher education legislation with how these are actually interpreted and implemented on a daily basis. Although considerable divergence between what is intended in legal mandates and what actually happens in practice has been observed in numerous higher education systems, exploration this discrepancy falls beyond the scope of the current review.

Of the 24 countries reviewed, two are Portuguese-speaking, eight are French-speaking, and fourteen are English-speaking. A full list of the 70 laws, acts, and statutes upon which this review is based is provided in the Appendix. The countries covered in this study are as follows:

Angola	Mauritius
Botswana	Mozambique
Burkina Faso	Namibia
Chad	Nigeria
Democratic Republic of Congo	Rwanda
Djibouti	Senegal
Ethiopia	Sierra Leone
Ghana	South Africa
Kenya	Tanzania
Lesotho	Uganda
Mali	Zambia
Mauritania	Zimbabwe

Notes

[1] The terms "higher education institution" and "tertiary education institution" are used interchangeably in this discussion.

[2] Responsiveness is understood to be a capacity for quick and appropriate adjustment to change. Adaptability is taken to be a capacity for suitable adjustment to changing environmental conditions. Flexibility in this case refers to efficiency in responding as when a legal framework provides sufficient scope that adjustment can be undertaken without resort to formal modifications of laws or regulations.

CHAPTER 2

Comment on Methodology

A major limitation of this report stems from the considerable difficulty we encountered in finding appropriate documentation of the legal frameworks that guide African universities. We searched for relevant legislation, acts, decrees, and statutes on the Internet and used the World Bank's own resources, which included materials held by country attorneys and those in the World Bank library. We also drew upon our own personal contacts within the African higher education community. The task proved to be particularly problematical in Nigeria where the national buffer body and 26 of 27 federal universities offer websites, but none of them contained copies of their respective institutional acts or statutes at the time of our research. For similar reasons, we were unable to obtain copies of statutes for individual private universities in Sub-Saharan Africa. Moreover, we had no way of ascertaining whether the documentation we retrieved was currently applicable, or whether it had been superseded or amended by more recent legislative actions. These tasks remain for the next researcher. Because of these limitations, this study should be viewed as an exploratory and incomplete attempt to assess the legal frameworks governing tertiary education in Sub-Saharan Africa.

CHAPTER 3

Governance and Diversification as Policy Variables

The major forces shaping tertiary education systems in the world today are (1) massification and diversification; (2) governance, funding, and public steering; (3) the evolution of the research mission; and (4) trends in international student mobility (Kearney and Huisman 2007). As noted above, our discussion here concentrates on the first two of these factors, although it is recognized that recent reforms to the legal frameworks for tertiary education in Africa are prompted by all of these forces and more, notably a growing concern to formalize the structures and processes necessary for quality assurance. The implication of these forces of change for the persons who draft these reforms, whether politicians or academicians, is that they should strive to avoid creating barriers to decision-making flexibility. Tertiary institutions will need to respond and adapt to change, and the law should not stand in their way (Cargill 2007; Fielden 2008). More importantly, the law can be a useful instrument for achieving policy objectives seeking to promote greater responsiveness in tertiary education. To this end, our review of regulatory frameworks will concentrate on two particular subjects that directly condition the possibilities for institutional responsiveness in tertiary education: governance and diversification.[1]

Governance

As the rising tide of demand for access to tertiary education generates pressures for massification of tertiary enrollments, and as globalization pressures force governments to concern themselves with maintaining the competitiveness of their economies, the development of capacities for effective management within tertiary education systems becomes more and more important. Thus, a key principle that guides many recent tertiary education reforms is that "institutions should be free to manage their own affairs—and be held accountable for their performance in doing so" (Fielden 2008). The legal frameworks that set the parameters for governance and management within the system quickly become relevant to the reform process, and debate frequently focuses on associated issues of autonomy and accountability.[2]

Autonomy

Autonomy is the power to govern without outside controls. For a higher education institution, it means the freedom to determine its own goals and priorities; to select its own leaders; to employ and dismiss staff; to determine enrollment size and rate of growth; and to manage its own budget, including the reallocation of funds among budget items and the right to retain for future use any savings generated. Autonomy should be clearly distinguished from academic freedom, which is the ability of academic staff to teach, conduct research, and publish without outside interference

(Richardson and Fielden 1997).[3] Autonomy protects the institutional right of self-regulation that the state confers upon the university in the law that establishes it. Thus, it does not guarantee independence from the state, but instead constitutes the basis for a kind of partnership with the state, which may need to be renegotiated from time to time in light of changing circumstances (Ajayi, Goma, and Johnson 1996).

When assessing autonomy it is important to take into account both overt and latent outside controls that can affect the independence of a higher education institution. Overt controls that infringe on an institution's autonomy can be anything written into the law that affects the institution's capacity to govern itself. A latent outside control is one that is not explicitly written into the law, but its effect is to curb the institution's ability to self-govern.

An important issue of autonomy is the extent to which these outside controls are felt within an institution. A tertiary education institution might have senior officers who are selected by the minister of education, but if these ministry appointees then have the power to appoint faculty deans, heads of departments, and other people in positions of power and influence, the institution may be less autonomous from government than if it held the authority to choose its own officers, since lines of implicit control reach all the way from the minister through the institution's chief executive to its lesser decision makers.

These outside controls can come from any source, with the same effect of limiting the higher education institution's capacity to govern itself. It is most often the government that creates the controls that hinder self-government by tertiary institutions. But constraints on autonomy can also be generated by other sources such as powerful academic staff unions, militant student organizations, or strong dependence on a particular source of international financial assistance. Whatever the source, these constraints tend to stifle innovation, facilitate rent-seeking, and/or politicize the education system (Kapur and Crowley 2008; Bloom et al. 2006). As a result, this review will look carefully at the composition of stakeholder representation in key institutional governing bodies such as the university's governing board or academic board,[4] who appoints the primary institutional decision makers and how this process occurs, and where the locus of decision making resides within the hierarchy of public administration.

Accountability

Governments, parliaments, and societies are all asking for greater accountability from public institutions in their performance and use of public resources (Fielden 2008).[5] For universities and their leaders, accountability represents the ethical and managerial obligation to report on their activities and results, explain their performance, and assume the responsibility for unmet expectations (Salmi 2008). In practice, accountability is the clear assignment of responsibility for efficient use of resources to produce results and the mechanisms whereby this performance can be monitored. These mechanisms often take the form of stakeholder representation in decision-making bodies, external evaluation by impartial experts, and publicly available reports on activities and accomplishments.[6] On balance, accountability mechanisms constitute feedback loops that enable decision makers at various levels of the tertiary system to receive evaluative information regarding its performance so that appropriate adjustments can be made in a timely manner. From this perspective, accountability mechanisms are a critical aspect of institutional responsiveness, and they are therefore included within the scope of inquiry that follows.

Diversification

Diversification is the process whereby distinct types of tertiary educations emerge in response to a country's need for educational programs that provide diverse types of skills and knowledge to a widening range of students with divergent abilities and interests. By increasing institutional specialization through a "division of labor" approach, the effectiveness of the overall system can be improved. For tertiary institutions to be responsive to the needs of change-driven societies, they must give conscious attention to the "fitness for purpose" of their outputs. The way they do this is by developing specialized missions and institutional profiles, and the end result of this process is a more diversified tertiary education system.[7]

The case for promoting diversification rests on various arguments. First, a diversified system improves access for students with different educational backgrounds and abilities by providing a wider range of choice and various pedagogical orientations. Second, it facilitates social mobility by offering multiple entry points to tertiary education and multiple options for successful students to transfer on to higher levels of study. Third, it responds to labor market needs by providing the growing range of specializations needed for economic and social development. Fourth, diversification provides interest groups with opportunities to strengthen their sense of identity and political legitimization by enabling them to target specific student populations (for example, women, regional cultures, religious communities). Fifth, it increases the effectiveness of institutions by encouraging them to specialize in what they do best. Finally, it permits low-risk experimentation whereby institutions can assess the viability of innovations undertaken by others without having to adopt them directly (Van Vught 2007). In general, these justifications tend to fall into one of two categories: public good and social justice concerns, and efficiency/effectiveness requirements, including the need for innovation (Singh 2008).

Whether diversification practice in Sub-Saharan countries conforms to this premise is less clear. Greater diversification has certainly been enhanced by the recent explosion of private tertiary education; by the establishment of specialized institutions focusing on distance learning, the education of women, or science and technology; and by the efforts of some institutional mission statements to address specific community needs. But it has been undercut by the upgrading of colleges and polytechnics to university status without filling the voids they leave behind, by required tutorial relationships in which established institutions shape the aspirations and work environments of new institutions, and by social demands that press for replication of the most prestigious institutional models (Ng'ethe, Subotzky, and Afeti 2008).

Fortunately, some of the more recent tertiary education legislation explicitly recognizes the need for diversification and makes provision for the establishment of other types of tertiary education institutions in addition to public universities. In our quest to understand the legal basis for greater institutional responsiveness, we will therefore give attention to statutory recognition of various types of tertiary institutions, and especially to the regulatory frameworks that govern the provision of private higher education.

Notes

[1] The need for new types of educational and research institutions, along with institutional governance reforms, is increasingly recognized to condition the success of current efforts in Africa to strengthen the capacities for science, technology, and innovation necessary to maintain and expand economic competitiveness (Juma 2007).

[2] It is worth noting that even within largely autonomous institutions, management control can be excessively concentrated to the detriment of institutional efficiency and responsiveness. For example, "in some cases, the university vice-chancellor or rector has to approve expenditures of as little as $100, authorize staff travel to conferences, chair student and staff disciplinary committees, chair all appointment meetings, and take part in very minor administrative chores" (Mwiria 2003).

[3] More specifically academic freedom encompasses determination of the content of classes and academic programs, the selection of students, control of examinations and degree standards, and establishing the balance among teaching, research, and community service.

[4] Virtually all universities in Africa are structured around two major deliberative bodies in a bicameral model. In this discussion, we will refer to them generically as the "governing board" and the "academic board." It should be understood that these terms refer to what are commonly known in the English-speaking countries as the *University Council* and *Senate*, in the French-speaking countries as the *Conseil d'Administration* and the *Conseil de la formation et de la vie universitaire* or the *Conseil Scientifique et Pedagogique*, and in Portuguese-speaking countries as the *Conselho Universitário* and the *Conselho Académico.*

[5] One set of observers sees accountability as "…the process of justifying the size of the public financial allocation to higher education relative to other competing needs" (Ajayi, Goma, and Johnson 1996).

[6] Specific accountability mechanisms may be used to monitor the degree of educational coverage (access), fairness of coverage (equity), quality of education, relevance to labor market needs, values imparted (citizenship), use of resources (efficiency), and the financial capacity of the institution to evolve and maintain standards (sustainability). Some of these goals may be incompatible, and stakeholder interests may thus come into conflict (Salmi 2007).

[7] For enlightening assessments of the literature on higher education diversification and differentiation, see Singh (2008) and Van Vught (2008).

CHAPTER 4

Overview of Recent Trends in Governance and Diversification

Universities have long functioned as members of a loosely knit international academic community, bound together by common historical origins in Western Europe; universally accepted goals of teaching, research, and community service; transnational academic disciplines; similar organizational structures and vocabulary; global discussions of discovery and theory; mechanisms for regular interaction and scholarly exchange; and a unifying quest for knowledge and understanding. Thus, even before the arrival of economic globalization, an international university community existed above and beyond national boundaries. For this reason, higher education experiences and innovations in one part of the world have often served as a stimulus for change elsewhere. For example, the recent standardization of academic award structures in Europe under the "Bologna Process" has kindled a compatible restructuring of academic awards in Africa. In short, international trends in higher education often have national repercussions. Because of this, a brief overview of global trends in the governance and diversification of higher education systems should enable a fuller understanding of similar trends now underway in Africa.

International Trends

Governance

A decade and a half ago, Van Vught and Neave (1994) distinguished between state *control* and state *supervision* models of university system governance.[1] State control involves the direct management of (and occasional interference in) a higher education system or institution by the government ministry responsible for education, or by higher levels of the executive branch of government, in which universities are treated as extensions of the public administration apparatus. In contrast, the state supervision model emphasizes greater institutional autonomy within the system with state "steering" of institutions towards policy goals through a combination of incentives and accountability mechanisms. Since then, state intervention has progressively declined as massified higher education has become too large and too complex to be managed effectively from a central ministry. The trend has favored fewer and less comprehensive regulations and increasing institutional autonomy (for example, Australia, China, Singapore, Sweden). In fact, a recent survey of European universities found that three-quarters of them now believe that they possess sufficient institutional autonomy to make decisions and manage their affairs in the best interests of society (Crosier and Smidt 2007). Another survey showed that national legislation was seen to provide "high autonomy" to universities in 13 of 23 European countries (Karran 2007).[2]

In a recent assessment of university governance trends, Fielden (2008) identifies the following international patterns:

- Withdrawal of the state from control functions
- Creation of buffer bodies (for example, a National Council for Higher Education) to manage sector finances, supervise standard functions (for example, quality assurance, degree equivalence), and provide sector-wide services (for example, statistics, ICT platforms)
- Adoption of funding models that give institutions greater flexibility and encourage them to develop new sources of income
- Establishment of external agencies to monitor educational quality
- Development of new forms of accountability through reporting on performance and outcomes achieved in terms of national goals and institutionally defined targets
- Affirmation of the university governing board as accountable to the minister or buffer body
- Gradual withdrawal of the state from direct decision making on the appointment of the chair of the governing board, its members, and the chief executive of the institution.

With reference to university governing boards, Fielden (2008) goes on to note that governments have increasingly sought to reduce the size of these boards in the campaign for greater managerial efficiency. Thus, Denmark recommends 11 board members. Australia and New Zealand suggest 8 to 12. The newer British universities are required to have between 12 and 24 members.

At the same time, a trend towards drawing the majority of board members from beyond the academic community is also apparent (Fielden 2008, 1996). The rationale for this is a belief that external members can be more objective in taking strategic decisions, especially where innovation in established institutional structures and procedures is required, and can help to improve the alignment of institutional outputs with the economy, the labor market, and the needs of employers.

But even as external governance is becoming less interventionist, the rules of the game in terms of accountability for performance are becoming more demanding (Bleiklie, Laredo, and Sorlin 2007). The initial emphasis on performance indicators contained in the "logical frameworks" promoted as planning tools during the 1990s has now been incorporated into an array of funding formulas and competitive funds for higher education. The drive for accountability, and the extensive needs for statistical and "measurable outputs" documentation that accompany it, has led some observers to observe that "These systems seem to be drowning under a proliferation of paper returns and statistics" (Richardson and Fielden 1997) and sparked university complaints of "performance indicator overload" (Salmi 2008).

A recent appraisal of legal and regulatory frameworks for higher education in 23 European nations notes a clear trend towards more "corporativist" and less collegial management structures in universities (Karran 2007). Many see this as an adaptive response to the expanded autonomy produced by deregulation. Universities have adjusted to this change by "strengthening leadership, building capacities for strategic analysis, sharpening strategy and mission based on these analyses, internal reviews and stakeholder input; rewarding performance among faculty; listening more closely to signals from the funding system; appointing external representatives to internal decision-making organs, and initiating fund-raising campaigns" (Bleiklie, Laredo, and Sorlin 2007). As the corporativist trend expands, conceptualization of university governance shifts from the notion of a collegial "republic of scholars" to that of a stakeholder-accountable organization (Bleiklie and Kogan 2007). Among the consequences of this shift are a larger role for central management in setting university objectives and processes, the creation of strong management structures that parallel or replace academic decision-making structures, the dilution of the power of academic senates by stakeholder boards, and the rise of quality assurance mechanisms that have become a strong influence in the growth of managerialism. In fact, the emphasis on corporativist approaches to higher education management has led some countries, most notably Denmark and (to a lesser extent) the United Kingdom, to recruit university executives from outside of the academic community (Karran 2007).[3]

Diversification

Throughout the world, a notable shift in public policies concerning higher education occurred towards the end of the twentieth century. The new policies sought to create markets in higher education, to strengthen ties with industry, and to stimulate higher levels of institutional diversity (Van Vught 2007). Intended to increase competitiveness within a global market, these policies are evident not only in developed countries, but also in developing nations such as Brazil, China, and Malaysia where the policy discourse increasingly stresses responsiveness and innovation (Bleiklie, Laredo, and Sorlin 2007).

Some argue that the reliance on market forces to achieve higher education policy objectives, including that of diversity, has backfired. In countries like Australia, New Zealand, and the United Kingdom that have increasingly incorporated market competition into higher education, institutions have often sought to imitate the activities of their successful competitors instead of diversifying into new areas in an attempt to capture a specific market niche. Two crucial factors influence the direction of higher education diversity: (i) the way in which governments structure the policy environment, and (ii) the relative strength of academic norms and values within higher education institutions (Meek 2000). For this reason, the inherent value of diversification should not be accepted a priori, but rather assessed within each national context in terms of other competing policy goals and the specific development needs of the higher education system (Singh 2008). As a result of contextual circumstances, it is possible that diversification strategies may lead to risks and unintended consequences (for example, sharply rising costs) as well as benefits (Van Vught 2008).[4]

The push towards greater market competitiveness and diversification in higher education has also fuelled a global trend towards increased autonomy for tertiary institutions. University leaders frequently view the pressures of competition as an opportunity for greater autonomy, arguing "We need more autonomy in order to compete" (Newman et al. 2004). However, an international survey of 10 higher education systems found that system size (that is, the number of tertiary institutions) is not necessarily related to their levels of diversity, and that governmental policies which promote institutional autonomy may simply enable institutions to emulate the most prestigious ones (Huisman, Meek, and Wood 2007).

African Trends

Governance

The history of African higher education has been characterized by strong government controls on institutions of higher learning.[5] A decade ago, a survey of university leaders from Commonwealth countries in Africa indicated that state constraints on institutional autonomy were rather high, although not as high as in Asia or some Mediterranean countries. Notably, where multiparty democratic political systems had been introduced, university leaders reported less government interference than in one-party states (Richardson and Fielden 1997). Still, an overview of trends in African higher education produced in 2003 concluded, "Government involvement in university affairs is the norm" (Teferra and Altbach 2003). External state interference, notably in the domination of governing boards and the appointment of chief officers, was considerable, especially in Francophone countries (Sawyerr 1996). University governance was characterized by "…a relatively fragmented organizational structure, the diffusion of decision-making power among many semi-autonomous units, and the substantial authority and initiative over important matters vested in individual academics (especially the professoriate)" (Sawyerr 1993). Too often, past relations between public universities and their governments were defined by conflict rather than partnership (Ajayi, Goma, and Johnson 1996).

Newer legal frameworks for tertiary education in Sub-Saharan Africa reflect the international trends towards greater institutional autonomy and increased accountability, along with some elements of corporativism. Whereas the head of state commonly served as the chancellor of each public university, this has become less and less the case. Likewise, the direct appointment of the leader of the university by the head of state or prime minister is becoming less frequent. In several countries, overarching higher education laws have recently been enacted for the tertiary system as a whole (for example, Sierra Leone, Tanzania, and Zambia), replacing and repealing a collection of individual university acts. Various countries have established different types of buffer bodies to guide policy implementation, mediate conflict, monitor performance, and ensure accountability. Governing boards are being empowered to preside over university affairs without the need to obtain ministerial approval for their decisions. For example, governing boards are accorded increasing freedom in the employment and dismissal of university staff, including the highest managerial positions. Likewise, universities have steadily been given greater control of their financial management, including income generation, internal reallocation within approved budgets, and the carryover of unspent funds from one year to the next. As decision-making responsibilities have been decentralized, the use of accountability mechanisms has expanded. One example is the increasingly common practice of including external stakeholder representatives on governing boards, and occasionally even on academic boards.

Diversification

Within the higher education systems of Africa, diversification is clearly apparent, although the nature and extent of it vary from country to country. These differences originate in the varieties of colonial experience, political economy, and immediate post-independence history. But they also reflect how countries have subsequently been able to position themselves in relation to the internationalization of higher education and to the market forces associated with globalization. Tertiary systems in Africa are quite diverse and can be classified as unitary, binary, trinary, semi-differentiated, or fully differentiated, depending upon the number of distinct institutional types that comprise the tertiary system. In general, the polytechnic and technical education subsystems appear relatively undifferentiated in comparison to the university subsystems (Ng'ethe, Subotzky, and Afeti 2008), but this may be changing (Kinyanjui and Afeti 2008). At the same time, diversification in delivery models for private higher education and tertiary distance education has clearly been growing (Varghese 2008).

Let us now see what our review can tell us about the potential for responsiveness contained in the prevailing legal frameworks for tertiary education in Sub-Saharan Africa as they pertain to governance.

Governance

System Governance

As national-level tertiary education in Africa has expanded from a small handful of public institutions to hundreds of public and private institutions, many governments have seen it prudent to establish intermediary—or "buffer"—bodies to oversee these increasingly large and complex systems. These intermediate bodies literally buffer the ministry of education from the periodic conflicts that may arise between members of the university community and the government by providing an initial recourse for dispute resolution. In a similar way, these buffer bodies also serve to shield tertiary institutions from direct intervention by government leaders since these bodies are usually staffed with former university administrators and academicians who generally understand the organization and culture of the university better than senior ministerial officials, and who may possess a network of informal contacts in the university community that allows for "off the record" problem-solving conversations to be pursued at a level of trust that may often be lacking between ministry and university leaders. A buffer body may be called a National Council of Higher Education, National Higher Education Commission, or Tertiary Education Council. Among their common responsibilities are to advise the government on higher education policy, to recommend on tertiary financing and allocations of funding to individual institutions, to assure educational quality, to plan for the tertiary system's development, and to collect and publish higher education statistics.

Table 4.1. Government Authority with Primary Responsibility for Tertiary Education in 2007

Ministry of Education	Ministry of Higher Education	Buffer Body*
Angola	Benin	Botswana
Burundi	Burkina Faso	Ghana
Djibouti	Cameroon	Kenya
Eritrea	Central African Republic	Lesotho
Ethiopia	Chad	Liberia
Guinea-Bissau	Congo, Republic of	Mauritius
Madagascar	Congo, Democratic Republic of	Namibia
Malawi	Côte d'Ivoire	Nigeria
Mauritania		Rwanda
Mozambique	Gabon	Sierra Leone
Swaziland	Gambia, The	South Africa
Zambia	Guinea	Sudan
	Mali	Tanzania
	Niger	Uganda
	Senegal+	Zimbabwe+
	Sudan	
	Togo	

Source: International Association of Universities, 2007; authors' data.

* Normally accountable to the ministry of education.

+ As of 2008.

Buffer bodies are more commonly found in the English-speaking countries of Sub-Saharan Africa (see table 4.1).[6] Within the French-speaking countries, the tendency has been to create separate ministries of higher education to manage the growing tertiary systems. At present, 15 of 42 Sub-Saharan African countries possess buffer bodies, and an additional 16 countries have dedicated ministries of higher education. To some extent, it appears that countries with smaller tertiary enrollments and fewer tertiary institutions tend to manage higher education from within a ministry of education with sector-wide responsibilities. In the Democratic Republic of Congo and in Nigeria, separate buffer bodies have been established for each category of tertiary institution (that is, universities, technical institutes, and teaching colleges). Although Burkina Faso, Cameroon, Mauritania, and Mozambique have established higher education councils, they are not yet true buffer bodies as their role is purely advisory to the minister.

Composition. In our review of the legal frameworks for Sub-Saharan African tertiary education, 13 of the 24 countries surveyed had established buffer bodies. The number of members on their governing boards ranges from 7 to 28, with an average of 16 (see table 4.2).

In four cases, the majority of governing board members comes from, or represents, public sector institutions. More often, membership composition reflects a rough balance among the public sector, the academic community, and the private sector. In some cases (for example, Rwanda, South Africa) the appointing authority is given the flexibility to choose as it deems most appropriate. Just three countries include students on the governing boards of buffer bodies. Private higher education is explicitly

Table 4.2. Composition of Buffer Body Governing Boards

Country	Internal			External			Undefined	Total
	Administration	Academic	Students	Government	Private Sector	International		
Botswana	2	1	1	5	3		2	14
Congo, Dem rep. of	5			5	3			13
Ghana	3			8	1		7	19
Kenya				21–25*			3	24–28
Lesotho				11*				11
Mauritius				7*				7
Namibia	1	5		5	5		3	19
Nigeria	7			5	6			18
Rwanda							7	7
Sierra Leone	4	1		7	1		4	17
South Africa							17	17
Tanzania	4	1	2	7	3		1	15–21
Uganda	6	2	2	7	3		1	21
Zimbabwe	3			12	3	3		21

Source: Authors' research.

* May include government appointees from outside of government.

included in the make-up of boards in Tanzania and Uganda. Only Zimbabwe calls for the incorporation of members who possess an "international reputation." In various cases, a portion of the membership is left undefined in terms of its institutional or stakeholder affiliation, presumably so that either the minster or the governing board can enhance the collective capability of the group by adding persons with expertise judged relevant to the current circumstances of the country's tertiary education system. Often, the governing board is explicitly linked to the country's planning and budgeting processes by requiring that senior officers in the ministries of finance and development planning serve as board members.

The trim Tertiary Education Council in Botswana (14 members) and the larger National Council for Higher Education (NCHE) in Uganda (22 members) provide useful examples of how multiple interests can be accommodated within the membership of a buffer body (see boxes 4.1 and 4.2). The Botswana Council incorporates four representatives of government, four representatives from various higher education communities, three nongovernmental representatives, and two flexibly defined members who are selected by the council itself. The Uganda Council represents both public and private universities, in case they may have differing needs. By including representatives of university academic boards, it also ensures that academic concerns have their own voice. The non-university sector is well represented with five members, and explicit attention is given to the inclusion of women and the disabled.

Box 4.1. Botswana Tertiary Education Council

- A Chairperson.
- The Permanent Secretary to the Ministry responsible for Education.
- Two public officers at Permanent Secretary level.
- Two people of recognized standing from business, statutory corporations, or the private sector.
- One person from the community.
- At least one Vice-Chancellor from either a public or private university.
- The Chief Executive of the Botswana Training Authority.
- A representative of tertiary institutions.
- A representative of the academic community.
- A student of a tertiary institution.
- Two people co-opted by the Council.

Box 4.2. Uganda National Council for Higher Education

- A Chairperson.
- A Vice-Chairperson.
- One representative of the Vice-Chancellors of public universities.
- One representative of the Vice-Chancellors of private universities.
- One representative of public university Senates.
- One representative of private university Senates.
- Two student representatives, one representing university students and one representing tertiary institutions students, one of whom must be a woman.
- Four members of religious non-degree awarding institutions.
- Three representatives, one each from the commerce, industry, and agriculture sectors.
- Four representatives of other sectors of higher education, at least one of whom must be a woman and one a person with a disability.
- The officer in charge of higher education, or his representative from the Ministry of Education.
- The NCHE Executive Director.
- One person from the public.

Appointment. The power to appoint persons as members of the buffer body governing boards tends to be reserved for the highest levels of government. In 10 of 13 countries, appointments are held under close government control and made directly by the head of state, prime minister, or minister of education. In four cases, the head of state names the board chair and the minister appoints the other board members. However, the head of state selects all board members in Nigeria, and three-quarters of them in Kenya.

In Sierra Leone and Uganda, a “mixed” procedure is followed whereby some members are appointed and others are elected from within legally designated stakeholder groups such as university leaders, the Chamber of Commerce, or the Academy of Arts and Sciences. South Africa also employs a mixed approach in which a public call for board member nominations is issued through national media, and the Minister of Education then selects 13 persons from among the nominees, bearing in mind such principles as representation, gender balance, expertise, and integrity. To complement the results of this process, the governing board can co-opt up to three additional members, and the Minister of Education is also authorized to appoint six additional *non-voting* members from relevant sectors of government (for example, science and technology, labor, research, provincial education). Legislation in several other countries, notably Tanzania and Zimbabwe, also includes "statements of principle" to orient the selection of board members.

Remuneration. The vast majority of countries—12 out of 14—remunerate governing board members for their service to the buffer bodies. South Africa remunerates only the Board Chair and members of the Board's Quality Assurance Committee, presumably because their workloads are greater. Only the Democratic Republic of the Congo apparently maintains the tradition that such appointments are a prestigious honor and civic duty for which no remuneration is required. Mauritius does not address the issue of remuneration in the legal foundations for its buffer body. Interestingly, in at least two cases (Uganda and Zimbabwe), governing board members are authorized to set their own levels of remuneration. Notably, Rwanda requires the board members of its buffer body to sign *performance contracts* covering their terms of service.

Term of Service. Half of countries surveyed mandate three-year terms of service for members of their buffer body governing boards. Another 30 percent of countries have set five-year terms. The remainder has four-year terms.

Meeting Frequency. Roughly half of the countries surveyed require their buffer body governing boards to meet at least four times a year. One out of four countries expects at least two meetings annually. In two countries—Mauritius and Nigeria—the legislation appears to be silent on this point. In all cases, additional meetings can be called by the chair as necessary.

Institutional Governance

Institutions of higher learning tend to be structured along similar lines in terms of their governance. Usually, a governing board is charged with responsibility for formulating the institution's strategic direction, for approving internal statutes, for approving budgets and accounting for use of funds, for setting terms and conditions of employment for staff and approving the employment of senior officers, for managing the institution's property and financial assets, and for safeguarding the institution's interests.

The institution's academic affairs are the domain of an academic board (*Senate* in English, *Conseil scientifique et pedagogique* in French, *Conselho Académico* in Portuguese).[7] These academic boards are normally accountable to the governing board and responsible for institutional policies and regulations concerning curriculum, educational quality, admissions, examinations, award of degrees, research, and the creation or closure of academic programs. They often advise the governing board on decisions concerning academic employment, promotions, and the establishment of new academic units, and may have responsibilities for preliminary preparation of the budget for academic activities. In addition to these standard functions, they are sometimes charged with the award of student scholarships (for example, Botswana, South Africa), deciding admissions intake (for example, Lesotho), staff and student disciplinary matters (for example, Mauritania, Rwanda), and determination of degree equivalencies (for example, Namibia).

In South Africa, university governance includes a unique additional structure called the "Institutional Forum." Apparently a response to the national effort at reform, transformation, and redress within the higher education system that followed the end of *apartheid* government in 1994, the Institutional Forum is expected to advise the governing board on matters of race and gender equity (particularly in staff employment), codes of conduct, dispute resolution, and fostering an institutional culture of tolerance. With some 25 to 30 members, the Forum brings together representatives of the governing board, management, the academic board, academic staff, students, non-academic staff, and other groups as may be stipulated by the statues of the individual institution.

Responsibility for daily management of the institution resides with a president, principal, rector, or vice-chancellor who will be referred to in the following discussion as the "chief officer." The chief officer is often assisted by one or two deputies (for example, vice-president, vice-rector, secretary general, pro-vice-chancellor, deputy vice-chancellor). Where there are two deputies, their responsibilities are commonly divided between academic and administrative affairs. Under these senior officers, individual academic faculties are headed by deans (*doyens* in French, *directores* in Portuguese). University institutes and centers are normally run by directors. Each academic department is managed by a head (*chef* in French, *chefe* in Portuguese).

The English-speaking countries generally include an additional position at the apex of their institutional governing structures called the chancellor (sometimes called the "visitor"). The chancellor normally conducts the annual ceremonies surrounding the award of degrees and may be given the authority to appoint the chair of the governing board. But his/her greater responsibility is to initiate an external investigation (a "visit") into the institution's affairs when a serious case of conflict or mismanagement occurs that cannot be handled by the governing board. For several decades after independence, the role of chancellor in public universities was often fulfilled by the head of state (for example, Kenya, Nigeria), thus adding an additional mechanism for government control. In recent years, this practice has begun to fade with the appointment of prestigious individuals of great integrity to the position of chancellor.

Composition of Governing Board. Two models predominate (see table 4.3). The first, characteristic of the French-speaking and Portuguese-speaking universities, is made up entirely (or almost entirely) of internal university representatives.[8] Chaired by the chief officer, it governs with considerable autonomy and very little involvement of external stakeholders. Because the chair of the governing board and the chief officer are the same person, this model gives considerable power and influence to the chief officer. Boards dominated by, and oriented towards, internal institutional interests do much to preserve academic freedom, but they contain little in their organizational structure or representation that requires responsiveness to external stakeholder concerns, societal expectations, or national development needs.

The second model, found more frequently in the English-speaking universities, incorporates various types of external members within the board in the effort to build in greater responsiveness to external constituencies. The most common external members are government officers, particularly senior officers from the ministries of

Table 4.3. Composition of University Governing Boards (percentages)

Country	Internal	Govern-ment	Other stake-holders	Interna-tional	Undefined	Total (%)	No. of members
Angola	100					100	45
Botswana	48	22	18	12		100	19
Burkina Faso	100					100	35
Chad	73	12	15			100	33
Djibouti	45	40	15			100	20
Ghana[a]	45	20	9	4	22	100	15
Kenya[b]	48	10	7	2	33	100	35
Lesotho	40		60			100	22
Mauritania	75	25				100	17
Mauritius	34	8	25		33	100	11
Mozambique[b]	65	12	23			100	25
Namibia	5	25		10	60	100	23
Nigeria	55	15			30	100	21
Rwanda	50		6		44	100	15
Sierra Leone	18	30	12		40	100	17
South Africa[b]	35				65	100	34
Tanzania	25				75	100	11–21
Uganda	50	23			27	100	23
Zambia	41	19	33	7		100	27
Zimbabwe	40	5	20		35	100	44

Source: Documents listed in appendix.

a Average of four public universities.

b. Average of two public universities.

education and of finance. A second member category is drawn from the private sector and can represent a wide range of stakeholders, for example, industry, commerce, unions, nongovernmental organizations, research centers, and professional associations. A few boards include a person or two from outside the country in the effort to draw upon international experience (for example, Botswana, Ghana, Kenya, and Zambia). In some cases, the make-up of the board is very loosely specified by law (for example, Namibia, Lesotho, South Africa, and Tanzania). In these cases, either the minister or the board itself is free to select persons judged to bring the right mix of skills for the institution's needs.

Institutional responsiveness to the society that supports it may be estimated by assessing the composition of the board in terms of the number of members who are either internal or external to the university. In half the cases surveyed, internal members make up half or more of the total number. This tends to be the case more often among Portuguese-speaking and French-speaking institutions. In 25 percent of the cases, internal members represent one-third or less of total board membership.

Box 4.3. Composition of the Governing Board, Zambia

- The Vice-Chancellor
- The Deputy Vice-Chancellor
- One member from the local government authority in whose area the university is located
- Two members of the academic staff of the university who are members of the Senate
- Up to two members who are associated with institutions for higher education outside Zambia
- Two members who are associated with other institutions for higher education within Zambia
- One member who is an alumnus of the university
- Two student members
- Two members of the non-academic staff of the university
- Three members of the academic staff of the university
- One member nominated by the Confederation of the Chambers of Commerce and Industry
- Permanent Secretaries in the ministries responsible for finance and education
- Two members of the National Assembly
- Five members representing trade, industry, commerce, and the professions

Source: The University Act of Zambia, 1992.

The composition of university governing boards in Zambia provides a good example of how various interests can be balanced together (see box 4.3). Of the board's 27 members, four are representatives of the national government and one is a representative of local government; ten are members of the university community (academic staff, students, and alumni); six come from various economic and professional sectors; four represent other institutions of tertiary education, including two from outside of the country; and two are senior university officers.

The extent of institutional autonomy from government influence can often be predicted by comparing the number of board members appointed by the head of state or the minister with the number of members who are selected by the board itself. For example, the Minister of Higher Education appoints 26 of the 44 board members at the University of Zimbabwe. In Kenya, the head of state appoints one-third of the board members. In contrast, the governing board of the University of KwaZulu-Natal in South Africa chooses 11 out of its 30 board members to cover a range of professional areas such as finance, business, law, information technology, and human resource management while the other members are mandated stakeholder representatives.

There is some evidence that more recent reforms to legal frameworks in Africa are consistent with an international trend towards smaller size boards and a larger portion of external stakeholders. For example, the Tanzania Universities Act of 2005 states that university governing boards should have between 11 and 21 members. Legislation in Lesotho, South Africa, and Tanzania stipulates that the proportion of external members on university boards should be 60 percent or higher.

The number of members on a governing board varies considerably from one country to another, and even among institutions within the same country. The range is from a low of 11 at the University of Technology in Mauritius to a high of more than 40 at Agostinho Neto University in Angola and the University of Zimbabwe. Among the 24 public institutions surveyed, 35 percent had a board membership of less than 20 persons, 35 percent had 20–29 persons, 20 percent had 30–39 persons, and 10 percent had 40 persons or more.

Students were represented on most governing boards, although in limited numbers. In most cases, they accounted for 10 percent or less of board membership. This contrasts with prevailing practice in Europe, where student representation on university governing boards is legally required in 31 out of 36 countries. The most common proportion, expressed as a percentage of seats on the board, is in the 11 to 20 percent range, followed closely by the 21 to 30 percent range (Daniel et al. 2007).

Standing committees. It is relatively rare for university statutes to specify standing committees under the governing board. In most cases, the board is authorized to form committees as may be necessary in order to accomplish its work. However, in a few cases, standing committees are mandated. The most common is a finance committee (for example, University of Ilorin in Nigeria; Université de Noukachott in Mauritania; University of KwaZulu-Natal in South Africa). Other examples focus on staff appointments, personnel evaluation, student discipline, and audit. Occasionally, a separate "university tribunal" may be established to handle staff or student disciplinary issues (for example, Uganda, Zambia). Often, provision is made for "joint" committees, combining members of the governing board and members of the academic board, in order to address overarching issues that combine broad academic and institutional concerns.

Appointment of Board Chair. Where the authority to appoint the chair of the governing board is assigned can be another indicator of autonomy—or lines of control. Three different arrangements for making this decision are manifest (see table 4.4). In one, the head of state directly appoints the chair. A variant of this approach is when the head of state appoints the university chancellor (see below) who in turn is charged with appointing the chair. In some cases, the head of state may appoint himself as the chancellor in which case the lines of control are shortened. The second arrangement is for the minister or chief officer to appoint the chair. Some countries require consultation with the board before doing so; others do not. In the French-speaking countries, the chief officer is frequently designated by law to serve as the chair of the board. However, this practice may be changing, as the 2007 decree establishing the Université de Thiès in Senegal introduces a board chair (*président*) who must come from outside of the university community. The third and most autonomous arrangement is when the board is empowered to elect its own chair. This is the case in five countries of Eastern and Southern Africa.

Appointment of Board Members. The procedures used in appointing members to the governing boards provide useful insight into the lines of political influence (or control) formalized within the legal frameworks (see table 4.4). In French-speaking and Portuguese-speaking countries where the board members are university employees, they serve on the board as a result of the position they occupy in the university (for example, chief officer, deputies, deans, full professors, academic staff, administrative staff, students). Thus, an internal formula defines board membership. In several English-speaking countries, board members are appointed by the head of state, the

Table 4.4. Appointing Authority for Chair and Members of Institutional Governing Board

Country	Chair	Members
Angola	Chief Officer	Internal*
Botswana	Head of State	Head of State and Minister
Burkina Faso	Chief Officer	Internal
Chad	Minister	Internal*
Congo, Dem. Rep. of	Chief Officer	Internal
Djibouti	Minister	SRF
Ghana	Head of State	SRF
Kenya	Chancellor	Head of State plus internal representatives
Lesotho	Head of State	Board
Mali	Chief Officer	Internal representatives
Mauritania	Chief Officer	SRF
Mauritius	Prime Minister	Prime Minister plus internal representatives
Mozambique	Chief Officer	SRF
Namibia	Board	SRF
Nigeria	Head of State	Minister plus internal representatives
Rwanda	Head of State	Prime Minister plus internal representatives
Senegal	U	U
Sierra Leone	Chancellor	SRF
South Africa	Board	SRF
Tanzania	Head of State	SRF
Uganda	Board	SRF
Zambia	Board	Chancellor
Zimbabwe	Board	Minister plus internal representatives

Source: Documents listed in appendix.

* Membership is by management position (Rector, Dean) or by elected representative (staff, students).

SRF = Stakeholder Representation Formula stipulated by law.

U = unclear or unavailable.

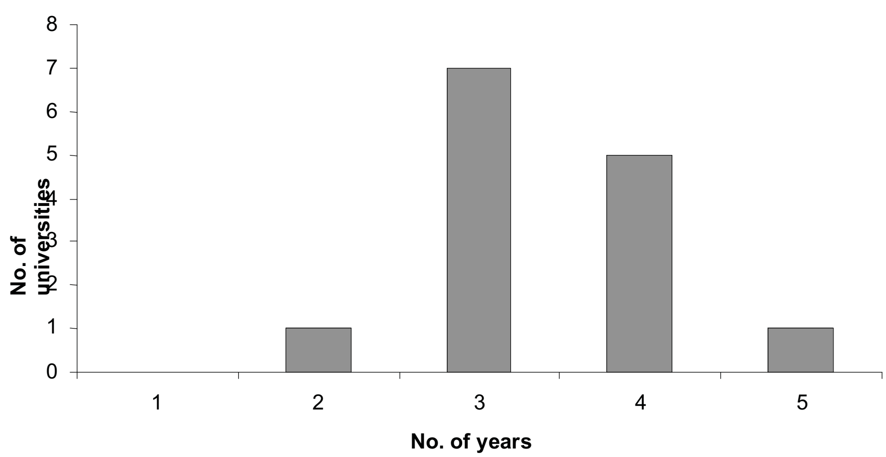
prime minister, or the minister of education, often choosing from a list put forward by the board itself. In this case, a portion of board positions is often designated for senior university officers. In nine countries representing all language groups, board appointments are made on the basis of a "stakeholder representation formula." In these cases, the law stipulates that board positions be earmarked for specific stakeholder constituencies who then vote to elect their respective representatives. In practice, a wide variety of stakeholder formulas have been employed. As noted, the share of stakeholder seats on governing boards seems to be expanding as the call intensifies for greater social accountability on the part of public universities. Among the less common but potentially enriching inclusions are representatives of local government (for example, Sierra Leone), workers unions (for example, Zimbabwe), secondary school associations (for example, Ghana), international experts (for example, Botswana), and donor agency representatives (for example, University of Cape Town). In some cases, explicit targets are proposed for the inclusion of women (for example, Tanzania). In nearly all cases, students have at least one representative on the university governing board.

Decision making. In most cases, legal frameworks provide definitions of quorum for board meetings and of the share of votes required to reach a binding decision. Two tendencies can be observed here. In one, the requirements for quorum and voting decision are comparatively higher, perhaps indicating an emphasis on reaching broad-based agreement in the decision-making process. In the other, quorum and voting are relatively less demanding. In these cases, it may be that the drafters of the statutes preferred to encourage efficiency and timeliness in decision making. Specifically, 40 percent of countries define quorum as a majority of the board's total membership; one-third of countries set the bar for quorum somewhat lower at 33 percent; and one out of four countries allows the board to determine its own quorum on the basis of internal regulations. In all cases, decision making is based on a simple majority of those present at the meeting.

Remuneration. Legal frameworks are often silent with regard to the right of board members to be remunerated or not for their service to the institution. Out of 23 cases, 17 do not address this issue. Of the remainder, two countries (Democratic Republic of Congo, Ghana) explicitly state that board members will not be remunerated. An additional four countries clearly state that members are entitled to remuneration.

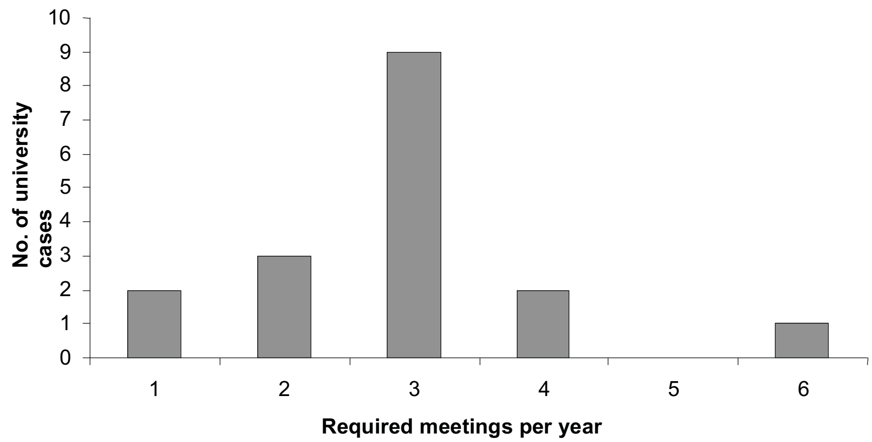
Term of Service. The university statutes of 14 countries define the term of office for governing board members (figure 4.3). This occurs most often when the members are elected to represent various stakeholder groups. Where board members are appointed rather than elected, their term of office is more likely to be left undefined, perhaps because they serve at the pleasure of the appointing authority. In most cases, the term of service is either three or four years. In Ghana it is two years, and in Zambia it is five years.

Figure 4.3. Term of Service for Governing Board Members (years)



Source: Documents listed in appendix.

Figure 4.4. Mandated Frequency of Board Meetings Per Year.



Source: Documents listed in appendix.

Meeting Frequency. In 17 cases, university statutes stipulate the minimum number of times that the governing board must meet each year. In all instances, additional meetings can be called by the chair or by a minimum number of members. Slightly over half of the universities require their boards to meet three times a year (figure 4.4). In two cases, only one meeting per year is mandatory, thus suggesting that the gathering is either a formality, or else reserved only for business of the highest institutional importance. At the University of Cape Town, the board is obliged to meet six times a year, implying that it is expected to play a more active role in university affairs than occurs elsewhere. Notably, the board of the University of Technology in Mauritius is required to meet on a monthly basis, thus creating the possibility that the board might play more of an executive function than a governing one.

Appointment of Chancellor. Twelve of the countries surveyed—all English-speaking—list the chancellor as the highest university office (see subsection on "Institutional Governance," p. 18). In two-thirds of these cases, the head of state appoints the chancellor. This also provides him with the option of appointing himself, and this continues to be the case in countries such as Zimbabwe.[9] In three other instances, the university governing board selects its own chancellor. At the University of Cape Town, a legally mandated electoral college comprised of elected representatives of alumni, academic staff, administrative staff, and students chooses the chancellor based on a publicly announced call for nominations. The chancellor is determined by majority vote through successive elimination rounds of balloting in which the nominee with the least votes falls out of each subsequent ballot until one candidate receives a majority vote. Once selected, the chancellor serves a 10-year term.

Table 4.5. Appointing Authority for Institutional Officers

Country	Chancellor	Chief Officer	Deputies	Deans/Directors	Department Heads
Angola	n.a.	Head of State	Head of State	Minister	Chief Officer
Botswana	Head of State	Head of State	U	U	U
Burkina Faso	n.a.	Cabinet	Cabinet	U	U
Chad	n.a.	Head of State	Cabinet	Elected	Elected
Djibouti	n.a.	Cabinet	Minister	Minister	Chief Officer
Ghana	Board	Board	Board	Board	Chief Officer
Kenya	Head of State	Chancellor	Board	Board	Board
Lesotho	Board	Board	Board	U	U
Mali	n.a.	Cabinet	Minister	Chief Officer	Chief Officer
Mauritania	n.a.	Minister	Minister	Elected	Chief Officer
Mauritius	n.a.	Prime Minister	Board	Board	U
Mozambique	n.a.	Head of State[a]	Chief Officer	Chief Officer	Chief Officer
Namibia	Board[b]	Board	Board	Board	U
Nigeria	Head of State	Head of State	Board	Elected	Elected
Rwanda	n.a.	Head of State	Prime Minister	Elected	Chief Officer
Senegal	n.a.	Head of State	U	U	U
Sierra Leone	Head of State	Head of State[c]	Board	Elected	Elected
South Africa	Board or Electoral College	Board	Board	Elected	U
Tanzania	Head of State[a]	Chancellor[a]	Chancellor[a]	Board	Board
Uganda	Head of State[a]	Chancellor[c]	Chancellor[c] or Board	Elected	Elected
Zambia	Head of State	Chancellor[c]	Chancellor[c]	Elected	Chief Officer
Zimbabwe	Head of State	Head of State	Board	Board	Chief Officer

Source: Documents listed in appendix.

Note: Cabinet also means Council of Ministers; n.a. means Not Applicable; U means unclear or unavailable.

a. Chooses from a list of three candidates submitted by the Board.

b. The current board choice is the Head of State.

c. Based on a recommendation by the Board.

Appointment of Senior Officers. The chief officer, as well as those deputized to act on his or her behalf, is a highly visible and politically sensitive position in most African countries. This is because he or she is in charge of daily operations at a major public institution in which staff and/or students usually hold a potential for mobilizing disruptive strikes and national political protests. For this reason, and to make the lines of accountability very clear, the head of state appoints the chief officer in 9 out of 22 cases. In another four instances, the appointing authority is the chancellor (who may be the head of state). In three countries, cabinet (that is, the council of ministers) makes this appointment. In just four countries (Ghana, Lesotho, Namibia, and South Africa) is the governing board invested with the authority to choose the institution's chief executive officer (table 4.5). Government control over other senior university positions is somewhat less tight, with the governing board authorized to make these choices in 10 of the 22 countries. Only in Mozambique is the chief officer permitted to select his or her deputies. Some observers have noted that university acts and statutes tend to say little concerning the criteria to be employed in making these appointments (Ajayi, Goma, and Johnson 1996; Mwiria 2003).

Appointment of Deans, Directors, and Department Heads. The appointment of faculty deans, institute directors, and heads of academic departments displays a wider array of practice. In some cases (Angola, Djibouti) deans and directors are appointed by the minister of education.[10] In six other instances the choice is made by the governing board (which may or may not be affirming the results of prior faculty level elections). In 8 out of 18 countries, deans and directors are elected by their academic peers. This gives these positions the distinction of being possibly the most democratically chosen within the university. Election is employed less commonly in selecting department heads (four instances). Here the chief officer is most likely to be the decision maker (9 out of 15 cases).

Academic Governance

Composition of the Academic Board. The other part of the university's bicameral governance system is what we will refer to as the "academic board" (see subsection on "Institutional Governance," p. 18). These boards are normally comprised of academicians with administrative titles (for example, deans, directors, heads) as well as those with academic titles (for example, professors, associate professors, lecturers). They frequently include representatives of management (for example, academic vice-president, registrar), of students, and of central support services (for example, libraries, computer services, student welfare services). Academic boards tend to be fairly large deliberative bodies, sometimes numbering 50 or more, and are generally chaired by the university's chief officer. Their responsibilities concentrate on curriculum, educational quality, and staff development. Daniel (2007) recommends that they not address management matters such as finance, tendering, or physical development of the campus.

In recent years, membership on academic boards has occasionally been expanded to enhance coordination and accountability. For example, academic boards in Namibia and South Africa also include several members of the institution's governing board. In Mauritius, South Africa, Uganda, and Zambia, the academic board also incorporates representatives of those who employ university graduates. Academic boards in Tanzania may include senior scholars from sister institutions.

Financial Autonomy

Sources of funds. The ability to obtain operating revenues from a wide range of sources (that is, financial diversification) is an important way of enhancing the decision-making autonomy of tertiary institutions because institutional stakeholders are well aware that "he who pays the piper calls the tune."[11] In virtually all cases, universities in Africa are permitted to obtain financial resources from government, donations, gifts, income generation activities, and student fees. The provision for universities to "fix, demand and receive" student fees is nearly universal (17 out of 21 countries). However, this authority may be curbed in practice where government controls the governing board through the appointment process and representation formula, or by political pressures emanating from the office of the head of state. Similarly, most universities are authorized to borrow money and invest funds, although some countries require prior approval by the minister (for example, Mali, Uganda, Zambia) or else place a ceiling on the size of transactions permitted (for example, Chad). The sale of university land is most likely to require higher level approval (five cases), although legislation in French-speaking countries tends to be silent on this issue—

perhaps because the physical assets of all public institutions are assumed to be property of the state. In Nigeria, legislation creating the National Universities Commission requires all foreign donor funds for universities to be passed through the Commission.[12]

Budget approval. Where the authority resides to approve the institution's annual budget is another indicator of financial autonomy. In half of the countries studied, that authority is vested in the governing board. But in almost one-third of the cases (7 out of 23) the minister of (higher) education is given this responsibility, although he/she may be required to consult with the tertiary system buffer body in the process. In four countries (Democratic Republic of Congo, Nigeria, Sierra Leone, and Tanzania), the buffer body itself approves institutional budgets. In Angola, Chad, and Mali, the chief officer is given an influential role in advising the minister regarding the budget submission from his/her own institution.

Hiring and terms of service. Whether or not a university can employ or dismiss staff, and set the terms and conditions for their employment, is also a gauge of financial (and managerial) autonomy. In the Portuguese-speaking countries, the chief officer is awarded this mandate. Within the English-speaking countries, the governing board is given the license to make these decisions, although anecdotal reports suggests that in some cases the public service commission still exercises considerable influence. The French-speaking countries are more likely to assign this power to the chief executive (for example, Chad, Djibouti, Senegal) or to the minister (for example, Madagascar, Mali).[13] In many of these cases, however, the legislation notes that the chief executive is obliged to follow the general guidelines for public service employment contained in other pieces of legislation.

On balance, it appears that tertiary institutions in English-speaking countries enjoy a somewhat higher degree of financial autonomy than their counterparts in French-speaking and Portuguese-speaking countries. In fact, the need for university financial administration in French-speaking countries to be updated so that its practices could be better aligned with prevailing levels of institutional autonomy was noted more than a decade ago (Ndiaye 1996).

Accountability

Accountability does not produce autonomy, but it is a necessary companion of autonomy. Without accountability, it would be impossible to ascertain the consequences of giving a higher education institution the power to make its own decisions. How have its officers performed? Is the institution fulfilling its mandate? Are public funds being used efficiently? Are graduates being produced with the right skills and in the right numbers to meet the needs of employers? Without audits, annual activity reports, and other feedback mechanisms, it would be very difficult to know the answers to these questions. And lacking such information, the government and the general public may not be able to accord these institutions their full trust and support.

When governments cede greater autonomy to tertiary institutions, they face the challenge of finding ways to ensure that the institutions remain accountable to them for compliance with legislation, adherence to approved policies, and for responsible use of the funds provided, whether from public revenues or individual student fees. Fielden (2008) observes that governments tend to meet this challenge in one of three ways: (i) by exercising control through the approval of the institution's development strategy; (ii) by contracting with the institution for it to produce certain outcomes in return for funding; and (iii) by creating a performance monitoring and evaluation structure. We will look briefly at six mechanisms for accountability that emerge from our review of the legal frameworks for higher education in Sub-Saharan Africa.[14]

Strategic Plans. University strategic planning in Sub-Saharan Africa began in 1992 (Matos 1993). Following a period of experimentation and assessment (Ekong and Plante 1996), it has now become a well established practice. In most cases, institutional strategic planning is not a formal legal requirement. But in a few cases it is. Ethiopia's Higher Education Proclamation of 2003 mandates the formulation of an institution's strategic plan as one of the responsibilities of university governing boards. Similarly, strategic planning is listed as one of the governing board's specific roles in the acts of the University of Ghana, the University of Technology in Mauritius, and Eduardo Mondlane University in Mozambique. Regardless of whether it is a legal requirement, ministries and buffer bodies often monitor an institution's performance against the goals it has set for itself in its strategic plan as an accountability procedure (Fielden 2008). In some French-speaking systems, performance contracts are used in which performance targets may be drawn from strategic planning objectives (for example, Mauritania). To a certain extent, this follows a similar practice established in France during the late 1990s whereby an institution is provided with financial rewards in return for the achievement of specified output targets or levels of performance.

Stakeholder Representation. Another means of enhancing the "social accountability" of an institution to the various stakeholder groups that represent investors or beneficiaries is by including representatives of these groups on the institution's governing board (Salmi 2007). This enables groups interested in the university's performance to monitor institutional fortunes from the "front lines" of board governance, to voice their concerns, and to propose possible improvements. As noted above (subsection "International Trends," p. 11), recent years have witnessed a worldwide trend towards the restriction of board membership numbers from inside the university community, and a parallel tendency to expand the number of board members who come from beyond the university campus. Consistent with this approach, recent legislation in Tanzania requires 75 to 80 percent of board members to be external to the institution (that is, neither employees nor students). Similarly, South Africa stipulates that 60 percent of board membership be external. Lesotho does likewise. In French-speaking countries, the Université de Thiès in Senegal and the Kigali Institute of Science and Technology in Rwanda require 35 percent of their board members to be external. Additional information on stakeholder representation in university governing boards is provided in table 4.3.

An emerging new practice is the use of stakeholder representation also within the academic boards of universities. This is apparently intended to ensure that employer perspectives are considered within the mix of academic discussion on curricula content, course design, and minimum standards. For example, the University of Mauritius includes five external members on its 29-person academic board, and Ugandan universities must include three external members "from the general public" on their academic boards. Zambian academic boards are required to incorporate four persons who are not associated with the universities. The statutes of the University of Cape Town permit its academic board to co-opt up to 10 external members. A variation on this practice is the inclusion of a representative of private higher education on the academic board of the University of Nouakchott in Mauritania, presumably to facilitate the sharing of lessons learned between public and private providers of higher education. Similarly, Tanzanian universities are encouraged to include representatives of a few sister institutions on their academic boards.

Financial Auditing. Financial audits seek to reassure government and the general public that their funds are being used efficiently and effectively, and that they are receiving educational value in return for their monetary investments. Thus, university legislation in virtually every country requires institutions to produce annual statements of income and expenditure and have them audited to ensure veracity. In many instances, these audits are conducted by the government's auditor general. However, universities in Ethiopia and Nigeria may contract independent external auditors. Ghana appears to be the only country that requires its higher education institutions to undergo both an internal and external audit, stating that the governing board should appoint a Director of Internal Audit and that the nation's Auditor General must conduct yearly audits of the university accounts. In contrast, the statutes of Agostinho Neto University in Angola seem to be silent on this matter. In addition to requiring audited financial statements, the government of Cameroon also places an "accounting agent" within each university, who is appointed by the Ministry of Finance.[15]

Academic Auditing. African governments are moving quickly to set up national quality assurance agencies to evaluate educational inputs and learning outcomes and to accredit academic programs. Sub-Saharan Africa now hosts 17 national quality assurance agencies for higher education, 10 of them established since the year 2000 (Materu 2007: Table A-1). In numerous cases, these responsibilities are carried out by the buffer body (for example, Kenya, Liberia, Mauritius, Namibia, Nigeria, South Africa, Uganda, Zimbabwe). In other cases, the quality assurance agency functions as a separate and independent body (for example, Ethiopia, Ghana, Sudan, Tanzania). Most of these agencies initially concentrated their quality reviews on private tertiary institutions, although some of them have now begun to expand the scope of their work to include public institutions as well.

Performance Reporting. Likewise, institutions are usually required to produce publicly available reports on their yearly activities and future plans. Universities in 19 out of the 24 countries surveyed are obliged by law to do so. In most cases, these reports are submitted to the parliament or national assembly through the minister's office. However, in three instances reports are given to the buffer body (Democratic Republic of Congo, Nigeria, and Tanzania). Notably, tertiary institutions in Cameroon are required to submit reports to the minister on a monthly basis! In general, it appears that the legal requirements for institutional reporting in French-speaking countries tend to be somewhat less specific in terms of the form and content of these reports. Interestingly, universities in Mozambique are asked to include estimates of the coming year's student intake as part of their annual reports, thus facilitating the ministry's efforts to monitor and manage enrollment growth within the overall tertiary system.

A fairly high level of specification is attached to reporting requirements for universities in South Africa. *Regulations for Annual Reporting by Higher Education Institutions,* issued by the Department of Education on August 29, 2003, cover institutional governance (including ethics, equity in representation, and conflict management), operations, academic performance, finances, management, and risk assessment. An implementation manual is also provided.

Performance-based Funding. In the effort to steer institutions of higher learning towards policy goals while respecting institutional autonomy, governments have devised new mechanisms for achieving this end. Among them are performance contracts, bench-marking, and performance-based budgeting formulas (World Bank 2002). Performance contracts are agreements negotiated between governments and individual institutions in which a certain amount of funding is provided in exchange for specified accomplishments, some of which may be drawn from national policy objectives while others may be derived from the institution's strategic plan. Mauritania is one African country that has reportedly adopted this approach.

Performance-based funding allocates budgetary resources to institutions based on their performance in attaining certain desirable policy goals such as efficiency (for example, cost per student), increased output (for example, graduate numbers, research products), equity (for example, percent of female students), or financing (for example, amount of self-generated income). Funding may be distributed through use of a formula that weights several performance indicators according to their policy importance. At present, no African country employs performance-based formulas for determining budgetary allocations to institutions, although South Africa considers certain aspects of performance in its quasi-contractual budgeting approach. However, Botswana, Ethiopia, Mozambique, and Tanzania are reportedly considering a move to some form of performance-based budgeting.

Notes

[1] For an informative overview of the various typologies that have been constructed for governance structures in higher education, see McDaniel (1996).

[2] Austria, the Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Poland, the Slovak Republic, Slovenia, and Spain.

[3] During the 1990s, Nigeria pioneered within Sub-Saharan Africa the practice of seeking university leaders from outside the academic community when its government appointed high-ranking military officers to head up some of the country's federal universities.

[4] In the case of European higher education, the risks of "over-diversification" have been identified as destructive competition, institutional drift, social exclusion, talent waste, and an undermining of horizontal diversity (Teichler, cited in Singh 2008).

[5] For an insightful analysis of university-state relations in Africa, see Mwiria (2003).

[6] Mwiria (2003) suggests that the performance of buffer bodies could be improved by attention to the following in their establishing legislation: (i) ensuring that no single group predominates in their membership; (ii) requiring their chief executives to be nationally respected professionals; and (iii) providing for the possibility of legal contracts among government, the buffer body, and institutions which clearly spell out the responsibilities and limitations to authority at each level of the hierarchy.

[7] In some French-speaking countries (for example, Burkina Faso, Chad), the academic board is given broader responsibilities for maintaining the quality of "university life," particularly with regard to student services. In these cases, the board may be called the *Conseil de la formation et de la vie universitaire*. Also, research is sometimes the domain of a separate Scientific Council (*Conseil scientifique*).

[8] The governing boards of the *grandes écoles* in French-speaking countries (also tertiary institutions) are more externally oriented in their board membership than the universities. They tend to include representatives from relevant ministries, industries and the private sector. This is designed to bring workplace experience to bear on their teaching programs (Ng'ethe, Zubotzky, and Afeti 2008).

[9] The heads of state in Tanzania and Zambia were the first to relinquish their roles as university chancellors (Mwiria 2003).

[10] In Senegal, university academic staff are considered to be civil servants and their salaries are paid by the state, not the university (Ng'ethe, Subotzky, and Afeti 2008).

[11] A decade ago, Bjarnason and Lund (1999) observed that "While governments have a policy rhetoric of increasing institutional autonomy, the reality is that the constraints on their universities' ability to have independent financial management are considerable in each of the cases provided."

[12] In practice, this is apparently not the case as federal universities reportedly are able to negotiate assistance directly with international donor agencies.

[13] In Madagascar the Ministry of Education appoints all academic staff and also determines their salaries (Kapur and Crowley 2008).

[14] Other mechanisms include licensing requirements, learning assessment tests, professional qualifications exams, and performance-based budgeting (Salmi 2007).

[15] *Règles financieres applicables aux universités*, 2005. A fairly detailed job description for the accounting agent is included.

CHAPTER 5

Diversification as a Path to Responsiveness

As explained earlier (subsection on "Diversification," p. 8), another means of increasing the responsiveness of a tertiary education system to a widening array of student circumstances and labor market demands is through the conscious pursuit of institutional diversification. Diversification is facilitated when legal frameworks recognize and provide for the possibility of different types of tertiary institutions. Privately provided higher education is a prime example because its market orientation makes it particularly sensitive to changes in market demand. But diversification can be impeded when legislation is not forthcoming on this issue, when quality assurance procedures seem to be based on an explicit public university model, or when newer and potentially more innovative private institutions are required to be "tutored" for a period of time by a more established public institution (for example, Ghana).

Private Tertiary Education

A major aspect of diversity among tertiary institutions resides in the divide between public and private provision of higher education. In fact, the explosion of private tertiary institutions in Sub-Saharan Africa is a distinguishing feature of higher education development on the continent over the past two decades. Since 1990, private colleges, universities, and tertiary-level professional institutes have been established at a far faster rate than public ones. While public universities doubled from roughly 100 to nearly 200 between 1990 and 2007, the number of private tertiary institutions surged during the same period from two dozen to an estimated 468. Non-university tertiary institutions have been the fastest growing segment within the private tertiary sector, possibly because they offer short-cycle courses that are strongly oriented towards employment (Varghese 2008). Not surprisingly, governments have felt the responsibility to regulate this growth.

Where government regulation of private tertiary education is enabling rather than controlling, it can play an important role in assuring consumers that they are obtaining educational value for money and in expanding access to education more quickly than would otherwise be possible solely on the basis of public funding. This was borne out in our review of legislation regarding private higher education in 18 countries.[1] Botswana provides a useful example of the enabling approach. It requires a simple registration process for a new private institution, followed by a three-year waiting period in which it can establish an academic track record to serve as the basis of evaluation. After maintaining a valid registration for three years, the owner may apply for accreditation. The application must include information on the academic qualifications of staff, the number of students and their performance, library and teaching equipment resources, available financial resources, and an inventory of physical facilities. Subsequently, an inspection committee from the Tertiary Education Council verifies this information, and a decision is made on this basis. Positive attributes of this process include the limited yet pertinent information required, the focus on academic resources, and the assessment of student and staff performance rather than simply of plans.

A second example of facilitative legislation comes from Lesotho.[2] The application process for private institutions focuses on educational quality, the existence of quality standards, financial capability, and appropriate structures for governance and management. Through periodic academic accreditation and the requirement for annual submission of audited financial statements to the Ministry of Education, accountability for quality and use of funds is ensured. The approaches utilized in Namibia and South Africa appear to be somewhat similar.

Positive features contained in the legal frameworks for private tertiary education in other countries should be noted. In Sierra Leone, the regulations specify a process for appeal of a negative decision regarding accreditation. In Tanzania, overarching higher education legislation provides a unified and integrated treatment of public and private institutions, thereby emphasizing equivalencies between these two groups. In Djibouti, the legal framework for private tertiary education provides for the establishment of a "parity committee" as a mechanism for problem solving and dispute resolution between government and private education authorities. The committee of nine persons is comprised of three private tertiary education leaders, three officials from the Ministry of Education, two representatives of local communities, and is chaired by the Minister of Education. It is required to meet every three months.

In some countries, the legal frameworks surrounding the provision of private tertiary education can be controlling or even punitive. For example, in Burkina Faso the application process for authorization to operate a private tertiary institution includes the submission of a physical plan, a financial plan, an inventory of books and equipment, the proposed student fee schedule, an affirmation that teaching activities will conform to the official study plans and programs, personal information on the owner, and the results of a ministry inquiry into the morality of the owner.[3] The legislation further requires the school director to possess an academic doctorate degree, and it stipulates the basic organizational structures to be used for the institution's governance, management, financial administration, and teaching.

Other examples of restrictive regulations may also be worth noting. In Cameroon and Rwanda, for example, private tertiary education is required to operate on a not-for-profit basis. Although this certainly eliminates the potential for exploitative "diploma mills," it also stifles local initiative. In most cases, those most likely to put forward the start-up capital for a nonprofit private tertiary institution without concern for a return on their investment are likely to be international religious organizations. While these groups may have a lot to contribute to the development of local higher education, they may not always share government priorities or reflect the needs of the local economy. In Kenya and Zimbabwe, the charter to operate a private tertiary institution is granted by the head of state, requiring what would seem to be an unnecessarily high level of administrative decision making that could create considerable inefficiency and time delay.

Some application requirements appear to run the risk of being onerous and of limited utility, even when they are well-intentioned. For example, Mozambique requires a curriculum outline detailing the number of class hours for each course, specification of the methods that will be used to evaluate students, staff development plans for teachers, and a financial plan that covers the time period of the institution's longest course plus an additional two years. In Cameroon, private institutions must employ the same admissions criteria for students and qualifications criteria for teaching staff as the public institutions. Although the goal is clearly one of uniformity in educational standards, it may deprive less capable secondary school graduates of the opportunity for further study and, in a context of academic "brain drain," could force private institutions to compete directly with public institutions for the limited number of qualified teachers.

In an assessment of the regulation of private higher education in a number of countries around the world, including half a dozen from Africa, Fielden and LaRocque (2008) identify common constraints to private provision (see box 5.1). As suggested above, many of these are also contained within the current legal frameworks that regulate private higher education in Sub-Saharan Africa.

Box 5.1. Common Regulatory Barriers to Private Tertiary Education

- Confused or unclear national policies concerning the role of the private sector in the education system.
- Cumbersome and complex registration processes for private higher education institutions that are less transparent and explicit than they should be, leaving institutions in a position of not knowing what documentation is required and how it should be obtained.
- Imposition of unclear and subjective criteria and standards to qualify for registration.
- Outdated criteria for accreditation and annual university monitoring that emphasize the number of books and journals available in hard copy and take no account of access to electronic materials.
- Difficult processes that provide officials in the accrediting body with considerable discretion in assessing applications for institutional registration, thus leading to inconsistent application of existing rules and leaving significant scope for arbitrary (and possibly corrupt) decision making.
- Prohibition of foreign-owned private education institutions and barriers to repatriating profits.
- Limits on the ability of private education institutions to set tuition fees at market rates and their ability to operate as for-profit entities.
- Criteria relating to financial reserves, land area, and infrastructure on private institutions (for example, requirements that private institutions own their own land/buildings, deposit financial security 'bonds', and meet detailed specifications for books and equipment).
- Restrictions on political or religious aspects of curriculum/program content and lengthy curriculum/program approval processes—up to 3–4 years—on private institutions.
- Quotas applied to the types of students that have to be admitted.
- The requirement that one or more places on the private university governing board be available for nominees from the ministry of education, and that the appointment of chief officer requires government approval.

Source: Fielden and LaRocque 2008.

Private higher education may be the most important manifestation of diversification within higher education, but it is not the only one. Our review of legal frameworks for tertiary education in Sub-Saharan Africa finds that, in the quest for greater responsiveness, some of them affirm institutional diversity more than others.[4] Uganda explicitly recognizes the importance of institutional diversity in the title of its *Universities and Other Tertiary Institutions Act* of 2001. Mozambique's *Higher Education Law* of 2003 acknowledges the need for institutional diversity and for student mobility among the different types of teaching institutions. It defines five types of higher education institutions. Angola's *Lei de Base do Sistema da Educação* of 2001 delineates four types of tertiary institutions. Ethiopia's *Higher Education Proclamation* of 2003 outlines five different types, and also recognizes continuing and distance education as legitimate components of higher education. Tanzania's *Universities Act* of 2005 defines six categories of universities, but does not address other types of tertiary institutions. Burkina Faso's *Education Law* of 1996, Kenya's *Universities Act* of 1985, and South Africa's *Higher Education Act* of 1997 are less specific in defining the types of tertiary institutions. In general, recent legislation is more likely to recognize the diversity of tertiary institutions than older legislation.

Notes

[1] Botswana, Burkina Faso, Cameroon, Djibouti, Ethiopia, Kenya, Lesotho, Mauritania, Mauritius, Mozambique, Namibia, Rwanda, Sierra Leone, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe.

[2] Higher Education Act of 2004.

[3] *Arrêté No. 2002 portant composition des cahiers de charges des établissements privés d'enseignement supérieur général.*

[4] A dynamic tension seems to surround institutional diversification efforts in many instances. Even as new types of tertiary institutions are being established, parallel efforts to expand university enrollments lead to the "up-grading" of various non-university centers to university status. For example, Ethiopia and Kenya have recently lost much of their training capacity for higher level skills development through the upgrading of polytechnics into universities.

CHAPTER 6

Concluding Observations

Our preliminary review of legal frameworks that shape tertiary education in Sub-Saharan Africa allows us to comment—but not draw conclusions—concerning the current state of affairs in this largely unexplored subject area. For the most part, it appears that when Sub-Saharan African countries and tertiary institutions update these frameworks, they do so in ways that tend to be consistent with global trends in this area. Like others, they are striving to raise the levels of their human resource and knowledge generation capacities in order to support national development and reinforce economic activities confronted by the competitive pressures of globalization. And because of the pace of change, all are engaged in the search for ways to improve institutional responsiveness and adaptability.

In general, our review notes apparent tendencies in Sub-Saharan Africa to increase institutional autonomy, strengthen accountability mechanisms, shift from appointment to elective representation processes in the filling of higher governance and management positions, favor merit over political affiliation in the criteria for choosing senior officers, and construct linkages with civil society, the private sector, and sister institutions in the region and beyond. The expansion of tertiary system buffer bodies and growing regulatory attention to private higher education are notable recent phenomena. Interestingly, newer legislation seems to give greater attention to explicit statements of principles as guides for decision making. In the ebb and flow of such reforms, however, it is our impression that, although there are clear exceptions, tertiary systems and institutions in French-speaking countries may be progressing more slowly on these fronts.

Three suggestions for future research on the legal frameworks for Sub-Saharan African tertiary education arise from our experience in undertaking this study. The first would be to assess the impact of the some of the more significant governance reforms in African higher education that have been identified above. What are the comparative advantages and disadvantages between ministries of higher education and 'buffer' bodies as overseers of higher education system development? Does the inclusion of external members on university governing boards produce greater institutional responsiveness and societal accountability? Does the method whereby board members and chief officers are selected and appointed make a difference in the institution's performance? How do the results of these changes in higher education governance compare with those generated by similar changes in other regions? In short, what is the 'cost-benefit' assessment of these and other recent governance reforms?

A second suggestion would be to compare formal intent of the law with its actual practice in the daily interpretation and application of these legal frameworks. Is the application of the law at variance with what the law dictates? If differences exist, are they the result of weighty institutional traditions, political pressures, or weaknesses in the legal documents themselves?

The third would be to generate understanding of possible differences between the statutes for private and public universities. To what extent do their governance, management, and accountability structures differ? If differences do exist, do they enable private institutions to be more responsive and efficient (a widely held but unproven belief) in terms of employability of graduates or costs per graduate?

Finally, if there is a recommendation to be made on the basis of this study, it would be to urge the Association of African Universities to request their 200 members to post current copies of national higher education acts, university statutes, and relevant decrees or regulations on their websites. This action would do as much as anything else to prepare the way for future learning and exchange of experience regarding the legal frameworks that might most appropriately generate greater institutional responsiveness within the tertiary education systems of Sub-Saharan Africa.

APPENDIX

Legal Documents on Tertiary Education Reviewed for this Study

Country		Legal document
Angola	N	Lei da Base do Sistema da Educação, 2001
	I	Estatuto Orgánico da Universidade Agostinho Neto, 2001
Botswana	N	Tertiary Education Act, 2005
	I	University of Botswana Act 2008
Burkina Faso	N	Education Law, 1996 Private Higher Education Accreditation, 2002
	I	University of Ouagadougou Law, 1991
Cameroon	N	Loi Portant Orientation de l'Enseignement Supérieur, 2001 Financial Regulations Applicable to Universities, 2005
	I	
Chad	N	Creation of Ministry of Higher Education & Scientific Research, 2002
	I	Decree for the Statutes of the University of N'Djaména, February 1994 Decree for the Statutes of the University of Adam Barka d'Abeche, 2003 Decree for the Polytechnique University Institute of Mongo, 2003
Democratic Republic of Congo	N	Higher Education and University Law, 1981
	I	Université de Lubumbashi (www.unilu.ac.cd)
Djibouti	N	Education System Law of July 2000 Decree no. 2005-0083 on Private Education Institutions
	I	Decree No. 2006-0009 Creation of the University of Djibouti Decree of July 2007—Statutes for the University
Ethiopia	N	Higher Education Proclamation, 2003
	I	(no university has yet been issued a charter under the 2003 law)

(Table continues on next page)

Country		Legal document
Ghana	N	National Council for Tertiary Education Act 454 of 1993
	I	University of Ghana Act, 1961 University of Ghana Statutes, 2004 Kwame Nkrumah University of Science and Technology Act, 1961 University of Cape Coast Law, 1992 University of Development Studies Law, 1992 University College of Education Law, 1993 University of Mines and Technology Act, 2004
Kenya	N	Universities Act, 1985
	I	University of Nairobi, 1995 Kenyatta University Act, 1985 Egerton University Act, 1987 Moi University Act, 1984 Maseno University Act, 2000
Lesotho	N	Higher Education Act, 2004
	I	National University of Lesotho Act, 1992
Mali	N	Loi Portant Orientation de l'Enseignement Supérieur, 2003 Decree creating the National Directorate for Higher Education and Scientific Research, 2006
	I	Law No. 06-007 Creating the University of Bamako, 2006
Mauritania	N	Higher Education Law 2006
	I	Decree 2006-097 University of Nouakchott, 2006
Mauritius	N	Education Act, 1957 Tertiary Education Commission Act, 1988 Education and Training Act, 2005
	I	University of Technology Act, 2000
Mozambique	N	Lei do Ensino Superior, 2003
	I	Eduardo Mondlane University Decree, 1998 Statutes of the Universidade Pedagógica (undated)
Namibia	N	Higher Education Act, 2003
	I	University of Namibia Act, 1992
Nigeria	N	National Universities Commission Decree, 1974 National Universities Commission Amendment Decree, 1988 National Universities Commission Amendment Decree, 1993
	I	University of Ilorin Act, 1979 University of Jos Decree, 1979
Rwanda	N	Higher Education Law, 2005 National Council of Higher Education Law, 2006
Senegal	N	National Education Law, 1991
	I	Décret Portant Creation, Organisation et Fonctionnement de l'Universite de Thiès, 2007

(Table continues on next page)

Country		Legal document
Sierra Leone	N	Tertiary Education Commission Act, 2001 Education Act, 2004 Universities Act, 2005
	I	[individual acts repealed]
South Africa	N	Higher Education Act, 1997
	I	Statute of the University of Cape Town, 2002 Statute of the University of KwaZulu-Natal, 2006
Tanzania	N	Universities Act, 2005
	I	[individual acts repealed]
Uganda	N	Universities and Other Tertiary Institutions Act, 2001
	I	[individual acts repealed]
Zambia	N	University Act, 1992
	I	[individual acts repealed]
Zimbabwe	N	Education Act, 2004 Education Act Amendment, 2005 Zimbabwe Council for Higher Education Act, 2006
	I	University of Zimbabwe Act, 1983

N = Nationwide laws, acts, or decrees.

I = Individual university acts or statutes.

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