

**A Comparative Study of Country Laws on Private Higher  
Education: Possible Lessons for Ethiopia**

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**A Comparative Study of Country Laws on Private Higher Education: Possible  
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***Abstract***

*The growth of private higher education in many countries has necessitated the enactment of laws that govern the sector. Among other things, these laws provide legitimacy to PHEIs and help the government play both of its supporting and regulatory roles. In this small study an attempt has been made to investigate into the country laws of six countries from three continents. These countries are: Ethiopia, South Africa, China, India, Hungary and Bulgaria. The country laws have been investigated with respect to articles relating to:*

- a. Process and Requirements in the establishment and closure of PHEIs*
- b. Administration and Supervision*
- c. Accreditation processes, and*
- d. Support and Reward.*

*A comparative analysis of the country laws has been made with a view to identifying lessons that could be drawn for Ethiopian private higher education.*

**Introduction**

Private higher education is currently regarded as the most dynamic and fast growing segment of education all around the world. Among other things, the growth of this sector requires planned efforts on the part of the government to promote its development and regulation. This is usually realized by state legislations.

As noted by Wongsothorn and Yibing (1995) legislation embodies the will of the state in the development of private higher education. The government is equally expected to promote the growth of the sector, and to regulate undesirable forms of private higher education. This may not be an easy task in the absence of effective legislation. Considering this, many countries have enacted laws related to the promotion and regulation of private higher education. Ethiopia is one of such countries where a Higher

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Education Proclamation, incorporating issues of private higher education, was that issued in 2003. In fact the proclamation is the first legal framework.

### **Objectives of the Study**

This exploratory investigation aims at studying the Ethiopian Higher Education Proclamation in light with other similar laws in other parts of the world. The major objectives of this undertaking are thus:

- a. to identify compare and discuss the major issues related to the regulation and promotion of PHEIs and how these are handled in the sample country laws; and
- b. to draw useful lessons that might help enrich the Ethiopian Higher Education Proclamation with a view to further promoting private higher education in the country.

### **Importance of the Study**

With a very young private sector which is already making significant strides, Ethiopia has a lot to learn from the experiences of other countries with a long history of private higher education. This demands, among other things, studying the manners in which the sector is regulated. Such an experience would thus offer the chance for policy and decision makers to look into the current proclamation and make improvements where this is desired.

### **Methods of the Study**

In this paper a modest attempt has been made to investigate the private higher education laws of six countries including Ethiopia. This has been made through a close study of the actual laws of the countries. Such laws are either incorporated in a country's higher education act (as in the case of Ethiopia, for instance) or are issued specifically addressing private higher education (as in the case of China).

The countries chosen for this study were chosen from three continents: Africa, Asia and Europe. Two countries from each continent constitute the source of data for the research. These countries are Ethiopia, South Africa, India, China, Hungary and Bulgaria. The

choice of these countries has been dictated by the promotion of private higher education at a remarkable rate and by the possibility of accessing the country laws. Although it has been the researcher's interest to include Latin America – a region with a remarkable private higher education growth – it was not possible to obtain documents pertaining to the issue.

### **Limitations of the Study**

This study exclusively focuses on an investigation of the higher education acts of the six countries studied. Additional documents in the form of decrees, amendments etc have not been obtained. Neither have the actual practices in the promulgation of the laws with the exception of Ethiopia been investigated. These might have their own limitations in the discussions and conclusions made.

## **Part One**

### **Background of the Private Higher Education Sector and the Laws in the Sample Countries**

As has been noted earlier, the countries chosen for this study were Ethiopia, South Africa, India, China, Bulgaria and Hungary each with its own history of private higher education. No doubt, the social and educational tapestry peculiar to each state must have influenced the country laws issued. A very brief profile of the private higher education sector in each country is offered below with the aim of putting the country laws in perspective.

#### **Ethiopia**

PHEIs are barely eight years old in the Ethiopian context. Within few years of its existence the sector is showing a remarkable growth. Currently, the sector enrolls 23% of diploma, and 11% degree students. Currently every fourth student in higher education institutions of Ethiopia attends PHEIs. Although the first for-profit PHEI (i.e. Unity University College) was established in 1997, The Ethiopian Higher Education Proclamation legitimizing the sector was issued in 2003.

### **South Africa**

The private higher education surge in South Africa mainly took place in the 1990s. This expansion has occurred largely at "level 5," a post secondary level "below" the standard first-degree university level with a major concentration on commercial fields of study (Levy 2002). According to Tasker (1999) the number of learners in private education and training institutions of South Africa exceeds, 500,000, making the sector, outside of general schools, the largest single educational sector in the SA education and training system. The higher Education Act of 1997 provides the legislative framework within which PHEIs in South Africa are regulated. It's this Act which is discussed in this paper.

### **India**

India has the second largest higher education system in the world with 11 open universities, 14,600 colleges, 10 million students and 0.5 million teachers (Gupta 2004). India is a country with a long tradition of private higher education. In India both the federal and state governments can pass legislation pertaining to education. In case of any conflict between the two, the federal law prevails (Ibid). In 1995 the federal government tried to regulate the private colleges in various states through the introduction of the Private Universities (Establishment and Regulation) Bill, which is the subject of study for this paper.

### **China**

PHEIs are witnessing a big change in size and form in China. Previous to 1949 PHEIs in China were church affiliated and philanthropy-oriented (Yan & Levy 2003). This value-oriented trend has changed to a commercially driven higher education with the government leveling the playing field for the sector at various times. Although there were previous similar attempts, it was the 2003 Law on the Promotion of Non-government Education in China that stipulated clearly the legal issues concerning private higher education.

### **Bulgaria & Hungary**

The East European region has been noted for its lack of private higher education before the demise of communism. Bulgaria and Hungary are good examples in this regard. Private higher education was possible in Bulgaria and Hungary only immediately after the fall of communism in 1989. In 2000/2001 among the 247,000 students that were educated at 42 universities and colleges in Bulgaria 11.3% were enrolled in private universities (Slantcheva 2002). After having operated in a legal vacuum, Bulgaria issued its first Higher education Act in 1995. The Hungarian Higher Education Act was also issued in 1993. Both of these acts will be investigated in this paper.

Although specific areas have only been chosen for the purpose of this study, each country law comprises a variety of issues. Before going into the discussion of specific laws it might be useful to see the major parts of each country's law in order to understand the framework that governs them. The following table is a representation of what has been obtained from the laws.

Continent	Country	Title/Date	Major Sections/Contents
AFRICA	ETHIOPIA	Higher Education Proclamation (2003)	<b>Part</b> <ol style="list-style-type: none"> <li>1. General</li> <li>2. General Provisions Applicable to All Institutions</li> <li>3. Public Institutions</li> <li>4. Private Institutions</li> <li>5. Establishment of the Executive</li> <li>6. Miscellaneous Provisions</li> </ol>
	SOUTH AFRICA	Higher Education Act 101 of 1997 (Dec. 1997)	<b>Chapter</b> <ol style="list-style-type: none"> <li>1. Definitions, Application and Determination of Policy</li> <li>2. Council on Higher Education</li> <li>3. Public Higher Education Institutions</li> <li>4. Governance of Public Higher Education Institutions</li> <li>5. Funding of Public Higher Education</li> <li>6. Independent Assessor</li> <li>7. Private Higher Education Institutions</li> <li>8. General</li> <li>9. Transitional and Other Arrangements</li> </ol>
ASIA	CHINA	Law on the Promotion of Non - government Education in China (Sept., 2003)	<b>Chapter</b> <ol style="list-style-type: none"> <li>1. General Provisions</li> <li>2. Establishment</li> </ol>

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			<ol style="list-style-type: none"> <li>3. Organization and Activity</li> <li>4. Faculty and Students</li> <li>5. Administration of School Property and Finance</li> <li>6. Administration and Supervision</li> <li>7. Support and Rewards</li> <li>8. Change and Closure</li> <li>9. Legal Responsibilities</li> <li>10. Supplementary Provisions</li> </ol>
	INDIA	The Private Universities (Establishment and Regulation) Bill (1995)	<b>Part (Constituted)</b> <ol style="list-style-type: none"> <li>1. General Provisions</li> <li>2. Establishment</li> <li>3. Administration and Supervision</li> <li>4. Closure</li> <li>5. Powers of the Central Government</li> <li>6. Supplementary Provisions</li> </ol>
Continent	Country	Title/Date	Major Sections/Contents
EAST EUROPE	BULGARIA	Higher Education Act. (1995)	<b>Chapter</b> <ol style="list-style-type: none"> <li>1. General Provisions</li> <li>2. Functions of the State in the Management of Higher Education</li> <li>3. Types of Higher Schools, Establishment, Transformation and Closing</li> <li>4. Academic Autonomy</li> <li>5. Structure and Organization of Studies at Higher Schools</li> <li>6. Academic Staff at Higher Schools</li> <li>7. Honorary Titles</li> <li>8. Organization of the Research at Higher Schools</li> <li>9. Undergraduates, Postgraduates and Specializing Students</li> <li>10. Accreditation of Higher Schools</li> <li>11. Property and Finances of the Higher Schools</li> </ol> <p style="text-align: center;">ADDITIONAL PROVISIONS TRANSITIONAL AND CONCLUDING PROVISIONS</p>
	HUNGARY	Higher Education Act (1993)	<b>Part</b> <ol style="list-style-type: none"> <li>1. General Provisions</li> <li>2. The Teaching Staff, Scientific Researchers and Students of Higher Education Institutions</li> <li>3. The Organization, Operation, and Management of Higher Education Institutions</li> <li>4. The self-government (Autonomy) of higher education institutions and their supervision</li> <li>5. Admission to Higher Education Institutions</li> <li>6. Tertiary Education</li> <li>7. International Academic Relations</li> <li>8. Scientific Research</li> <li>9. Organs of Interest Representation in Higher Education</li> <li>10. Special and Temporary Regulations</li> <li>11. Closing Provisions</li> </ol>

## Part Two

### Discussion on Major Components of the Country Laws Studied

#### 2.1. Process and Requirements in the Establishment of PHEIs

As has been identified earlier, one of the major issues investigated in this comparative case study is the rules laid out for the establishment and closure of PHEIs.

In Ethiopia the establishment of PHEIs is effected in accordance with laws of associations (Part II, 8.3). This is different from the way public institutions are established. The latter is dictated by the regulations of the Council of Ministers or the law to be enacted by the Regional Council on the basis of who is establishing the institution. This is not the case for the other countries considered in this study.

The South African Law requires that an institution be *registered* or *conditionally registered with the Department of Education* to start operation. The registration only occurs if the institution ensures (i) that it is financially capable (ii) that it will maintain standards not inferior to those at a comparable public higher education institution; that it will comply with the requirements of the appropriate quality assurance body; that it complies with any other requirement determined by the registrar (Article 53). When applications for accreditations are made (see section 2.4), proof of registration with the Department of Education is needed.

Applying for interim – establishment in South Africa requires presenting documents comprising (a) an application report, mainly including: founders, aim of cultivation, size of school, level of school, form of school, qualifications of school, internal administrative system, financing, and expenditure, etc (b) names of addresses of founders, (c) sources of school property, amount of capital, and valid probative documents with a clear record of



property right (d) school property that has come as donations. These documents are presented to the Examination and Approval Departments which should make decisions within 30 days. If approved, the departments issue authorization certificates of establishment. Interim establishments do not exceed 3 years. For those that apply for official establishment of PHEIs, the examination and approval departments should make decisions in written form on approval or disapproval within 6 months, and inform the applicants of the decisions.

Applications for registration are determined by a Registrar of PHEIs, an employee of the Department of Education. Satisfactory applications are issued a certificate (stating the terms of such registration) which will be published in a Gazette. Conditional registrations could also be given with specified periods for fulfilling requirements stated. This will also be published in a Gazette. Where an application is rejected, reasons are provided and advice is given to the applicant. No person other than a public higher education institution or an organ of state is allowed to provide higher education without registration or conditional registration. The establishment requirements for the other countries are also demanding like South Africa.

A non – state higher education institution in Hungary can only be established with the consent of parliament (chapter 2, section 6, Art. 1). At the time of its establishment, the founder/s must ensure personnel and objective conditions such as (a) the availability of full – time teaching personnel, including adequate number of professors and readers, necessary to supply tasks related to teaching & research; (b) the objective conditions necessary for education and scientific research (building, institution library, informational background, laboratory, places for experiments and practicing, equipment and other resources).

In Bulgaria the state exercises the management of higher education through the National Assembly and the Council of Ministers. It is through these bodies that the establishment of PHEIs is granted. Article 9.2 of the Bulgarian Law states that the National Assembly shall make decisions to establish institutions.

PHEIs are established at the request of citizens or organizations which are considered as founding members. Founders are required to present a project which shall (a) set socially acceptable aims before the proposed institution (b) contain a description of the main units of the institution, necessary educational documentation, data on research and teaching staff, the facilities and the funding schemes, (c) provide for a management which shall guarantee the basic academic freedoms, (d) comply with the unified state requirements. The project is also expected to be accompanied by a Founding Act which should include type, name & location of institution, scope of activities, name of the founding member, property to be used and ways of funding, management and ways of representation, rights and obligations of founding members. The decision for the institution to be established is given by the National Assembly and is published in the state Gazette.

In China PHEIs could be established by social organizations and individuals. Article 9 of the Chinese Higher Education Law requires that social organizations that establish non-governmental schools should be in the form of corporate organizations. Individuals that establish such institutions are also required to “possess political rights and complete civil behavior capacity.” The institutions are also required to have the appropriate juridical qualifications.

Similar to South Africa, Chinese institutions can apply for *interim – establishment* or directly for *official establishment*. Such a possibility can favourably create a distinction among the initial capacities of PHEIs. In the Ethiopian case such distinctions are not made, and as a result an institution with a very limited capacity could be established with a similar status as that of a well – established and highly organized PHEIs.

After being issued an authorization certificate of establishment, a PHEI is required to register according to relevant laws and administrative regulations. The Chinese Law also lays down further rules on establishment. Article 10 of this law, for instance, states that institutions should meet the local needs of educational development, and the requirements of the Education Law and other relevant laws and statutes. Article 10 also stipulates that

the criteria for establishing PHEIs should reflect the criteria for establishing public HEIs.

This appears to be highly demanding specially at the beginning when PHEIs may not be able to comply with the requirements and standards applied to public institutions.

In India applications are made to the Central Government if one wishes to open a PHEI. This application is required to have a proposal and shall be accompanied by fees as may be prescribed by rules. On receipt of an application, the Central Government makes inquiries pertaining to the establishment and also notifies in the Official Gazette and at least in one daily newspaper for the public to give their opinion. The commission is also requested for its views. Once this is done, the Central Government may ask the sponsoring body to furnish a project report containing a variety of details including objectives, location, programmes, arrangements for academic auditing, nature of faculties, ten years perspective of campus development, phasing of capital & recurring expenditure over a period of ten years, resource mobilization, fee structure, track record of sponsoring body, method of selecting candidates for admission. The project is submitted to the State Government where the institution is to be established which, along with its comments, shall furnish the same to the central Government within 6 months from the date of its receipt. The document received is referred again to the University Grants Commission which furnishes its recommendations within a period of six months. When this is favourably accepted the Central Government requires the founders to establish a Permanent Endowment Fund.

The Permanent Endowment Fund consists of a sum equivalent to the recurring expenses for three years for the fully operational University in long term interest. The institution is required to invest and keep invested this fund in securities issued or guaranteed by the Central Government. The Central Government has the power to direct any upward revision of the Permanent Endowment Fund from time to time.

It's after the above processes that the government allows the establishment of an institution by notification in the Official Gazette, which is also required to be laid before both Houses of Parliament. Although the Indian Law seems to be highly suspicious of a

malicious private sector and protective of public interest, it could easily discourage private initiatives with all the over – demanding articles incorporated.

As might have been shown above, establishment of a PHEI appears to be less bureaucratic, demanding and time consuming in the Ethiopian case. Requirements relating to the preparation of a proposal outlining the details of the PHEI are needed only when a pre-accreditation permit is requested. Even when the requirements for the pre-accreditation permit are seen, standards do not require PHEIs to be in par with similar public institutions (as in the case of South Africa and China). Neither are the approval processes given to higher government bodies like Parliament and Council of Ministers (like that of Hungary, Bulgaria and India) which may take longer time to effect. This lax stance must have helped many PHEIs in Ethiopia to proliferate as severe restrictions in other countries must have worked against the sector. In addition to this, although the pre-accreditation requirement in Ethiopia demands new institutions to present, among other things, their financial capacity ensured by certified auditor, this has not be the case at least in practice. This must have again attracted investors with a limited capital to invest in the area.

## **2.2. Laws Related to the Closure of PHEIs**

The closure of PHEIs is a serious matter to owners, students, parents and the government alike. If at all it happens, it should be handled with the utmost care, and in a manner that protects students. Laws governing the closure of PHEIs should thus logically indicate in detail how this should be done.

The Ethiopian Higher Education Proclamation does not offer a detailed mechanism into which a PHEI might be closed. This issue is solely attached with reasons that bring the cancellation of accreditation permit. Article 75, Part IV of the Law states that an accreditation permit shall be cancelled on the following grounds:

- a) where the Quality Assurance Agency or the Board ensures that the accreditation permit was issued on the production of false document;

- b) where the institution contravenes the provisions of the higher education proclamation or any other relevant law;
- c) where the institution dissolves with any relevant law;
- d) where the institution fails to rectify defects within the time fixed in the warning given by the Ministry to it for the failure to satisfy the requirements provided for by law, or for contravening directives issued by the ministry pursuant to Regulations of the Council of Ministers.

As the above statements might show, if the accreditation permit of an institution ceases, the institution ceases, *de facto*. To this effect Article 75.3 of the law states that an institution whose accreditation permit is cancelled shall not engage in new training programmes transaction.

The Ethiopian Higher Education Law also has very limited provisions on the procedures to be followed during the closure of a PHEI. The only thing it states is the following:

The cancellation of accreditation permit ... shall be effective after the completion of the undergoing activities of the institution. However, if the institution cannot carry on such activities, it shall take appropriate measures that the students and trainees continue their studies at other appropriate institutions.

The above statements do not say anything on what will happen if an institution is closed for any other reason than cancellation of accreditation permit. It doesn't also explain what appropriate measures' the institution should take and the mechanisms thereof. The country laws of the other countries are far better with regard to the above, and have a very important lesson to offer.

In South Africa the power to close the school is given to the Registrar. When the accreditation of an institution is withdrawn, the registration is reviewed. If the registrar cancels the registration or conditional registration of a PHEI, the institution must return

the original certificate of registration to the registrar within 14 days. However, cancellation can't happen unless the registrar has informed the PHEIs of the intention so to act and the reasons thereof. The registrar should also grant the PHEIs and other interested persons an opportunity to make representations in relation to such action (Articles 63 a, b, c).

A PHEI can make an appeal to the Minister within 60 days of the date of the registrar's decision. However, an appeal does not suspend the operation of any decision of the registrar unless a competent court orders otherwise on good cause shown. Such an appeal is not available in the Ethiopian case.

In India if an institution chooses to be dissolved, it should give a notice of at least six months to the government. The Central Government, in consultation with the University Grants Commission, makes arrangements to administer the institution from the date of its dissolution until the last batch of students complete their courses. The expenditure for administration of the institution is also made out of the Permanent Endowment Fund reserved by the institution. This provides better protection to students by not leaving them solely to the will and choice of the private provider.

There are also provisions in the Chinese Law for the closure of institutions. Article 56 states that PHEIs should be closed if they are required to close according to school statutes; or if their authorization certificates of establishment are revoked; or if they cannot continue operation because their liabilities exceed assets. Article 57 also states that when PHEIs are closed, their students should be taken care of properly. Institutions are required to settle their accounts according to law if they are closed on their own request. For those closed by the examination and approval departments the latter should arrange for settling accounts. Courts arrange for the settling of accounts for bankrupt institutions.

In Hungary only the parliament has the right to the abolish a non – state higher education institution, and withdraw recognition from it. However, if infringement of the law by

PHEIs happens, the Minister of Education demands explanations and corrections. Where the latter is not respected it is the Minister who initiates the impeachment of the head of the institution and/or legal proceedings. With the exception of stating that the maintainer provides from the abolition of the institution, the Hungarian law does not offer the manner in which this is to be done.

In Bulgaria PHEIs could be closed if they violate government regulations; if they have received two successive rejections of accreditation or have not sought one within the time limits provided; or still at the request of founding members. The motion for the closing of HEIs is made by the Council of Ministers upon which the National Assembly decides to close the institution. Article 18.3 stipulates that the decree for the closing of the institution shall lay down the conditions and order in which students shall complete their studies. Founding members of PHEIs are bound to sort out the property matters and guarantee the rights of students before closing the institution.

### **2.3. Laws Pertaining to the Administration and Supervision of PHEIs**

The Ethiopian Higher Education law ascribes the accountability of PHEIs to the appropriate organ as provided for in their memorandum of association. However, such institutions are also accountable to the Ministry for their performance as an institution of education. This requires, among other things, submitting annual reports; education, training and research plans of the institution; report of the implementation of the education policy and national plan every two years. Article 60.4 (part four) also states that the Ministry shall carry out periodic evaluation and supervision as may be necessary. This is done through Quality and Relevance Assurance Agency.

In South Africa the administration and supervision of PHEIs is relegated to the Council for Higher Education (CHE). There are requirements that PHEIs must meet. In accordance with generally accepted accounting practice, principles and procedures every PHEI must keep books and records of income, expenditure, assets and liabilities; prepare financial statements within three months of the end of the year; must within the period determined by the registrar ensure an annual audit of its records of account by an auditor,

provide this or any additional information, particulars or documents to the registrar. Surprisingly, Article 56 of the South African Act also grants the right to any person to inspect the register of PHEIs and the auditor's report. This is not the case in Ethiopia where reports are submitted only to government agencies and where annual reports mainly focus on academic rather than financial performance. If at all the latter is done, it is required by the Ministry of Inland Revenue.

The Hungarian Higher Education Act recognizes the self – government of higher education institutions. The law states that non – state higher education institutions determine their tasks themselves within the framework of the founding charter laid down by the founder. A higher education institution decides in all matters concerning the institution with the exception of those assigned to the state or local government. With regard to the latter, such things as the recognition of the establishment and abolition of a faculty belongs to the sphere of the government. Although HEIs can issue their regulations relating to organizational and operational undertaking, a copy of these regulations and their amendment should be sent to the Minister of Education.

The Hungarian Law also establishes rules as to how the administrators of a PHEI should be chosen. Article 56/A, Chapter 13 states that the rector of a non – state university shall be a university professor, and be mandated or dismissed at the proposal of the Minister of Education by the president of the Republic. Director generals of PHEIs with several faculties may be appointed by the owners of PHeIs but the appointment should be confirmed by the prime minister in accordance with the proposal to the Minister of Education. This is indicative of the government's intervention in the internal affairs of PHEIs.

Hungarian PHEIs are also required to establish a separate committee comprised of University professors and students to undergo continuous supervision of the institution's activities. Further more, HEIs are required to provide information about their education and publish their admission requirements annually at an appropriate time.



In Bulgaria the state exercises its functions in managing higher education through the National Assembly and the Council of Ministers. The National Assembly is given the power of making decisions to establish, transform or close PHEIs. The Council of Ministers establish the general guidelines of the national policy in higher education and enter motions to the National Assembly for the establishment, transformation and closing of PHEIs. The Council of Ministers also decide the total number of students in PHEIs (Article 9.6). The national policy in higher education is implemented by the Ministry of Education and Science. It is this Ministry which makes motions before the Council of Ministers. It is also this Ministry which exercises control over the PHEIs as to the observance of the higher education act and the state requirements.

With the exception of few restrictions the Bulgarian Law provides the liberty to PHEIs to have their own structures and management bodies provided these shall not infringe upon academic freedoms (Article 36). Article 14 also states that founding members of PHEIs shall be responsible for the overall activity, management of the institution. Article 22 further notes that the autonomy of PHEIs cannot be violated by means of interference in their activity except for the cases exclusively stipulated by law.

The Chinese law stipulates the types of organization and activity PHEIs should engage in. For instance it is required that non-governmental schools should have a school council, board of trustees, or other decision making organizations with all the roles ascribed to each. These structures seem to be imposed on PHEIs with the possibility of creating a restriction their managerial flexibility. With regard to the administration and supervision PHEIs, power is given to educational administrative departments and other relevant departments. These departments are required to supervise PHEIs to improve school quality. Non – government schools are also required to submit their admission brochure and advertisements to the examination and approval departments for their records. If PHEIs infringe upon the legal right of their students, the latter and their relatives have the right to appeal to the educational administrative departments. So it is not only the government which makes the supervision of PHEIs. Rather, this activity could be initiated by students complaining about their rights.

In India the University Grants Commission (UGC) has the powers to inspect institutions at any time after giving prior notice of such inspection. The findings of the commission are communicated to the Central Government which may act on the basis of information received.

The Commission mainly controls the activities of institutions through the Statutes which they should present and get approved. Such statutes should, among other things, include provisions regarding fees to be levied from students and number of seats in different courses.

The law states that the annual accounts and balance sheet of an institution should be prepared, and audited once at least every year and at intervals of not more than fifteen months. It is also required that the annual report of an institution together with the audit report and observations should be submitted to the Central Government. The directions of the Central Government on matters arising out of the accounts and audit reports of the institution are binding on it.

#### **2.4. Laws Related to Accreditation of PHEIs**

In the Ethiopian case the accreditation process assumes two phases: Pre – accreditation and Accreditation. It is impossible to establish, upgrade or modify a private institution without first securing a pre – accreditation and/or accreditation permit from the Ministry of Education. Any credential awarded otherwise is considered invalid.

An applicant for a pre - accreditation permit is required to present a document/documents indicating proposed name, main address, field of study or academic mission of institution; objectives of the institution; type of management; admission requirement, details of facilities and services required, number and qualification of staff, a three – year plan of the institution, name and address of owners, and trade, investment and other similar licenses issued by the appropriate government organs. This requirement begins only after the institution has been established based on the commercial laws of the

country. So the real Challenge for an institution is not to get established. It is rather to get the pre – accreditation required for providing higher education.

The evaluation for the pre - accreditation is made by the Quality Assurance Agency. After having received the recommendation of the latter the Ministry issues the permit within 15 days. This is also communicated to the public through nation – wide mass – media. Where pre – accreditation is denied (which will be communicated through writing) the institution has the chance of reapplying within 90 days of the rejection.

An application for accreditation is processed by the Ministry and the Quality Assurance Agency. The Ministry receives the application and sends it to the Agency within three working days. The Agency is given 3 months to process and submit its recommendation. The Ministry issues the permit within 10 working days from the date of its receipt. The renewal takes place every three years.

The South African Higher Education Act states that it is the Council on Higher Education (CHE) which is given the authority to accredit programmes of higher education and audit the quality assurance mechanisms of HEIs. Among other things, CHE is entrusted with the task of auditing the quality assurance mechanisms of higher education institutions. PHEIs are expected to comply with the requirements in terms of the South African Qualifications Authority Act (SAQA) and any other reasonable requirement determined by the registrar.

In order to perform its quality promotion and quality assurance functions the CHE establishes a Higher Education Quality Committee as a permanent committee that performs the quality promotion and assurance functions of the CHE. This committee can again, with the concurrence of the CHE, delegate any quality promotion and quality assurance functions to other appropriate bodies capable of performing such functions.

The Procedures of accreditation for South African PHEIs are attached with the registration process involved. Accordingly, only an applicant with a certificate of registration can apply for accreditation.

The composition of those entrusted with the responsibility of accrediting institutions is also given due consideration in The South African Act. Accordingly, the act states that the functions of the CHE should be performed according to the highest professional standards and thus members should be broadly representative of the higher education system and related interests; should have deep knowledge and understanding of higher education and research; should appreciate the role of the higher education system in reconstruction and development; and have known and attested commitment to the interests of higher education. Nominations for membership are invited from the public, national organizations, research and science councils, non – governmental organisations. Non- voting members are also appointed from HEIs.

In Hungary the validation of the quality of education and scientific activity in higher education is handled by the Hungarian Accreditation Committee which is established by the Government. Quite different from the other countries investigated, the composition and qualification of members of this Committee is given special consideration. The Committee is comprised of representatives of the higher education institutions, of the research institutes and of the utilizing sphere possessing at least doctoral degrees. The members are mandated by the Prime Minister for three years. What is more, International Advisory Body (consisting of eleven people at most) may operate besides the Accreditation Committee whose members shall be invited by the president of the Accreditation Committee.

The Committee performs a variety of tasks including giving opinions on the establishment/recognition of a HEI; the establishment/recognition of a faculty, qualification requirements, the starting of accredited higher vocational education programmes, etc. The committee makes its evaluation on regular basis, but at least every eighth year. Institutions are required to hand over information concerning their educational and research activities. This information is used for evaluating the institution.

In Bulgaria the National Evaluation and Accreditation Agency (NEAA) under the Council of Ministers is the specialized government body for quality assessment and

accreditation. This body implements its activities in accordance with the provisions of the Higher Education Act and regulations approved by the Council of Ministers. The Bulgarian Act clearly formulates the objectives of accreditation, type of accreditation, the composition of the accreditation council.

The Major aim of accreditation is identified as promoting institutions in developing their potential and in enhancing and maintaining the quality of their activity. It is accreditation that grants the right to an institution to operate and to conduct training in accordance with the grade received. In Bulgaria there are what are called institutional and programme accreditation. Institutional accreditation precedes the programme accreditation. Evaluation of projects for the opening of faculties, branches, etc. may be later requested by an institution, which has received institutional accreditation.

Unaccredited institutions do not have the right to conduct training and to issue diplomas. They cannot admit students nor be funded in anyway by the state. Accreditation evaluation is conducted along a four – grade scale namely: very good, good, satisfactory, unsatisfactory. The accreditation is valid for 5 years when the grade is very good or good, and 3 years when the grade is satisfactory. This is an important aspect of the accreditation process that we see lacking in the Ethiopian case. No distinction is made through the accreditation process about the size, facility, performance of a higher education institute.

The time for accreditation is fully specified in the Bulgarian Act. The procedure begins with an application. The procedure opens within one month of the submission of the request. The accreditation procedure should be concluded within 6 months of its opening. In a similar vein, the project evaluation procedure should end within 3 months of its opening. Although the act doesn't offer the details, it states that the Agency shall develop and adopt evaluation and accreditation criteria in accordance with the act and state requirements. The results of accreditation are also published no later than may each year in the state Gazette together with the grades earned.

Another important element of the Accreditation process in Bulgaria is the fact that the Accreditation Council sets up standing committees in professional areas and expert panels under them. At the proposal of the standing committees are also established the tasks and the members of the expert panels in line with the procedures. This is a practice which is not common in the other countries with the exception of Hungary.

The Chinese Law does not provide a detailed account of what the accreditation process involves. However, it states that the educational administrative departments and other related departments should organize or entrust social intermediary organizations to evaluate the level of institutions and their quality, and announce the evaluation results to the public. This shows that the government is not directly involved in the accreditation process.

The Indian Act does not provide the specific accreditation procedures to be followed. However, it requires that every university, within three years of its establishment, obtain accreditation from a body nominated by the Commission and shall renew it at an interval of every five years thereafter.

## **2.5. Laws Related to Support and Reward for PHEIs**

The various country laws have also been investigated in terms of the articles they have about the support and reward systems available to PHEIs.

The Ethiopian Higher Education Proclamation does not say much on the support and reward to be given to private institutions. The only such support it talks about is land. The law states that land shall be allocated for the establishment and service of the higher education institutions in accordance with applicable laws and policies. In a similar vein, the South African higher education act and the Indian Bill do not specify the type of support and reward private institutions are to be given.

The Chinese Law, on the other hand, has a chapter and 9 articles specifically dedicated to support and Rewards. The law states that Governments above the country level can set up special funds to subsidize non – governmental schools' development, and reward and

commend the advanced groups and individuals. It is also stated that governments can support PHEIs by subsidizing them, and leasing or giving away the public property. Non – governmental schools also enjoy preferential taxation policy prescribed by the government.

According to laws and regulations PHEIs can also receive donations from individuals, corporate entities and organizations. These individuals, corporate entities and organizations are also given preferential taxation and commendation. The government also encourages monetary organizations to use loans to support non – governmental education development. It is also stated that the government, when entrusting non – governmental schools to bear compulsory education responsibilities, should appropriate the needed educational funding as described in the entrust agreement. When establishing and extending non – government schools, the government should give preferential policy based on regulations of land use and construction for public welfare. Land for educational purposes should not be used for any other purposes.

Article 51 of the law also notes that after non – governmental schools deduct school – running costs and reserve a development fund, and draw other necessary costs, founders can receive reasonable rewards from the school – running surpluses.

Article 52 further states that the government will take measures to support and encourage social organizations and individuals to go to minority nationality regions and remote and poor areas to establish non-governmental schools and to promote educational development.

The Hungarian Higher Education Act has a chapter on the system of financing and support for Higher Education. Chapter 4, section 9 of the act identifies 6 major sources of support for HEIs. These are: support from the state budget; other sources originating from the sub-systems of the state budget; fees for services provided, other charges to students, tuition fees and other fees; income from basic and from entrepreneurial activities; income from donations and other income, and foundation sources; fiscal means being at the disposal of such purpose. In this respect, there are a variety of support

mechanisms created to institutions. Accordingly the Education and Facilities Maintenance Allocation, the Programme Financing Allocation, The Research Allocation, The Development Allocation are a variety of funds created to assist institutions in their quest for support. The manners in which PHEIs might benefit from such an arrangement is not clearly stated in the law with the exception of an article which notes that the state may finance non – state higher education institutions according to the related commission (Chapter 3, Section 7, 7).

The Act states that whereas ensuring the conditions for development is the role of the institutions, and should be done from its own income, contributing to this same cause is the role of the state. Where an agreement is reached between the state and the PHEI for training, the state offers the required support if the PHEI intends to fulfill an educational task that considerably differs from those conducted in public higher education institutions or which complements it. In such occasions the institution receives support on the basis of the number of students it has.

For Church related PHEIs the Hungarian Act further states that the same amount of budgetary support allocated to state higher education institutions is given to ensure participation in scholarships relating to higher education.

The Bulgarian Higher Education Act identifies the variety of support to be given to higher education institutions. The income of HEIs is defined to come from: subsidies from the state budget; financial assistance from municipalities; donation, inheritance, sponsorship; self-generated income. The state budget subsidy provide funds for covering the costs of the teaching and learning process; the institution's research or artistic activities; publishing of textbooks and research paper; social expenses; capital investments.

The Act also stipulates that imported or donated literature, machines and equipment for the purpose of teaching or research are exempt from duty, vat and other charges.



## Part Three

### Conclusions and Possible Lessons

The healthy development of private higher education in any country demands the practice of productive regulation. The short – sighted behaviours of some private providers and undesirable types of PHEIs cannot be deterred with out effective legislation. This does not, however, mean that legislations should be too restrictive.

In addition to their regulatory nature, legislations should also stimulate the growth of the sector. Legislations should provide for the protection of good private institutions. As argued by Tasker (1999) “an environment must be created that neither suffocates educationally sound and sustainable private institutions with state over – regulation, nor allows a plethora of poor quality unsustainable operators into the higher education market”. It is in line with these two considerations that the country laws of six countries have been investigated in this paper.

The discussion in part II of the paper must have shown the manners in which the various elements of state legislation on private higher education are structured and handled in different countries. The following are the major conclusions that could be drawn and serve as possible lessons for the Ethiopian context.

- 3.1. The establishment of PHEIs in Ethiopia is not time – consuming and bureaucratic as is the case with other countries like South – Africa and China. Neither is it too demanding with requests such as meeting standards comparable to public institutions. This is a practice that needs to be maintained since it has contributed to the growth of the sector.
- 3.2. The Ethiopian Higher Education Proclamation falls far short of offering the necessary provisions in the closure of PHEIs if and when this happens. Articles indicating prior notification of such actions and government intervention ahead of

time in order to protect the safety of students from the outset are in order. Equally, if an institution is ordered to close, there must be a mechanism which offers it an opportunity to make representations in relation to such action, and some room for appeal. These two elements are currently lacking in the legislation.

- 3.3. In the administration of institutions the Ethiopian proclamation recognizes the self – government of PHEIs and does not allow too much intervention as in the case of South Africa, Hungary, and China. This is a practice that needs to be further strengthened.
- 3.4. The Pre-accreditation/Accreditation process in the Ethiopian case is clearly laid out and offered in details. However, there seems to be some chance for improvement. Areas to consider are the procedures for accreditation, and the composition of accreditors. In the Ethiopian case an institution cannot apply for accreditation directly. It has to secure pre – accreditation, stay for a year, and apply for accreditation. This practice will have to be followed regardless of the fact that the institution is new or old. This does not encourage institutions with all the necessary facilities and capacity to apply directly for accreditation. The practice in China and South Africa where institutions themselves choose to apply for either an interim or permanent establishment are worth – emulating.
- 3.5. The other procedural element of accreditation that needs to be looked at is the time it would take to secure pre – accreditation and/or accreditation. In the Ethiopian legislation the time from the commencement of the application to securing the permit is not clearly laid out as a result of which things are left to the will of accreditors causing delays and disputes.
- 3.6. The composition of accreditors is also an important element to look into. Although the Ethiopian Higher Education Proclamation states that this task is handled by the Quality and Relevance Assurance Agency it does not say whether this is to be handled at a national or regional level, the mechanisms in which it is handled and what the composition of the task force would be like. The Bulgarian law where high level experts are required to be involved, and/or the Chinese case where intermediary (not governmental) organizations are involved in the accreditation process are worth emulating.

3.7. The Ethiopian Higher Education Proclamation is devoid of articles related to support and reward to the sector. A sector which is entrusted with the task of educating the nation's human resource cannot be expected to grow without the required support and reward. The Chinese, Bulgarian and Hungarian Laws provide useful lessons in this regard.

All the above areas of concern possibly suggest the need to undertake a review of the relevant articles of the Ethiopian Higher Education Proclamation. Such an undertaking might offer the chance for further improvements in the form of amendments, decrees or regulations that might address the existing gaps. It is through such an engagement that we can ensure the further proliferation of the private higher education sector in Ethiopia.

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