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**Legal Frameworks for Higher Education Governance
in Sub-Saharan Africa**

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Abstract

This is a preliminary survey of the laws and statutes that determine governance arrangements for higher education systems as well as individual institutions in 24 countries of Sub-Saharan Africa. Following an overview of recent higher education governance trends within Africa, it describes the current range of practice and most common approaches set forth in foundation legal documents for national higher education with regard to autonomy, accountability, government control and stakeholder representation. Particular attention is given to the membership of governing boards, how board members are appointed, the selection of chairpersons, the nomination of chief officers in the universities, and the degree of institutional autonomy implied in the definition of these processes. Various mechanisms for insuring institutional accountability are also identified, including strategic plans, governing board composition, annual reporting requirements, financial and quality audits, and performance-based funding.

Keywords: Governance, laws, statutes, acts, universities.

Introduction¹

The importance of legal frameworks for effective performance of a higher education system and its individual institutions is often recognized more in practice than in theory. Modifications to the laws and regulations that affect higher education are frequently 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 accorded attention commensurate with the energy of the discourse that surrounds attempts to reform them.

The lack of scholarly interest in the legal frameworks for higher education is particularly evident in the case of Sub-Saharan Africa (SSA). A search of some 1,100 references specifically related to SSA higher education topics found only *four* that dealt with the legal frameworks that guide tertiary institutions (i. e., Moja, Muller 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, and the other compares university-government relations in three African countries. It therefore seems reasonable to conclude that any other studies or evaluations regarding legal frameworks for higher education in Africa – if they exist – are not accessible in the public domain. Consequently, few resources are available to guide legal reform proposals for African higher education.

This type of information is increasingly sought as countries and institutions update their legal frameworks for higher education in response to changing parameters of competition, market demand and social expectations. In fact, the need for such analysis 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%) reported higher 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 higher education at all, or else one that was at least two decades old.² As a result, governance 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 2007, 27).

The purpose of the following review is to describe, compare and analyze the national higher education system legislation and individual statutes of selected public universities in 24 countries of Sub-Saharan Africa for which this documentation could be obtained.³ It seeks to identify the range of practice and most common approaches in these documents with regard to the specific matters of governance. Governance arrangements are frequently identified in the higher education literature as essential for determining the responsiveness, adaptability and flexibility of higher education systems, and ultimately their capacity to manage change and maintain relevance under continually shifting conditions (Juma 2007;

Kearney and Huisman 2007, 362; World Bank 2002, 62). In fact, one recent report concludes that flexible governance arrangements are one of three main determinants of world-class universities (Salmi 2009).

Methodology Comment

A major limitation of this report stems from the considerable difficulty encountered in obtaining official documentation of the legal frameworks that guide African universities. The task proved to be particularly problematical in Nigeria where the national buffer body and 26 of 27 federal universities host websites, but none of these contain copies of their respective institutional acts or statutes. For similar reasons, it was not possible to obtain copies of statutes for individual private universities in Sub-Saharan Africa. Moreover, there was no way of ascertaining whether the documentation obtained is currently applicable, or whether it had been superseded or amended by more recent legislative actions. Also, this initial scan of higher education laws in Africa did not seek to determine whether the interpretation and application of these laws were consistent with their stated intent, or whether they might have become modified in practice by other forces. These tasks remain for the next researcher. Because of these limitations, this study should be viewed as a preliminary and incomplete attempt to assess the legal frameworks governing higher education in Sub-Saharan Africa.

Governance as a Policy Variable

As massification intensifies the demand for access to higher education, and as globalization pressures force governments to concern themselves with maintaining the competitiveness of their economies, the development of capacities for effective management within higher education systems becomes more and more important. Thus, a key principle

that guides many recent higher 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, 2). The legal frameworks that set the parameters for governance and management within the system quickly become relevant to the reform process, and debate soon settles on issues of autonomy and accountability. The law can therefore be an important instrument for achieving policy objectives seeking to promote greater responsiveness in higher education. To this end, the following review of regulatory frameworks will focus on governance arrangements—particularly autonomy and accountability (both financial and performance-related)—as the legal area most likely to condition the possibilities for institutional responsiveness in higher education.

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, 11). Autonomy protects the institutional right of self-regulation which 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 partnership with the state, which may need to be re-negotiated from time to time in light of changing circumstances (Ajayi, Goma and Johnson 1996, 167).

When assessing autonomy, one must 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. These outside controls can come from any source, but it is most often the government that creates the constraints that hinder self-government by tertiary institutions. However, autonomy can also be fettered by other external forces 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, 43; Bloom et al. 2006, 5). As a result, this review will look carefully at the composition of stakeholder representation in key institutional governing bodies,⁴ at who appoints key institutional decision-makers and how this process occurs, and where the locus of decision-making resides within the hierarchy of public administration.

Accountability. Autonomy does not mean a complete absence of external controls. Governments, parliaments and societies are all asking for greater accountability from public institutions in their performance and use of public resources (Fielden 2008, 10). Accountability is the clear assignment of responsibility for efficient use of resources to produce results and the mechanisms whereby this performance can be measured. 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.⁵ On balance, accountability mechanisms constitute feedback loops that enable decision-makers at various levels of the 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.

Recent Trends in Governance

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, a mutual 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 re-structuring 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 of higher education systems should provide a fuller appreciation and understanding of similar trends now underway in Africa.

International Trends. A decade and a half ago, Van Vught (1994) distinguished between state *control* and state *supervision* models of university system governance. 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 location. The trend has favored fewer and less comprehensive regulations and increasing institutional autonomy (e.g., 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, 60). A separate survey showed that national legislation is seen to provide “high autonomy” in 13 of 23 European countries (Karran 2007, 302).

Issues of governance in higher education have taken on heightened importance as factors that can condition the success of current initiatives to boost national competitiveness in the global knowledge economy. As an illustration this rising interest, one has only to note two major studies of governance trends in European higher education (Eurydice 2008; CHEPS 2007) and the steady stream of similar analyses (Bladh 2007; Bleiklie and Kogan 2007; Crosier, Purser and Smidt 2007; Moses 2007; Paradeise and others 2009; Salmi 2007). Moved by like concerns, south-east Asian countries organized a regional conference on university governance in late 2008.

In his assessment of university governance trends, Fielden (2008, 43) identifies the following international patterns:

- Withdrawal of the state from control functions.
- Creation of buffer bodies (e.g., National Council for Higher Education) to manage sector finances, supervise standard functions (e.g., quality assurance,

degree equivalence), and provide sector-wide services (e.g., 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.

Although governments are less directly involved in university affairs than before, they retain an influential role. They accomplish this by holding institutions accountable (often through the criteria employed in the budget allocation process) for their performance in meeting the needs of society, maintaining educational excellence, and using public funds responsibly. Taken together, these changes herald a new model of university governance that stresses leadership, management, and entrepreneurship over the academic freedom of individuals, internal democracy, and organization based on academic disciplines. The goal is for universities to “overcome their fragmentation into faculties, departments, ...and administrative units, and instead target their efforts collectively on institutional priorities for research, teaching and innovation” (Maassen 2007).

With reference to university governing boards, Fielden (2008, 37) notes that governments have increasingly sought to reduce the size of these boards in the campaign for greater managerial efficiency. Denmark currently 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, 38). The rationale for this is a belief that external members can be more objective in taking strategic decisions, especially where innovation in established 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. Some countries (e.g., Estonia, Hungary, Spain) have seized upon this latter purpose as a justification for setting up University Advisory Boards comprised entirely of external members who provide guidance (but not decision-making) to the institution's governing board and senior managers (Eurydice 2008, 40).

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, 497). 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 formulae and performance contracts for higher education.

The previously cited appraisal of legal and regulatory frameworks for higher education in 23 European nations notes a clear trend towards more "corporatist" and less collegial management structures in universities (Karran 2007, 290). 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, 498). As the corporativist trend expands, university governance shifts from the notion of a collegial “republic of scholars” to that of a stakeholder-accountable organization (Bleiklie and Kogan 2007, 477). 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, a dilution of the power of academic senates by stakeholder boards, and the expansion of quality assurance mechanisms that have become a strong influence in the growth of managerialism (CHEPS 2007, 27).⁶

African Trends. The history of African higher education has been characterized by strong government controls on institutions of higher learning.⁷ 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. Notably, where multi-party democratic political systems had been introduced, university leaders reported less government interference than in one-party states (Richardson and Fielden 1997, 33, 48). 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, 6). External state interference, notably in the composition of governing boards and the appointment of Chief Officers was considerable, especially in Francophone countries (Sawyerr 1996, 286). 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 vested in individual academics (especially the professoriate) over important matters” (Sawyer 1993). Too often, relations between public universities and their governments were defined by conflict rather than partnership (Ajayi, Goma and Johnson 1996, 178).

Newer legal frameworks for higher education in Sub-Saharan Africa reflect the international trends towards greater institutional autonomy and increased accountability for performance, along with some elements of corporativism. Whereas the Head of State commonly served as the Chancellor of each public university in English-speaking countries, 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. In several countries, over-arching higher education laws have recently been enacted for the tertiary system as a whole (e.g., Sierra Leone, Tanzania, 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. This trend is more visible in Anglophone countries, as many francophone universities still function as a formal part of the public service. 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 de-centralized, 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.

The review will now examine the prevailing legal frameworks for higher education in Sub-Saharan Africa as they pertain to governance. System-wide governance will be looked at first, followed by institutional governance.

System Governance

As national-level higher education in Africa has expanded from a small handful of public institutions to dozens 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. 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, to allocate funding to individual institutions, to assure educational quality, to plan for the tertiary system’s development, and to collect and publish higher education statistics.

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. Because these bodies are usually staffed with former university administrators and academicians who bring with them an understanding of the organization and culture of the universities, they may be more effective than ministerial public servants.

Buffer bodies are more commonly found in the English-speaking countries of Sub-Saharan Africa. Within the French-speaking countries, the tendency has been to create

separate (and often rather weak) ministries of higher education to manage the growing tertiary systems.⁸ At present, 15 of 42 SSA countries possess buffer bodies, and an additional 14 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 single Ministry of Education with sector-wide responsibilities. In the Democratic Republic of Congo and in Nigeria, separate buffer bodies have been established for each sub-set of tertiary institutions (i.e., universities, technical institutes, and teaching colleges). Although Burkina Faso, Cameroon, Mauritania and Mozambique have established Higher Education Councils, they are not true buffer bodies as their role is purely advisory to the Minister.

Governing Board Composition. Among the 24 countries included in this review, 13 have established buffer bodies. The number of members on their governing boards ranges from 7 to 28, with an average of 16. 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 (e.g., 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 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 Minister 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 higher education system. Often, the governing board is

explicitly linked to the country's planning and budgeting processes by requiring senior officers in the ministries of finance and development planning to serve as board members.

The trim Tertiary Education Council in Botswana (14 members) and the larger National Council for Higher Education in Uganda (22 members) provide good examples of how multiple interests can be accommodated within the membership of a buffer body. The Botswana Council incorporates four representatives of government, four representatives from various higher education communities, three non-governmental 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.

Governing Board Appointment. The power to appoint persons to the 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 (e.g., science and technology, labor, research, provincial education). Legislation in several other countries, including Tanzania and Zimbabwe, also includes “statements of principle” to orient the selection of board members.

Board Member 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 maintains the tradition that such appointments are a prestigious honor and civic duty for which no remuneration is required. 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 3-year terms of service for members of their buffer body governing boards. Another 30 percent of countries have set 5-year terms. The remainder has 4-year terms.

Institutional Governance

Governance arrangements within institutions of higher learning tend to be structured along common lines. Usually, a governing board is charged with responsibility for formulating the institution’s strategic direction, for approving internal statutes, for confirming budgets and accounting for use of funds, for setting terms and conditions of

employment for staff and endorsing 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 pédagogique* in French, *Conselho Académico* in Portuguese).⁹ 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 (e.g., Botswana, South Africa), deciding admissions intake (e.g., Lesotho), staff and student disciplinary matters (e.g., Mauritania, Rwanda), or determination of degree equivalencies (e.g., Namibia).

In South Africa, university governance includes a seemingly 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 statutes 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 (i.e., vice-president, vice-rector, secretary general, pro-vice-chancellor, deputy vice-chancellor). Where there are two deputies, their responsibilities are usually split between academic and administrative affairs. Under them, 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 African independence, the role of Chancellor in public universities was often fulfilled by the Head of State (e.g., Kenya, Nigeria), thus adding an additional mechanism for government control. In recent years, this practice has begun to fade as the appointment of prestigious individuals of great integrity to the position of Chancellor becomes more frequent.

Composition of Governing Board. 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.¹⁰ 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. The second model, found in the English-speaking universities, incorporates various types of external members within the board. The most common group is government officials, particularly senior officers from the ministries of education and of finance. A second category is drawn from the private sector and can represent a wide range of stakeholders, e.g., industry, commerce, unions, non-governmental 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 (e.g., Botswana, Ghana, Kenya, Namibia, Zambia). In some cases, the make-up of the board is very loosely specified by law (e.g., Namibia, Lesotho, South Africa, 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.

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

In practice, institutional autonomy 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. A higher proportion of internal members presumably confers greater institutional autonomy. 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. Often, institutional autonomy can be better predicated 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.

More recent reforms to legal frameworks in Africa are consistent with international trends 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 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 are represented on many institutional governing boards, although in limited numbers. In most cases, they account 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 2007, 33).

Appointment of Board Chair. Where the authority to appoint the chair of the governing board is assigned can be another indicator of autonomy – or political control. Three different arrangements for making this decision are manifest. 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 accountability 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.¹¹

Appointment of Board Members. The procedures used in appointing members to the governing boards provide useful 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 university employees, an internal formula defines board membership. Thus, they serve on the board as a result of the position they occupy in the university (e.g., chief officer, deputies, deans, full professors, academic staff, administrative staff, students). In several English-speaking countries, board members are appointed by the Head of State, the Prime Minister, or the Minister of Education. 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 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 (e.g., Sierra Leone), workers unions (e.g. Zimbabwe), secondary school associations (e.g., Ghana), international experts (e.g., Botswana), and donor agency representatives (e.g., University of Cape Town). In some cases, explicit targets are proposed for the inclusion of women (e.g., 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.¹²

Term of Service. The university statutes of 14 countries define the term of office for governing board members. 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.

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. In two institutions, 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. But 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. 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. 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 fewest votes falls out of each subsequent ballot until one candidate receives a majority vote. Once selected, the chancellor serves a ten-year term.

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 hold a potential for mobilizing themselves into disruptive strikes and political protests. For this reason, and to make the lines of political 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 (i.e., the council of ministers) makes this appointment. In just four countries (Ghana, Lesotho, Namibia, South Africa) is the governing board invested with the authority to choose the institution's chief executive officer. 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.

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. In six other instances the choice is made by the governing board (which may or may not be affirming the results of faculty level elections). In eight 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).

Accountability

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, whether from public revenues or individual student fees. Fielden (2008, 20) 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. Five mechanisms for performance accountability that emerge from this review of the legal frameworks for higher education in Sub-Saharan Africa will be briefly considered.¹³

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. For example, Ethiopia's Higher Education Proclamation Law of 2003 specifies 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 roles in the acts of the University of Ghana, the University of Technology in Mauritius, and Eduardo Mondlane University in Mozambique. As a result,

ministries and buffer bodies often monitor an institution's performance against the goals it has set for itself in its strategic plan (Fielden 2008, 21).

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, 225). This enables groups interested in the university's performance to accompany institutional fortunes from the “front lines” of board governance, to voice their concerns, and to propose possible improvements. As noted above, 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 (i.e., 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.

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 ten 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.

Auditing. Financial audits seek to reassure government and the general public that their funds are being used efficiently and effectively. 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. In addition to requiring audited financial statements, the government of Cameroon also places an "accounting agent" within each university, who is appointed by (and presumably accountable to) the Ministry of Finance.¹⁴ Unfortunately, these stipulations do not include deadlines, thereby permitting the submission of audited financial reports to be seriously delayed in some cases.

Quality audits (or academic audits) are intended to determine whether stakeholders are receiving educational value in return for their monetary investments. African governments are in the process of setting up national quality assurance agencies to evaluate educational inputs and learning outcomes. 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 agencies are housed within a buffer body (e.g., Kenya, Liberia, Mauritius, Namibia, Nigeria, South Africa, Uganda, Zimbabwe).

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 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 (i.e., 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 are 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 South African Department of Education in 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, benchmarking, and performance-based budgeting formulae (World Bank 2002, 92). 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. Côte d'Ivoire, Mali, Mauritania, and Senegal are among

the African countries that have experimented with this approach.¹⁵ Performance-based funding allocates budgetary resources to institutions in accordance with their performance in attaining certain desirable policy goals such as efficiency (e.g., cost per student), increased output (e.g., graduate numbers, research products), equity (e.g., percent of female students), or financing (e.g., amount of self-generated income). Funding may be distributed through use of a formula which weights several performance indicators according to their policy importance.

Concluding Observations

This preliminary review of legal frameworks that shape higher education in Sub-Saharan Africa provides a basis for comment – but not for conclusions – concerning the current state of affairs in this largely unexplored subject area. For the most part, it appears that when SSA countries and tertiary institutions update these frameworks, they do so in ways that tend to be consistent with global trends in this area. As in Europe and elsewhere, they have expanded institutional autonomy, re-structured university governance, and begun to introduce mechanisms of accountability, although at a slower pace and with considerable lag time. But the United Kingdom model of centralized and professional executive power, most recently taken on by France in its 2007 act on university autonomy, has been slower to find expression in Africa. True, African university presidents, vice-chancellors, and rectors have long wielded considerable personal power derived from the status of their office and their own personal achievements. But the African archetype of the powerful university leader has yet to be transformed into professionally strengthened executive management structures.

In general, the review notes tendencies in Sub-Saharan Africa to augment institutional independence, bring in accountability mechanisms, shift from direct

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. In the process, innovations are emerging such as the Institutional Forum in South Africa and the inclusion of international members on university governing boards in several countries. Other notable phenomena are the expansion of tertiary system buffer bodies and growing regulatory attention to private higher education. 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, the impression is that, although there are exceptions, tertiary systems and institutions in French-speaking countries are progressing more slowly on many of these fronts.

Two suggestions for future research on the legal frameworks for SSA higher education arise from the particular experience of undertaking this study. The first 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 to change, or more efficient (a widely held but unproven belief) in terms of employability of graduates or costs per graduate?

A second suggestion would be to compare “theory” with “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?

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.

NOTES

¹ The author wishes to recognize the considerable contribution of Christine Lao in collecting many of the legal documents reviewed in this study and in undertaking an initial survey of their contents. However, responsibility for errors or misinterpretations rests solely with the author.

² Following the survey by Bloom *et al.*, new legal frameworks for higher education have been put in place in eight countries – Botswana, Democratic Republic of Congo, Djibouti, Mauritania, Namibia, Sudan, Tanzania, and Zimbabwe (IAU 2007) – and are under serious consideration in Kenya.

³ Angola, Botswana, Burkina Faso, Chad, Democratic Republic of Congo, Djibouti, Ethiopia, Ghana, Kenya, Lesotho, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Uganda, Zambia, Zimbabwe.

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 Pédagogique*, and in Portuguese-speaking countries as the *Conselho Universitário* and the *Conselho Académico*.

⁵ 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, 225).

⁶ An associated shift is increased autonomy for institutions in managing the recruitment, contracting and career advancement of their academic staff, including the progressive introduction of performance criteria (Eurydice 2008, 22). In France, for example, 20 out of 85 universities have been granted autonomy under a controversial reform law that permits them from 2009 to spend their state-allocated budgets as they choose and recruit their own staff (Marshall, 2008).

⁷ For an insightful analysis of university-state relations in Africa, see Mwiria (2003).

⁸ Rwanda is the only francophone country to have a buffer body rather than a Ministry of Higher Education.

⁹ In some French-speaking countries (e.g., 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*).

¹⁰ 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 often include representatives from relevant ministries, industries and the private sector. This is intended to bring workplace experience to bear on their teaching programs (Ng’ethe, Subotzky and Afeti 2008).

¹¹ Lesotho, Namibia, South Africa, Uganda, Zimbabwe.

¹² Namibia, Nigeria, Uganda, Zambia.

¹³ Other mechanisms include licensing requirements, academic audits, quality assurance reviews, accreditation, learning assessment tests, professional qualifications exams, and performance-based budgeting (Salmi 2007, 225).

¹⁴ *Règles financières applicables aux universités*, 2005. A fairly detailed job description for the accounting agent is included.

¹⁵ The practice originates with university performance contracts used in France during the 1990's and diffused in Africa by French development assistance.

Legal Documents on Higher Education Reviewed for this Study

Country		Legal Document	
Angola	N	Lei da Base do Sistema da Educação, 2001	
	I	Estatuto Orgânico 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	
	N	Loi Portant Orientation de l'Enseignement Supérieur, 2001 Financial Regulations Applicable to Universities, 2005	
Cameroon	I		
	N	Creation of Ministry of Higher Education & Scientific Research, 2002	
Chad	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	
	N	Higher Education and University Law, 1981	
	I	Université de Lubumbashi (www.unilu.ac.cd)	
Democratic Republic of Congo	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	
	N	Higher Education Proclamation, 2003	
Ethiopia	I	(no university has yet been issued a charter under the 2003 law)	
	N	National Council for Tertiary Education Act 454 of 1993	
Ghana	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	
	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 Organization 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
	I	Kigali Institute of Science and Technology Law, 2001
Senegal	N	National Education Law, 1991
	I	Décret Portant Creation, Organisation et Fonctionnement de l'Université de Thiès, 2007
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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