

**THE CHALLENGES FOR QUALITY ASSURANCE IN A TRANSNATIONAL  
LEGAL EDUCATION CURRICULUM/PROGRAM FOR TOMORROW'S  
LAWYERS: LESSONS FROM THE REGULATORY FRAMEWORK ON  
QUALITY ASSURANCE IN SOUTH AFRICA AND THE EMERGING  
RESPONSE FROM THE LAW SCHOOLS**

By

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**INTRODUCTION**

The particular concern of this Paper is not so much whether quality assurance (hereinafter referred to as “QA”) is important or relevant to legal education, an issue on which ample literature provides evidence of wide debate and acceptance, but it rather focuses on the unique problem relating the mechanism of its application in the context of different conceptualisation and expectations of quality among the different law schools (some represented at this conference) and more particularly, in the context of the varying complex regulatory environment within which each or all the said law schools operate(s), leading to the vastly uneven levels of experience of and capacity for QA currently in existence. The ultimate position taken in the Paper is that we cannot meaningfully discuss issues of legal education and training in terms of curriculum development, teaching practices, organizational support etc without addressing the related critical issues of QA, given the varying complex environments indicated above. (underlining for emphasis).

Rather than being prescriptive in addressing the above concern, the Paper reflects on the experiences and new emerging challenges on the application of QA mechanism by law schools in South Africa in the context of the regulatory framework within which they find themselves. In so doing, it is hoped that few lessons will emerge that could provoke some thought on QA issues when we address the emerging challenges of a transnational curriculum/program for tomorrow’s lawyers.

**1. THE BASIS FOR CONCERN**

Among the many acknowledged imperatives to consider when addressing concerns for QA, only three will, in the interest of time and space, be discussed here because of their utmost significance to the present debate. The first relates to the fact that the requirement

for good governance necessitates the institutionalization of QA mechanisms, a phenomenon that is firmly recognised in most developed and developing countries around the world. The argument for its support is that the demand for greater institutional accountability and efficiency in respect of public financing, participation in sharing of shrinking resources and greater stakeholder scrutiny of education and training processes and outcomes have led to the implementation of formal quality assurance arrangements within all higher institutions and systems. Secondly, the demands for social, economic and intellectual pursuits for societal developments necessitate a comprehensive developmental-oriented QA mechanism that will tackle differences in quality across different institutional curricula. The argument is strengthened by acknowledging the fact that it is important that QA mechanisms enhance access not only to high education but more so to high standards of its provision and of their concomitant intellectual and economic benefits. Thirdly, the aspiration for an efficient and effective QA mechanism has to take into account the development of higher education systems whose objectives are delivered by public and private providers in the context of competition and collaboration consistent with the rapid internationalisation of higher education and the increased mobility of graduates and professionals across national boundaries. (underlining for emphasis)

What the above imperatives mean to the core concern of the Paper is that for any efforts directed towards implementing an efficient and effective mechanism on QA to work, there needs to be put in place a strategic plan for coordinated policies and resources by a range of role-players in order to enable a new QA dispensation to succeed in its objectives, given the context of the concerns underlined above.

## **2. SITUATIONAL ANALYSIS OF THE REGULATORY FRAMEWORK ON QUALITY ASSURANCE IN SOUTH AFRICA**

### **2.1 The Historical Context**

What South Africa went through in building its peculiar history is a matter of common knowledge undeserving of repetition here. However, for the purpose of this discussion, it should be noted that the internationally condemned discriminatory system which has characterised that history led to an uneven QA landscape with a range of unintegrated and

unevenly resourced higher education systems. The inevitable result was for the incoming post apartheid Government to transform higher education, a process that has taken the whole nation to task by an overwhelming storm of evolution. As we speak, a new landscape is sweeping the entire educational system in South Africa resulting in some contentious, but largely successful, reconfiguration of higher education in terms of size and shape commonly referred to as “the Merger System” aimed at developing a more evenly capacitated and resourced higher education system in which quality, together with equity and redress, democratisation, development, effectiveness and efficiency, academic freedom, institutional autonomy and public accountability, were all identified as principles and ideals that must guide the transformation of higher education.

## **2.2 Policy Formulation**

To date, two policy documents formalising the above policy issues earlier determined by Government at the time the new dispensation was democratically ushered in 1994 are recognised. The first is *the Report of the National Commission on Higher Education: A Framework for Transformation* published in 1996 whose crucially significant part stipulates that a comprehensive and developmental-oriented QA system is central to the creation of a single co-ordinated higher education system and that QA mechanisms are essential to tackle differences in quality across institutional programs. The second is *the Education White Paper No. 3* entitled: *A Programme for the Transformation of Higher Education* published in 1997 and it states that the pursuit of the principle of quality means maintaining and applying academic and educational standards, both in the sense of specific expectations and requirements that should be complied with, and in the sense of ideals of excellence that should be aimed at.

For the purpose of the present arguments, these documents are of utmost significance for laying the fundamental foundation upon which subsequent legislative framework for QA in South Africa was to be built.

## **2.3 Regulatory Framework**

With the policy issues duly determined and formulated as discussed above, what followed was to ensure the legal instruments to support and drive the necessary mechanisms for change. Three such instruments deserve mention, the first of which is the Higher Education Act of 1997 whose importance lies in institutionalising the required

mechanisms of QA not only by establishing the Council of Higher Education (CHE) but more importantly by establishing a Higher Education Quality Committee (HEQC), a sub-committee of CHE, with the mandate to promote QA in higher education; audit the quality assurance mechanisms of higher education institutions; and accredit programmes of higher education. The second is the South African Qualification Authority (SAQA) Act of 1995 of which two important aspects relate to the mechanisms of the application of QA in higher education institutions in that in so far as the CHE and the HEQC deal with QA as discussed, they must do so in compliance with the policies and criteria formulated by SAQA. Besides, it is also the responsibility of SAQA to, amongst others, oversee the development of the National Qualifications Framework for teaching and learning achievements and for formulating and publishing policies on education and training standards and qualifications. The third instrument is the SAQA Regulations of 1998 provided for under section 14 of the SAQA Act according to which regulations are to be made (and they have accordingly been made) to govern the accreditation of Education and Training Quality Assurance (ETQA) bodies which are given wide responsibilities to promote, monitor, assess and make recommendations on quality among constituent providers for specific standards or qualifications registered on the National Qualifications Framework.

Through these statutes, South Africa has, in the context of its vastly uneven levels of experience of and capacity for QA due to the apartheid legacy, effectively put in place a new national QA dispensation for the entire education and training system but more specifically (and for purposes of our discussion) for the higher education sector

### **3. QUALITY ASSURANCE EXPERIENCES OF AND NEW CHALLENGES FOR LAW SCHOOLS IN SOUTH AFRICA**

#### **3.1 Features of the Emerging Experiences**

From the reports submitted to the “La Pietra” conference by the South African delegates, a variety of features of the South Africa universities and their respective law schools become evident, the most significant aspect of which relate to the number, historical characteristics and other outstanding academic features. For purposes of this discussion, and arising from those features, it becomes easy to understand why mechanisms for the

application of QA differed from one law school to another in the context of different conceptualisation and expectation of quality and, more importantly, in the context of complex regulatory environments, depending on the background of a particular law school i.e. whether one with an historically black (Indian, Coloured or Black) or historically white (English or Afrikaans) background. The inevitable result was the emerging uneven levels of experiences of and capacity for QA in these law schools. Indeed, the academic climate surrounding QA experiences even today continues to differ materially. Nevertheless, the regulatory framework outlined above should be viewed not only as critical landmarks for the application of a new QA mechanism in South Africa but more importantly, as pillars to support and drive the new QA landscape.

### **3.2 Emerging Challenges of the Regulatory Framework**

3.2.1 To Universities of Respective Law Schools:- each now has a requirement to a quality management and assurance framework based on notions of quality as (1) *fitness for purpose* in relation to each functional unit's specified mission; (2) *value for money* in terms of effectiveness and efficiency judged in relation to the labour market responsiveness and cost recovery; and (3) *transformation* in terms of human capacity building and socio-economic development. This means that universities have to introduce QA structures which will oversee new quality rules and procedures, run the audit programmes and monitor the smooth operation of QA systems.

3.2.2 To Law School Administrators (Deans/Directors):- each now has the responsibility to ensure that their respective schools effectively and efficiently design, deliver and evaluate legal education and training, research and community service in accordance with the stipulations of the SAQA and CHE statutes. In particular, each has to develop the QA capacity of their peers; develop unit-specific QA tools and mechanisms; implement all university QA policies and rules; guide the peers during self-evaluation; design and implement corrective action; submit evaluation reports etc

3.2.3 To Staff (Professors/Lecturers):- each now has the responsibility to implement QA systems within her/his own work areas including ensuring that each has up-to-date QA documentation and implement all instructions relating to improving their work and those of peers and students on the basis of the findings of self, peer, and students evaluation and quality audits.

3.2.4 To Students:- each now bears the primary responsibility for quality of the academic work each one them submits for assessment.

### **3.3 Any Success for Law School Responses to New Challenges?**

Given the impact of the legacy of apartheid and the new regulatory framework discussed above, the question of success immediately becomes a particular concern. However, it is contended here that the issue of success needs no urgent discussion at this stage as it is too early to take any meaningful assessment when available information is still so scanty.

## **4. EMERGING LESSONS**

The significance of the above arguments to the broader debate is based on the belief that sharing experiences and identifying possible areas of commonality from which different lessons may emerge is a useful exercise in search of a formal, coordinated and comprehensive QA mechanism during a discussion on developing a core law degree curriculum for transnational lawyers of tomorrow. In that regard, the situational analysis of the QA experiences of and the new challenges for South Africa law schools plays an important role. Of course, one could argue that such an exercise is futile because what constitutes an acceptable standard of QA should be left to be determined according to the needs, standards and procedures of each particular society/law school, thus ensuring that these differ from one to another of the societies/law schools. The present Paper contends the contrary given the imperatives for QA already discussed in that firstly, while societies may have different law schools, adhere to varying conceptualisation and expectations of quality and undergo uneven levels of experiences of and capacity for QA, the context of competition and collaboration demanded by the rapid internationalisation of legal education and the increasing mobility of law graduates across national boundaries urgently require the sharing of experiences to achieve a relatively common strategic approach to a coordinated policy and regulatory framework for QA. Secondly, the concern for a core law degree curriculum introduces an element that South African law schools with varying academic environments have been struggling with i.e. the control, coordination, promotion and enhancement of quality for such a programme. Like South Africa therefore, a programme of this nature inevitably requires an adequate common vision and a strategic focus in order to meet the diverse social tasks ascribed to

all transnational lawyers. Thirdly, and assuming there is an agreement on the said core curriculum, the growing role of technology in teaching and learning in the context of the said globalisation necessitates, as admitted in South Africa, some new common QA dispensation to achieve the curriculum objectives. Last but not least, and indeed stated broadly, the demands for greater scrutiny of the higher education institutions and systems together with the legal education and training they offer, (a process currently taking place in South Africa as part of its social transformation) also require an equally greater scrutiny of specific QA arrangements to meet global social needs.

## **5. CONCLUSION**

The critical issue of the uneven QA landscape, whether in South Africa or elsewhere, remains the cornerstone of the concern of this Paper. Arguments have accordingly been developed around the vastly uneven levels of experiences of and capacity for appropriate QA systems particularly in South Africa and the government's introduction of a new QA dispensation through a newly established regulatory framework. The resulting challenges and new experiences of the law schools in response to the regulatory framework in that country were then considered, thus setting the stage for sharing experiences and deriving some lessons for dealing with similar concerns among law schools of different jurisdictions. All stakeholders are accordingly invited and persuaded to consider the issues raised for the success of a core law degree curriculum specifically, and legal education and training of transnational lawyers generally. Whether the Paper's core concern is real, and whether its arguments have indeed done justice to that core concern, are matters that are themselves contentious enough to provoke further debate and more research on the important issue of QA in the context of the concerns expressed and herein discussed whilst attempting to develop a common core law degree curriculum/program for transnational lawyers of tomorrow.

## **END NOTES**

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2. Main sources (for present discussion which can be developed further for publication):

- The Proceedings of the “La Pietra” Conference published in the *AALS Journal of Legal Education* Vol. 51 of 2001;
- The “HEQC Founding Document” published by CHE in 2001;
- Iya, PF: “Maintaining Quality in Legal Education with a Diminishing Resource.....” *Stellenbosch Law Review* Vol. 11 of 2000;
- University of Fort Hare QA Directorate Documents of 2001-2003;
- The above are to mention but just a few of the sources consulted.

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