South African legislation on limiting private and foreign higher education: protecting the public or ignoring globalisation?

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ABSTRACT
In October 2000 legislation was passed by the National Assembly to amend the Higher Education Act (Act 101 of 1997). A number of the amendments were aimed at limiting the operations of private and foreign higher education institutions in South Africa. Good arguments exist for the legislation as accepted, but questions are also being raised as to whether the amended Act might represent some form of protectionism, allowing certain local higher education institutions to continue with weak programmes and practices instead of allowing open competition to challenge and eliminate weaknesses. Questions are also being asked about depriving students of opportunities and choices in an increasingly globalised economy.

The article introduces a link to the concept of globalisation by indicating how global financial markets impact on developing countries. It then explores the globalisation phenomenon as it impacts on education in general and higher education in particular. Against a backdrop of the factors leading to closer regulation of private and foreign higher education, the article discusses its implications and points towards certain alternative avenues that might protect “consumers” of higher education on the one hand but also promote healthy competition and co-operation for improved quality in higher education in South Africa.

INTRODUCTION
In his account of how developing countries are influenced by the phenomenon of globalisation under the subheading: “Dance of the Dinosaurs”, Ash Roy (1999:95) suggests that “the markets” are emerging as global entities more potent than any military or political power. As the new ruling international authority, the global marketplace has emerged by eliminating trade barriers through the rise of communications technology. In 1999 the average daily worldwide trading in financial instruments exceeded 1 trillion American dollars largely carried out by huge financial institutions with short investment horizons and beyond the control of any single government. Roger Altman, a USA investment banker speculates that we “… have entered an age of unprecedented financial power and risk. Markets will be the dominant worldwide force of the 21st century, dwarfing that of the United States or any consortium of nations. And as with nuclear weapons, we are now permanently in their shadow” (Roy 1999:96). On a global scale, developing countries have very little say and except for some potential regional power, these countries are likely to be relegated to the status of “… neocolonial resource zones to be courted by the major economic blocks” (Harkavy 1997:572).

In contrast with the economic domination scenario, protagonists of the “global village” thesis do not visualise any fundamental conflict either between nations or between trading blocks. They believe the world will be more integrated and will be guided by global interdependence (Yergin & Stainslaw 1998). The communication revolution has effectively abolished distance and made terrain irrelevant. But has the world actually become a “global village”? Roy (1999:100) suggests that in many respects the concept of the “global village” has indeed materialised and promotes single cultural forms. Together with the “Cocacolisation and McDonaldisation” of the globe, manipulation of the entire socio-political context in which people in the developing world work, eat and learn has been evident.

To counteract total economic and cultural domination and to cope with the demand of globalisation, Browne (1998) suggests that regionalisation might be one of the keys to a possible solution. Armin (in Shariff 1997) reiterates; “… all Third World countries need regionalisation which is a means to reinforce the capacity to negotiate globalisation”. Apparently this approach might provide frameworks for what one analyst (Browne 1998:82) terms: “… lateral, as
opposed to vertical forms of development co opera
tion”. Roy (1999:120) maintains that the developing
world needs globalisation from below and not from
above in order to create space for themselves: “The
developing countries must hang together or else they
will be hanged separately by the developed world”
(Roy 1999:121).

The question arises as to the effect of globalisation on
higher education as an “evolving enterprise”. What
are the effects of globalisation on higher education
systems and institutions? Are there differences be
 tween the concepts of globalisation and internatio
nalisation? How should governments and institutions
in developing countries respond to the phenomenon
of globalisation? Is the effect of globalisation on
higher education different from other domains of
societal life?

GLOBALISATION AND HIGHER EDUCATION

The terms internationalisation and globalisation are
often used interchangeably, with the latter term
tending to displace the former. One line of thought
has it that there seems to be little difference between
the two terms, except perhaps in their scale and
intensity. Others (Gibbons et al 1994; Middlehurst
2000; Scott 1998 and Scott 2000) argue that not only
are internationalisation and globalisation different,
but that they are actually opposing terms.

Scott (1998) maintains there are three main reasons
why globalisation cannot simply be regarded as a
higher form of internationalisation. The first reason is
that internationalisation presupposes the existence of
established nation states. Globalisation is either
agnostic about or hostile to nation states. Secondly,
internationalisation is most strongly expressed
through the “worlds” of diplomacy and culture, while
globalisation is found in the “worlds” of mass
consumerism and global capitalism. The third reason
is that internationalisation, because of its dependence
on the existing (and unequal) pattern of nation states,
tends to reproduce hierarchy and hegemony. Globa
lisation, on the other hand, is a major force in
addressing new agendas such as global warming,
global pollution, sustainable technologies and in
equalities between North and South.

National governments are increasingly proclaiming
education as the key to success or survival in the
global economy (Spring 1998) and in this respect the
goals of education and learning are directly related to
the world’s economic needs. In 1997, for instance,
the then elected prime minister in Britain, Tony Blair
declared that “… in today’s world there is no more
valuable an asset than knowledge. The more you
learn, the more you earn. It’s as simple as that. Educa
tion is an economic imperative” (Blair, in
Spring 1998:6). In 1996, USA economist, Lester
Thurow asked: “Who wants the marginalized eco
nomic losers of the world, (say Africa south of the
Sahara) on their team?” (Thurow, in Spring 1998:7).

Leaders from the developing world and Africa in
particular are mindful of these challenges. At the
World Conference on Education for All, president Moi
of Kenya claimed in 1990: “We must increasingly look
towards education to help solve such problems as
unemployment, population growth, declining agricul
tural production, and the damage caused to our
environment” (Moi, in Spring 1998:193). Sam
Nujoma, in his opening remarks at the International
Council on Education for Teaching (ICET) confer
ence, reiterated his confidence in education to rectify
the situation: “While I am mindful of the fact that
there can be no single solution to all the problems
with which we are faced, I do agree that there exist
some universal consensus for a single common
foundation upon which the building of that future
must be based. That single common foundation must
be quality education” (ICET 2000:2).

With the current domination of the free market in the
economic systems of the world, prominent leaders are
focusing on two broad themes when it comes to
education as a solution to unemployment and income
inequalities: Technology and lifelong learning.

Based on the premise (mainly coming from US
economist Paul Krugman) that technological change
is causing economic problems and that lifelong
learning is the answer, plans to invest in the
information superhighway and continuous learning
were put in place by several countries during the latter
half of the nineties. Sparked by the initiatives of
relatively small economies like Singapore, the United
Kingdom announced the creation of a National Grid
for Learning (Blair 1997) and in the USA former
president Clinton promised in 1996 to make all
American children computer literate by 2000 (John
son & West 1996).

In addition to the common support for education for
the information superhighway, several governments
advocate lifelong learning. In the UK, for instance, the
Department for Education and Employment (DfEE)
listed the following goals for lifelong learning projects:

• ensuring that all 14 to 18 year olds continue in full
time or part time education or training;
• improving the information, advice and guidance
available to adults, and making learning more
easily accessible;
• stimulating providers of education and training to
be more responsive to the needs of individuals and
employers;
• persuading employers to invest more widely in
updating and adapting the skills of their workforce;
• developing qualifications which allow individuals
to demonstrate their knowledge and skills and build on earlier learning (Department for Education and Employment 1996).

The report from the DIEE was followed by a White Paper on Lifelong Learning in 1997 stressing the creation of a learning society supported by lifelong learning and a commitment to continuous education to prepare workers for changing job requirements resulting from technological innovations.

Where does all of this leave education in Africa, and more particularly Southern and South Africa in terms of a global perspective? What are the challenges faced in terms of global education?

It seems worthwhile firstly to consider regionalism as a possibility to strengthen the capacity of developing against new forms of imperialism. Just as economic imperialism seems to be a threat, so does intellectual imperialism in higher education equally pose a possible threat. It might be better to determine which areas and forms of research and teaching is needed in a developing context rather than trying to imitate or duplicate what is happening in the developed world.

Secondly it is also important to realise that higher education is perceived to be one of the primary contributors of socio economic advancement. Through providing well educated professionals and technologists, relevant research, innovative leadership and fostering democratic values, higher education can be one of the main forces for development.

CLOSER REGULATION OF THE SOUTH AFRICAN HIGHER EDUCATION SCENE

General concerns currently reigning on the South African higher education scene were highlighted and fully documented in the Size and Shape Proposals (Council on Higher Education 2000) as well as the National Plan for Higher Education (DoE 2001). They are thus not discussed as part of this article.

Situations and trends that caused closer regulation of the South African higher education environment by the state did, however, emerge. For instance, while student enrolments in public higher education in South Africa have sharply decreased in the recent past, private higher education institutions have experienced a boom (Edusource Data News 2000). Many public universities and technikons had reached a stage where they had to consider closure unless government (crisis) funding was stepped up. Incidents also occurred where prospective students had lost huge amounts of money by enrolling with "fly by night" private higher education institutions that promised them a higher education, but closed doors shortly after opening (CTM Workgroup 2000).

Conversely, a number of higher education institutions from abroad offer quality higher education opportunities in South Africa, competing with the best the country can offer from its public arsenal, but at a price. Monash University, for example, which had opened the doors of its new R18m Roodepoort Campus in February 2001, charges in the order of R29 000 for a BA and up to R32 000 for a Bachelor of Computing three times as high as most public universities in South Africa (Intercampus 2001).

In February of 2000 it was reported that at least 43 known foreign higher education institutions were operating in South Africa: five from Australia, 21 from the UK, 13 from the United States and Canada, three from Europe and one from Asia (The Star 2000). More than 20 foreign universities have applied for permits to operate in the country (Business Day 2000) and the Ministry of Education expressed concern about foreign degrees being offered in "for profit" arrangements through local institutions subsidised by government. Consequently he placed a moratorium on new partnerships (Business Day 2000). In an occasional report from the South African University Vice Chancellors' Association (SAUCA) (CHEMS and SAUCA 2000), it was observed that only four foreign universities were authorised by the end of 2000 to operate in the country: Monash University, Bond University, De Montfort University and the Business School of the Netherlands (CHEMS and SAUCA 2000).

In the market of local private institutions the position by the end of 1999 was that Educor held 45 per cent of the market, National Private Colleges 20 per cent and AdvEd 20 per cent (SA Journal of Trade 1999). In the meantime a reshuffling of the market took place resulting in Educor currently owning most of the private providers in South Africa worth R870 million (Mail & Guardian 2000). The sector employs about 4 000 teaching staff and in 2000 registered 350 000 students a 22 per cent increase on 1999 figures. These students were mostly registered in the Further Education and Training (FET) Band, however.

In addition, two important reports on the issue of private higher education were published in 2000. One on the impact of private higher education on the technikon sector (CTM Workgroup 2000), the other on the regulation of private universities in the Commonwealth (CHEMS and SAUCA 2000).

The first report by the Committee on Technikon Matters (CTM Workgroup 2000) did not question the existence of private and foreign higher education institutions in South Africa. It was pointed out that article 29(3) of the South African Constitution makes special reference to private education, namely that everyone has the right to establish and maintain, at their own expense, independent educational institutions that (a) do not discriminate on the basis of race, (b) are registered with the state, and (c) maintain...
standards that are not inferior to standards at comparable institutions. The report also highlighted, however, a number of concerns that had to be investigated further. Firstly the question of quality and appropriateness of programmes offered by private institutions. For example, a focus on non SET (Science, Engineering and Technology) programmes provide private institutions with a high return on investment for a relatively low outlay. Programmes are shorter and more intense than those offered at public technikons and appropriate quality assurance systems were found to be lacking. Secondly, it was not assumed that private education programmes were inferior as they appeared to meet market needs and were accepted by many in commerce and industry. It also appeared as if private institutions capitalised on aggressive and effective marketing strategies. The report documented a number of national strategies such as the following (mainly to counter competition from private institutions) to be considered by the technikon sector:

- Ways to compete in an open, global, highly competitive and customer driven higher education market;
- Repositioning of technikons in the national and international markets and consider changing their nomenclature;
- Aggressive marketing and public awareness campaigns.

The second report was produced by the Centre for Higher Education Management Systems (CHEMS) of the Association of Commonwealth Universities, partly sponsored by SAUVCA. The report provides an overview of how private higher education has become a permanent feature of higher education as well as different types of private provision. Most relevant to this article, however, is the section on why private higher education ought to be regulated. Firstly the argument exists that private higher education should be left to market forces and that the “consumers” (i.e. students or parents) should be given the responsibility to decide for themselves. Their decisions should be determined by common market forces such as price, quality or brand recognition. However, most governments still consider higher education a public good and they have the responsibility to ensure equitable and quality provision. Although governments can no longer fully fund higher education, there is a general consensus that they have a responsibility to continue exerting some influence over provision within their jurisdiction.

The quality of higher education is not merely a matter of personal choice, since it impacts directly on economic performance (CHEMS and SAUVCA 2000:3). Governments have obligations to their citizens for at least the following three reasons: (a) employers expect a certain level of competence from new employees prepared by higher education; (b) students must be assured that their degrees will be recognised by other higher education institutions should they wish to continue their studies, and (c) students, parents and employers should be protected from operators that promise higher education but are unable to properly deliver it. The report states (CHEMS and SAUVCA 2000:4) that without government regulation, areas with high student demand and low public investment in education infrastructure could experience a further deterioration in the quality of higher education. In Nigeria, where the higher education sector was opened up to private provision in 1979 without regulation, the system expanded with 26 “universities” in six months. This freedom was quickly removed when it was found that such an open market encouraged the growth of the lowest quality of provision. This is exactly the same concern that drove the Ministry of Education in South Africa to legislate closer regulation of private higher education provision.

Contrary to the arguments above, it is believed by many that an increase in private higher education institutions will improve higher education, not just by increasing accessibility, but by creating benchmarks with a higher standard of quality through market forces.

The increased competition is welcomed by many, even by some in the public higher education sector, as an opportunity to improve public higher education provision. By subjecting private institutions to rigorous quality standards, government can ensure that these improvements do occur, thus encouraging changes in both public and private sectors. In the United States the University of Phoenix provides an interesting case in point. Public universities are horrified at its focus on the use of teaching only staff on semester long contracts, who are subjected to rigorous evaluation of performance. Yet this approach is very attractive to fee paying students and employers.

Another complicating factor for regulation is the operations of foreign universities in any particular country (also see The Guardian 2001). There are complex issues such as the extent of foreign ownership, whether the provider has established a legal entity and the equitable nature of the partnership with a national provider. In addition, the provisions of agreements on trade and services provide some protection to foreign educational providers wishing to enter other national markets.

THE AMENDED LEGISLATION AND RESPONSE

The Higher Education Amendment Act (Act no 54 of 2000), amended a number of sections of Act 101 of
1997 (the Higher Education Act) for different reasons and purposes. Four articles of the Act are highlighted as being relevant to the purpose of this article (the essence of the amendments being put in italics):

- Section 3 of Act 101 is amended to provide the Minister of Education with the authority, in the interest of the higher education system as a whole, to determine the scope and range of operations not only of public and private higher education institutions, but also of individual public or private higher education institutions;
- Section 51 of Act 101 is amended to allow the Registrar of private higher education institutions discretion to grant registration to institutions as private higher education institutions in terms of the Companies Act (61 of 1973);
- Section 53 of Act 101 is amended to allow the Registrar of private higher education institutions discretion to decide whether the name "university" or "technikon" might be used or not;
- Section 54 of Act 101 is amended to allow the Registrar of private higher education institutions discretion to differentiate between local and foreign applications for provision of higher education (RSA 2000).

In the explanatory notes of the Amendment Bill (RSA 2000a), the following reasons for the relevant amendments are provided: "Our country has during the recent years experienced an influx of foreign private education institutions. If left uncontrolled, this might be to the detriment of our local higher education system. Discretionary powers are allowed to the registrar of private higher education institutions in terms of sections 52, 53 and 54 of the bill to register foreign institutions. The registrar is also authorised to differentiate between local and foreign institutions if it is in the best interest of the higher education system as a whole."

Following the passing of the Bill, a number of responses were recorded (SA News 3 October 2000). Since most opposition parties in Parliament opposed the bill, the Minister of Education responded that under the present government none of the major opposition parties approved of any education legislation. The Democratic Alliance opposed the bill since of the eighty eight institutions registered Operations not only of public and private higher education institutions have to undergo. This creates the impression that all public higher education is of high quality and all private institutions are to be regarded with skepticism. Gordon (Mail & Guardian 2001) argued that the government had demonstrated a political agenda by curtailing private higher education radically in order to save the student market for public institutions. She also pointed to the Department of Education’s inability to understand that it needs to work with the private sector in terms of higher education provision instead of working against it. She vehemently opposed the regulatory powers of the South African Qualifications Authority that forces everything to be measured against existing standards and claimed that this will inevitably ensure mediocrity in the sector.

In response to Mcfarlane and Gordon, Dowling (Mail & Guardian 2001a) claimed that higher education institutions in general and universities in particular exist primarily for the public good and not to make a profit. She argued that private higher education institutions are unable to provide the breadth and depth of curricula to serve the country properly, limiting opportunities and narrowing choices to workplace demand only. Conducting research is also costly and private institutions would focus on teaching alone, which again limits the possibilities of integrating the core functions of higher education, which are teaching, research and providing a service to the community. Dowling thought it reasonable that the government proceed with caution in the accreditation of private higher education providers.

In the National Plan for Higher Education the Ministry of Education agreed with the Council on Higher Education that private higher education has a role to play in complementing public provision. It also pointed out, however, that private higher education institutions "... are presently inadequately regulated and that, where appropriate, they should be subject to the same requirements as public higher education institutions" (DoE 2001:63). It also acknowledged, however, that "... the regulation of private providers is a new and uncharted terrain" (DoE 2001:63) and that "... the current registration and accreditation processes are inadequate and need to be strengthened" (DoE 2001:64). The Ministry also intends to carefully monitor student enrolments to ensure that there is a balanced provision of programmes in private institutions since of the eighty eight institutions registered by the end of 2000, seventy three offered only five or fewer higher education programmes.
POSSIBILITIES FOR FUTURE EXPLORATION

It seems clear that to evangelise public higher education and demonise private provision or vice versa is not an option for developing countries and South Africa in particular. The country needs both public and private higher education provision of quality. The fact is that higher education is expensive and becoming increasingly so. The South African government will find it more difficult in future to meet public higher education expenditure, even at the present subsidy levels of approximately 60 per cent. One way to establish quality is by close regulation, which might also prove to be quite expensive in the long run.

The crucial element in a balanced approach is the discretion allowed in the current amended legislation to the minister and the registrar of private higher education. The legal basis has been established, which in itself might be positive, since many examples exist where an open and free market might not be the best way to promote quality higher education in a developing country. In the same vein it can be said that South Africa, in more than one respect, is also a developed country, requiring more of an open market to enable choice. It has been proved, moreover, that private higher education institutions are generally more efficient than public institutions simply because of their profit motive. This assumption should, however, be viewed with caution, since many public higher education institutions are becoming increasingly entrepreneurial and corporate in their approach. Therefore it might be wise to look past the current legislation and its constraints and add a number of fresh perspectives.

Globally the topology of higher education is becoming increasingly complex. Today phrases such as entrepreneurial, service, corporate, virtual, learning community and supercomplexity are linked to higher education provision (Barnett 2000; 2000a). In a global environment, isolation or protectionism can be stifling, since the challenges to higher education to utilise the information superhighway and create lifelong learning opportunities determines to a great extent the quality of the workforce. In an age of abundant information, higher education needs new roles and functions to be valuable. It also needs to look beyond quality as the only criterion for provision.

The basic access rate of higher education (calculated by expressing the number of first year, first degree places as a percentage to the number of 18 year olds) worldwide was 16 per cent in 1999 (Blight, Davis & Olsen 2000). The diversity of access is demonstrated when one considers that the percentage figures for Africa, Asia, Europe, the Americas and Oceania range between 6, 11, 32, 34 and 35 respectively. This indicates that for Africa to grow economically it needs increased higher education provision. South Africa is in an excellent position to provide in this respect and, increasingly, fee paying students are studying in this country.

There are sound reasons for protectionism if we take a narrow view of higher education, but why should stakeholders in higher education world wide, also in South Africa, seek to increase international involvement rather than to excessively protect what they have? Why should government, institutions, community, business and industry be taking the broader view? There are four categories of good reasons for this: Political, economic, academic and cultural/social (also see Knight 1997; Amaral & Magalhaes 2000).

Firstly, governments should capitalise on the political incentives it will gain from committing itself to a globalised economy within a regional powerbase, through exhibiting openness to the world and its societies and commitment to development of the region within a global perspective.

Secondly, the economic incentive includes exporting a service like higher education and assisting students to operate in international and intercultural contexts. This means that if foreign institutions want to operate in South Africa, there should also be opportunities identified for South African institutions to operate in the foreign country by offering programmes of study which will be of benefit to the particular country in question. African Studies programmes, Tourism in Africa and programmes in specialised areas of science might be examples of such programmes. Thirdly, individual public higher education institutions could benefit from partnerships and agreements with foreign and private institutions if these institutions are of recognised quality or if they offer quality programmes in particular areas. Fourthly, it has been shown that international academic approaches attempt to avoid parochialism. Interaction with other cultures and perspectives is important for student development, while awareness and understanding of new and changing phenomena enhance students’ abilities to apply new solutions to problems.

The amended Higher Education Act, supplemented by the National Plan for Higher Education, are clearly steps towards increased and tight control. Given the immediate experiences with private and foreign higher education provision in South Africa, this is probably an appropriate step. However, if control reaches the point of protectionism and a broader view of the value of private and foreign higher education provision within a global economy is lost, this will result in the setting of a dangerous precedent. In such a scenario the public of this country might not be protected against external exploitation. On the contrary, they might be left with a higher education system stifled into becoming an ideological desert.
REFERENCES


