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## Private Provision and Its Changing Interface with Public Higher Education: The Case of Kenya

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### Abstract

Like the rest of the continent, Kenya has a relatively long history of public provision of higher education. Policy reforms in the 1980s resulted in the legitimate recognition of the private sector. Emerging competition has forced both sectors to adopt specific coping strategies, and foster different types of provision such as: traditional setting up of private institutions; privatization of public sector institutions; franchising and other forms of partnerships; and internationalisation. Private universities are also venturing into alternative modes of delivery like evening programmes. On the legal front, intense regulation of the private sector is leading to evident seriousness, but at the same time is giving the public sector an undue advantage over the private, as it remains largely unchecked.

### Résumé

Comme le reste du continent, le Kenya a une histoire relativement longue en matière d'offre publique d'enseignement supérieur. Cependant ; les réformes politiques dans les années 1980 ont abouti à la reconnaissance légitime du secteur privé. La concurrence émergente a ainsi contraint les deux secteurs d'adopter des stratégies d'adaptation, et de favoriser différents types d'offres, tels que la mise en place traditionnelle d'établissements privés, la privatisation des établissements du secteur public; le franchisage et d'autres formes de partenariats, ainsi que l'internationalisation. Les universités privées se lancent aussi dans d'autres modes d'enseignement tels que les programmes dispensés le soir. Sur le plan juridique, la réglementation intense du secteur privé lui donne une importance manifeste, mais en même temps cela donne au secteur public un avantage excessif sur le privé car il reste largement incontrôlé.

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### Introduction

Africa inherited an education system that reflected the practice in Europe, with a history of public provision. The trend continued after independence. Despite the pioneering work of private religious institutions, public provision still dominates higher education in Africa. But its interaction with private provision reveals paradoxes and changing fortunes. It is a paradox of public domination in enrolment and private prevalence in numbers of institutions; of earlier private institutions overshadowed by later privileged public ones; of a high number of non-university tertiary higher education institutions (NU-HEIs) overshadowed in popularity by the few (public and private) university institutions; and of the public sector institutional reforms to challenge the private sector institutional initiatives, ultimately inviting private sector counter reforms to compete with public. Competitive dynamics are raising the popularity of the NU-HEIs in yet another reconfiguration as public universities franchise private NU-HEIs to raise the stakes against private universities. The franchising of NU-HEIs by public universities benefits both sides: public universities are expanding their reach and generating more income as the NU-HEIs raise their status. This form of collaboration is not new. It is indeed part of the 'academic drift' - the attempt of the non-university sector to achieve the much higher status of the university sector (Huisman and Kaiser 2001). The end result is a competitive turf for both public and private institutions. The public-private relations then become more complex, even intertwined, with the status of one player increasingly being affected by the policies, measures and practices pursued by the other player. The benefits are mixed, and opportunities are open to both. In the end, public and private institutions behave more or less the same, except for a few distinctions.

This article discusses these changing dynamics in private and public provision<sup>1</sup> of higher education in Kenya. The discussion is structured in three parts. The ensuing section lays the historical foundation of higher education in Kenya. Regulatory issues are discussed in part two. Part three is devoted to types of private provision and its changing interface with public higher education.

### Historical Overview

In East Africa, higher education development is traced back to 1921 when a technical school opened at Makerere Hill in Kampala, Uganda. In 1922, it was renamed Makerere College and mandated to offer certificate courses in technical education, gradually being elevated to offer diploma courses in 1937 (Bogonko 1992). In 1949, it was elevated to the University College of East Africa. In 1963 the University of East Africa was inaugurated with two constituent colleges in Nairobi (Kenya) and Dar es Salaam (Tanzania). The parent university in Makerere offered medicine and agriculture with Dar es Salaam offering law

while Nairobi offered engineering, veterinary medicine and architecture. In 1970, the University of East Africa was wound up and Makerere University, the University of Dar es Salaam and the University of Nairobi (UoN) were inaugurated. This marked the beginning of independent development of public university education in each of the three states.

Private, mainly religious, provision also started during the colonial era: St. Paul's United Theological College (1930); Kenya Highlands Bible College (KHBC) (1953) and Scott Theological College (STC) (1962). The first secular private university, the United States International University (USIU) was started in 1969; Daystar University in 1974; the University of Eastern Africa in 1978 and the Catholic Higher Education Institute of East Africa (CHEIEA) in 1983. The Church therefore played a leading role in setting up higher education institutions, like in other parts of the world. However, unlike in Latin America where Catholic Church played a pivotal role in establishing universities (Levy 1986), Catholics were not the pioneers in establishing higher education institutions in Kenya, or even East Africa. Protestant Churches took the lead. Currently, the region has 46 universities (Kenya, 23 (6 public and 17 private (Table 2)); Uganda, 13 (2 public and 11 private), and Tanzania 10 (3 public and 7 private). The total number of higher education institutions in Kenya stands at 130 (KIPPRA 2004) while Tanzania has 28 (10 universities, 7 university colleges and 11 NU-HEIs) (Mkude, Cooksey and Levey 2003).

This brief background reveals specific attributes of public and private provision. The former was regional and secular, the latter religious and country specific. One aspect though that does not change over the years is ownership: public institutions are owned by the state and private institutions are owned by Churches, wealthy individuals and international foundations private consortia. Later, we see how new circumstances dictate shifts in some of these features.

### Reasons for Growth

The impetus for rapid growth globally is attributed to an unprecedented increase in the demand for higher education, coupled with strained capacity of governments to support public higher education (Altbach 1999). In Africa, the factors for growth coalesce around three related factors<sup>2</sup>. First, reduced government funding of public universities meant that the expansion of the public sector was limited. Second, the broader economic reorientation under structural adjustment policies that African countries implemented from the late 1980s and 1990s. This involved economic liberalisation, limiting the role of the government and allowing more private sector participation in the economy. It is at this time that most of the policies that allowed private higher education growth were enacted. A third factor relates to the high number of (mostly religious) private institutions

before liberalisation. The institutions simply applied for university status upon the enactment of the enabling legislation. The steep rise in the number of private universities has, therefore, had less to do with the setting up of new institutions but more with the upgrading of the existing ones, in as much as new institutions emerged in the 1990s. Upgrading meant lower start-up costs because the basic infrastructure was in place.

The policy environment resulting from these measures has therefore played a crucial role in the expansion of private universities. The number of institutions rose from one in 1969 to 17 in 2005. Over 80 percent of private institutions have a religious sponsor, curriculum, or affiliation. Growth patterns in private university education in Kenya reveal that the mostly elite (secular) institutions have had a much faster growth than the purely religious ones mainly because of offering a more diversified curriculum. The secular USIU holds the largest share of enrolment. Other religious universities are also expanding but mostly after secularising their curriculum. Those that do not, like STC, despite being in the 'elite' club of chartered institutions, comparatively have the lowest enrolments. A different aspect to the world trend is that private universities in Kenya are not demand-absorbing institutions. This sets Kenya apart from the global trend of low-quality private universities, especially among many countries that have a similar length of history of private sector institutions.

### **Enrolments**

Public universities still dominate in enrolments, even though there are more private institutions (Table 1). The total enrolments of self-sponsored students (Module II) at UoN in 2004/2005 was more than the regular full-time students and also higher by 7,687 students than the enrolment in all private universities. Enrolments in the self-sponsored programmes are actually higher since many students are integrated (attend the same classes as regular students, as opposed to mainly evening and school-based study) in full-time study. What this attests is that public universities have been able to increase their internal capacity much faster than the private universities. The part-time, private programmes are responsible for this increase, since there is stagnation in the number of regular students being enrolled in public universities. For the past (1990s) decade, new admissions never exceeded 10,000 students.

**Table 1:** Student enrolments in Kenyan public and private universities, 2000/2001–2004/2005

Institution	2000/2001		2001/2002		2002/2003		2003/2004		2004/2005	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
<b>Public universities</b>										
<i>Nairobi</i>	10,532	4,302	15,426	9,270	16,200	9,486	16,991	9,720	21,268	11,706
Full-time	8,383	3,331	8,724	4,450	9,163	4,428	9,603	4,406	9,987	5,250
Part-time	2,149	960	6,702	4,820	7,037	5,061	7,389	5,314	11,281	6,456
<i>Kenyatta</i>	5,942	4,010	6,831	4,984	10,737	4,998	10,753	5,023	11,252	4,403
Full-time	4,510	3,019	5,384	3,983	4,972	3,329	5,221	3,495	4,313	2,887
Part-time	1,433	991	1,447	1,001	5,765	1,669	5,532	1,528	6,939	1,916
<i>Moi</i>	4,753	3,766	5,469	3,869	6,275	4,549	5,804	4,643	6,796	5,214
Full-time	4,046	3,163	4,066	3,179	4,086	3,195	4,107	3,211	4,304	3,195
Part-time	707	603	1,403	690	2,188	1,354	1,697	1,432	2,492	2,019
<i>Egerton</i>	6,629	2,356	6,816	2,284	6,975	2,387	6,908	2,444	6,351	2,246
Full-time	5,981	2,127	6,161	2,053	6,307	2,151	6,207	2,196	5,540	1,960
Part-time	648	229	655	232	668	236	701	248	810	287

**Table 1: (Continued)**

Institution	2000/2001		2001/2002		2002/2003		2003/2004		2004/2005	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
<i>JKUAT*</i>	2,992	1,288	2,565	1,115	3,184	1,404	3,203	1,454	4,315	1,959
Full-time	1,301	520	857	339	1,442	613	1,373	624	2,201	999
Part-time	1,691	768	1,708	776	1,742	791	1,829	831	2,114	960
<i>Maseno</i>	2,596	1,538	2,531	1,518	3,505	2,130	3,429	2,178	3,413	2,168
Full-time	1,994	1,155	1,922	1,132	2,885	1,736	2,777	1,765	2,660	1,690
Part-time	602	383	608	386	620	394	651	414	753	478
Sub-total	33,444	17,260	39,637	23,040	46,875	24,957	47,088	25,462	53,394	28,097
<b><i>Private universities</i></b>										
Accredited	3,093	4,050	3,122	4,089	3,476	4,163	3,650	4,371	3,796	4,546
Unaccredited	876	472	949	511	748	742	763	757	801	907
Subtotal	3,968	4,521	4,071	4,600	4,224	4,905	4,412	5,128	4,597	5,453
Total	37,412	21,781	43,709	27,640	51,099	29,862	51,500	30,590	57,990	33,551
Grand total	59,193		71,349		80,961		82,090		91,541	

**Source:** Ministry of Education, Science and Technology, 2005. \* Jomo Kenyatta University of Agriculture and Technology

The private share of total enrolments is currently only 12.1 percent, from a high of 20 percent before the onset of privatisation (Otieno 2002). The rapid growth of the public sector universities, especially through Module II programmes, largely explains the reduced private share. Public sector enrolments in 2004/2005 reflect a growth of 80.5 percent (or 16.1 percent annually) over 2000/2001. In contrast, the private university growth is 18.4 percent (3.7 percent annual) over the same period. The growth pattern reflects the changing fortunes of public and private institutions. The privatisation gains by the former create hurdles for the latter. For the private universities, stringent accreditation<sup>3</sup> requirements played a great role in the initial growth, but less stringent regulation (or the lack of it) now largely explains the public surge. We examine this aspect of regulation in some detail in the ensuing section.

### **The Regulation of Public–Private Provision**

Much of the pace, direction, type and level of private provision is influenced greatly by regulatory policies. Literature attests to the rigid regulation of private as opposed to the public sector. Gupta (2004) shows that in India, current growth is facilitated by the absence of a ‘restraining’ centralized national government. Implied in this observation is that centralised national regulation can slow down private growth (Levy 2003). In Japan, private universities are complaining of government interference via accreditation policies (Yonezawa 2005). The East African experience is not different from the rest of the world. At the height of initiating private colleges in the mid 1980s, Kenya, Uganda and Tanzania established accreditation agencies to regulate the provision of higher education. Kenya was the first to establish the Commission for Higher Education (CHE) in 1985. Tanzania followed with the setting up of the Higher Education Accreditation Council (HEAC) and Uganda with National Council for Higher Education (NCHE). Other than nomenclature, all these bodies concentrate more on the private than public institutions. Evidence suggests that accreditation bodies can be tough, and enforce regulations with zeal. Gupta (2004) cites cases that have ended up in courts in India<sup>4</sup>. In Uganda, NCHE revoked the license of one private university in April 2005 for ‘lacking the capacity to effectively deliver higher education’. Three others were given one year to upgrade to charter status while a fourth was given three months to demonstrate its ‘viability’ or close down (*The East African*, June 2005, p.28). In keeping with this international trend, Kenya’s CHE forced the Australian Universities Institute (AUSI) to drop the ‘university’ tag because it had not been registered as a university in 2003. In 2005, it moved to stop a graduation ceremony of a little known private institution<sup>5</sup> in partnership with Newport International University, which is neither ac-

credited in Kenya nor in the United States. Though the partner institution in Kenya defied the order and held the graduation ceremony, the CHE later declared the ceremony null and void, the degrees bogus, and the university illegal, meaning that the degrees are not recognised. The rigour is also attested by the high number of institutions still in the 'registered' category for more than 15 years (Table 2). Mostly, these institutions have failed to diversify their curriculum and upgrade facilities.

**Table 2:** Categories of accredited private universities in Kenya by 2002

Accreditation	Institutions in category	Year of level/ category accreditation
I. Chartered Universities (granted own charter)	University of Eastern Africa, Baraton	1992
	Catholic University of Eastern Africa	1994
	Daystar University	1994
	Scott Theological College	1997
	United States International University	1999
	African Nazarene University	2002
II. Registered (issued with letters of registration after fulfilling the 1989 Rules. Registration a recognition of existence)	East African School of Theology	1989
	Nairobi Evangelical Graduate School of Theology	1989
	Nairobi International School of Theology	1989
	Pan-Africa Christian College	1989
	Kenya Highlands Bible College	1989
	St. Paul's United Theological College	
III. The Letter of Interim Authority (LIA) authorised to prepare for the implementation of proposal accepted by CHE including admission of students	Aga Khan University	2002
	Kabarak University	2000
	Strathmore University	2002
	Kiriiri Women's Univ. of Science & Technology	2002
	Kenya Methodist University	1997

**Source:** Commission for Higher Education Records, 2005.

A fact not often given much attention is the reason for CHE's concentration on policing the private and not public universities, despite being empowered by the Act. Part of the reason is the failure to harmonise the CHE Act with the Universities Act. Second is the initial suspicion of private universities on quality grounds. It is doubtful whether some public universities would be accredited if



they were subjected to the same regulations applied to private universities, notwithstanding that they have some of the most qualified staff. Also questionable is the quality of their private partners.

There are three legal instruments guiding the public-private provision in Kenya: (i) the Universities Act (1985); (ii) the 1989 Universities Rules on Establishment of Universities (Standardization, Accreditation and Supervision); and, (iii) the 2004 Universities Rules on Coordination of Post-Secondary School Institutions for University Education. The 1989 rules provide that upon becoming operational, no university would operate in Kenya without the express authority of CHE or any other person competent to grant such authority under the Universities Act of 1985. These rules apply to: (i) private universities (ii) public universities other than those established by an Act of Parliament (iii) foreign universities; and, (iv) any agency operating or intending to operate as or on behalf of such university within Kenya. The 2004 rules provide for the validation of academic programmes and granting authority to post-secondary institutions to collaborate with other institutions in offering academic programmes.

There are two notable ambiguities in the legal framework. One is a narrow definition of public and private universities. According to the law, ‘a “private university” means a university established with funds other than public funds’, while ‘a “public university” means a university maintained or assisted out of public funds’ (Kenya 1989:90). Second, public universities are set up under specific Acts of Parliament while private universities are accredited under the CHE Act. But the CHE Act is itself established under the Universities’ Act as Chapter 210B of the Laws of Kenya. It is not an independent statute. The Acts establishing universities give them the freedom to run their programmes without prior reference to the CHE, unlike the chartered private universities<sup>6</sup>. The Acts also provide that the heads of these universities be appointed by, and be answerable to, the State president as the Chancellor.<sup>7</sup> Under the CHE Act, the Chief Executive of that body is appointed by a minister who is an appointee of the president. Public university heads argue that, technically, they are direct appointees of the president and not answerable to an appointee of a minister (that is, the CEO of the CHE), who is also an appointee of the president.

The failure to harmonise the Universities’ Act and the CHE Act is therefore one of the major shortcomings of the regulatory regime in Kenya. The practice of hiring public university staff to evaluate proposed programmes of private universities also places undue demand on the private universities to meet public university standards, including the curriculum. In turn, this narrows the scope of programmatic diversity in the private universities, as the public universities personnel appointed to evaluate programmes of private institutions view programmes

from the perspectives of their public university background. Private universities also feel constrained that public university personnel dominate the accreditation agency, and see the laws and its enforcement as a calculated move to perpetuate their insubordination to the public. The bone of contention seems to be that the law is not applied uniformly, and that it inhibits private provision while, by omission, it leaves the public sector unencumbered. Kenya is not alone in this. Such concerns are also evident in Japanese higher education (Yonezawa 2005).

### **Types of Private Provision and Changing Dynamics with Public Provision**

#### ***Principal Manifestation of Private Provision***

The common manifestation of private provision is setting up private institutions. In countries like the United States, Japan, the Philippines and South Korea, private provision has flourished (Altbach 1999). In Kenya, the pace of growth of private institutions has been fast since the establishment of CHE in 1985. Before then, there was no legal framework guiding the establishment of private universities. The first private university was accredited in 1992, with two more being accredited in 1994. By this time, there were four public universities with a student population of about 40,000 (Kenya 1996). Currently, there are 6 public compared to 17 private universities. Compared to the public sector universities, there has been a faster growth in the number of private universities. Though enrolments have been growing, it has grown at a slower pace compared to public universities (refer to Table 1).

There is a close concentration of enrolments in a few universities. The chartered/accredited private universities have the bulk of private enrolments in Kenya. Three of them: Daystar, USIU and CUEA, account for about 74 percent of the private sector enrolment. This attribute is shared with public universities, where three universities (Nairobi, Kenyatta and Moi) dominate with 74.4 percent of the public sector enrolment. The unaccredited ('other private' – those having letters of interim authority and registered universities) category have very low enrolments, constituting just about 13.7 percent. Inter-sectorally, public universities dominate higher education, but intra-sectorally, the few, elite chartered institutions dominate private university enrolment. A notable feature of the table is the dominance of USIU, which has the single highest institutional share. USIU is striking not only for its secularity and elitism, but also for being the most expensive institution. The only member of the elite chartered club with low enrolment is STC – the only one not to have secularized so far. Secularism reflects the changing shifts in institutional attributes engendered by competition. On the one hand, secularism is a feature of the popular public universities which private

counterparts now find attractive to embrace. On the other hand, competition from private providers now brings efficiency in public institutions, with regard to utilisation of resources and facilities and dependence on tuition income unlike a few years ago.

### ***Public Privatization***

Private provision by public universities, often in the form of privately-sponsored, full fee-paying students is increasingly becoming the dominant mode of public privatisation. In Eastern Africa, Makerere University was the pioneer in offering Module II programmes. Privatisation of public university programmes was a direct result of the decline in public resources the need to generate income to supplement the diminished state support. The state therefore encouraged public universities to diversify their sources of finances and programmes. Being income-generating programmes, tuition in Module II programmes are as high as those in the private universities and, in some cases, even higher. Enrolment in a single Module II programme could be as high as total enrolment in a private university. For instance, total enrolment at USIU in 2002/2003 was 2,931 while those enrolled in commerce under module II at the University of Nairobi (UoN) alone was 2,683. This figure is equivalent to 92 percent of enrolment at USIU. Overall, UoN had 53 percent of its students in these programmes. In 2002/2003, the university raised a total of Ksh 1,209,512,592 (US\$ 15,914,639) from these programmes.

The upshot is that while the public universities continue to increase their enrolments courtesy of privatisation, and despite there being three private universities for every one public university, the private university share of total university enrolment is declining, notably in the last five years from 20 percent in 1999 to 16.4 percent in 2001 to a low of 13.0 percent in 2003 and 12.1 percent in 2005. Privatisation of public universities therefore diminishes the private share of enrolment, even though the private enrolment continues to grow in absolute numbers. Private universities are also launching both evening and distance learning modes to offset the dominance of the public programmes. The terminologies may be different, but the principle remains the same. Notably, however, while Module II public university programmes are much more expensive than the regular, the trend is reversed in the private universities, where the alternative modes tend to be cheaper. This is a deliberate move to enlist more students. Private universities realise their disadvantage and have been keen to make up for it by competitively pricing their product.

In summary, while the public universities are the originators of alternative modes of delivery, private universities replicate them in order to remain attractive. The public sector institutions/universities began to privatise in order to

compete with the private, of course driven by a need to increase their funding base, but the private sector institutions now copy the public to compete. An important dynamic in public-private provision relevant to the theme of this special issue concerns the rebound effects of public privatisation. A general assumption initially was that public universities provided quality education, and private institutions were regarded with some level of suspicion. Debate is now shifting to the quality of private programmes in public universities. Public universities are accused of 'worshipping at the altar of intellectual quantity (but wishing away quality', leading to the production of 'half baked graduates' (*Daily Nation*, 24 July 2005, p.5). Reports indicate that in 2004, 84 (32.1 percent) out of 261 privately-sponsored students in medicine at UoN failed in their examinations, compared to only 10 (3.4 percent) out of 262 in the regular class. Such developments mar the reputation of private programmes offered by public universities. Private institutions may be losing out on numbers of students, but developments like these might just enable them to gain the advantage they have lost to the public competitors, especially on quality grounds.

### **Partnerships**

Partnerships or franchise arrangements are becoming increasingly popular in the provision of higher education. Partnerships have been both engendered and fostered by competition. Public universities have been more aggressive in franchising their programmes to local public and private NU-HEIs. Leading is Jomo Kenyatta University of Agriculture and Technology (JKUAT) that has franchised to 21 colleges so far (Otieno 2004). Moi University has similar arrangements with a number of institutions, the most popular of which is the partnership with a private business college, Kenya Institute of Management (KIM). Kenyatta University's most known partnership is with a commercial college, the Nairobi Institute of Business Studies (NIBS), among others. Public university partnerships with private NU-HEIs seem to be purely motivated by the need to raise additional income, since they are a feature not seen before the current financial crunch facing public universities. Not surprisingly, private commercial colleges located in major urban centres and therefore having the potential of enrolling more students appear to be popular with public universities in forging partnerships. Notably, bigger public and private institutions with more marketable programmes like UoN and USIU have been less enthusiastic in franchising. They are fairly well centrally located and have some of the most marketable programmes. On the other hand, some of the leading institutions in franchising are disadvantaged in being located far from the capital city and it is especially difficult to attract non-resident students. Principally, partnerships entail a university allowing a college to offer programmes in its own (college) campus but

certification is done by the franchising university. In most cases, some of these programmes are drawn by the university, sometimes solely while in other cases in consultation. In return, the franchised college remits a specific portion of funds accruing from such programmes to the university. The specific amount or proportion of funds remitted would depend on the memorandum of understanding between the two institutions.

The current public push for partnerships with commercial private colleges contrasts sharply with only a few years ago when they were merely tolerated. The private university challenge is mostly responsible for this changed public perception of private university education. Notable also is that the regulating authority is not questioning or vetting the public university initiatives, in stark contrast to its strict policing of the private. Another important point to note is that these colleges are private but find it convenient to affiliate to the public. But the public universities realise that the best way to tap the 'private' market is through private colleges that have a long tradition in specific disciplines, that are known to charge economic fees, and that are generally patronised by the working class or those focusing on the private employment sector.

Rarely would a private university partner with a public university – since they are in direct competition – but a private university would partner with a public college (though this is also mostly rare) as a public university partners with a private NU-HEI. In this latter arrangement, the private entity is motivated to gain the status, prestige and, in some cases, access to certain privileges restricted to public institutions, or simply to enhance its own competitiveness. This is a common practice in most of the world (Levy 2003).

### ***Internationalisation in the Provision of Higher Education***

Internationalisation in education could be analysed from two fronts: the framework of General Trade in Services (GATS), and local conditions and initiatives that attract international students and faculty (even before WTO). Drawing from the Kenyan experience, this article analyses three forms of internationalisation: international studentship, foreign campuses, and establishing consortia.

#### ***a) International Studentship***

Much has been written on international studentship (United States [Altbach 2004], Russia [Smolentseva 2004], Australia [Burn 2000], Kenya [Kigotho 2001]). The concern of this article is the broader picture of international studentship in public-private provision, and specifically the flow of international students to public and private institutions. Though the wider picture is not known, Deloitte and Touche (1994) found a large proportion of foreign students in private institutions. A later study (Wesonga et al. 2003) reports that private universities

enrol more foreign students than public universities where they constitute 12 percent and 6 percent at CUEA and Daystar respectively. USIU attracts students from over 40 nationalities across all the five continents. The presence of international students at USIU is largely explained by the patronage by diplomatic community and other international organizations based in Nairobi. Even in the religious institutions, foreign students dominate. At the Pan-African Christian College, foreign students accounted for up to 67 percent of all students while at the Nairobi International School of Theology, the figure was 25 percent. The overall proportion of foreign students in these two universities is 9 percent. This proportion is more or less similar to that established in South Africa (Subotzky 2002) at 9 percent for private institutions/providers and 6.55 percent for the overall higher education sector in that country.

The number of foreign students in the public universities, though largely not documented, is much less by comparison to that of foreign students in the private higher education sector. Explanations for the difference in the number of foreign students in public and private universities could be attributed to three factors. First is the efficiency of private institutions, suggesting that the instability such as caused by strikes that characterize public universities discourages foreign students from seeking admission there. Second, the ownership (both international and regional) and affiliations of private institutions pull foreign students into Kenya. CUEA is owned by the Association of Member Episcopal Conference of Eastern Africa. As such, its rectors and other officials are appointed regionally. This predisposes it to attracting many international students. The same can be said of UEAB, Daystar, and other private universities. Foreign ownership gives institutions a high profile in attracting foreign students. At USIU, there is a notion that one can have an American-type university education in Kenya, while admission at AUSI is an automatic guarantee for eventual studies in Australia. This is one unique advantage that private universities seem to have over the public, and which the public may never possibly attain.

Third, foreign students in local public universities typically pay more than nationals for the same education, making it not much different from the private universities. It is therefore understandable if students prefer the private universities, where in any case there are already more foreign students and therefore a more internationalised environment than the public, besides of course, the lure of completing their studies faster than they would in the public, given the frequent interruptions at the latter.

#### *b) Foreign campuses*

There are three offshore campuses in Kenya. Some like AUSI operate independently. Others (University of London and Technikon South Africa – now merged

with the University of South Africa) both collaborate with a local private institution, the Kenya School of Professional Studies while others (like Free State University, South Africa) franchise semi-autonomous public institutions, for example Kenya College of Communications and Technology. A few facts are noteworthy. First, foreign institutions opt to collaborate with NU-HEIs, mostly because they (NU-HEIs) have a need to enhance their profile in a market that is becoming highly competitive. Second, most institutions are private. Currently, no fully public institution serves as a campus of any foreign university. Third, foreign campuses constitute only a small proportion of tertiary institutions in Kenya, and also enrol a minority. This is a typical private feature in Kenya. Fourth, most of the offshore campuses, as typified by AUSI, rely on courses in high demand, a trait shared with the elite USIU. An additional pertinent observation is the intense engagement of private NU-HEIs by both public universities and foreign (public and private) institutions. The NU-HEIs are thus in a uniquely attractive position. They can offer programmes leading to a local public university certification, a foreign private university certification or a foreign public certification. This further enhances their competitive edge over the local private universities that are mostly missing in this mode of provision. Their association with public universities also enhances the public edge over the private.

*c) Consortia*

In a move aimed at bolstering their penetration and accessing the East African educational market, two groups of universities in Britain have formed two competing forums, the Northern Consortium of British Universities and the British Universities in Africa Group. Notable is that most of the British universities are public, but competing for students from Africa<sup>8</sup>. These consortia organise joint recruitment of students from East Africa. They do not collaborate with either private or public universities. These consortia are a common international competitor to both public and private universities for local fee-paying students who would either opt for local public or private university education. Thus, instead of seeing just the local public and private universities, students find a third alternative.

More worrisome for local universities is that these groups are formulating new strategies to secure the East African market. The Northern Consortium of British Universities launched a foundation course at one of the high-cost private schools in Kenya (Braeburn) meant to specifically prepare students for further education in Britain by bridging the gap between the Kenya Certificate of Secondary Education (KCSE) and university entry requirements in Britain. The students are thus tied to join specific universities within this consortium upon completing their studies.

### ***Sectoral Issues in Private–Public Provision***

#### *a) Finance*

Other than ownership, the other distinguishing characteristic that makes institutions public or private is the source of finance. Public universities are funded directly by the state. Private universities generate their own funds from sponsors/owners or tuition fees. In Kenya, another key distinction is drawn from the law, which defines them in terms of sources of funds. The legal definition of a public and private university in Part II of the Act implies that private universities cannot access public funds and vice versa. The practice in Uganda is different, as the government directly supports private universities from the public funds, though minimally compared to the public institutions. Kenya has not managed to provide funding to private universities directly but students in accredited private universities now receive publicly-funded student loans. This is a significant victory for private universities. Whereas before, most of the finance would be guaranteed for the public universities, there is now a competition for funds between students in private and public universities. It means that less is going to public universities than before. Access to funds encourages potential students to head to the private sector institutions/universities since they are certain of getting at least a component of tuition paid. Notably, this is leading to greater differentiation in access to private university education, as less affluent students access the institutions. As students from the less privileged backgrounds access the private universities, the institutions gain from an improved image, in contrast to the previous notion of being exclusive clubs for the rich. To improve their image further, some institutions are combining access to the loans with student aid facilities to pull more students to enrol and enhance their 'corporate social responsibility' image in the eyes of the wider public and therefore win more recognition and claim legitimacy. The reconfiguration in financing is thus aiding the private university sector to entrench itself more than before. It is significant that up to 15 percent of all students enrolled/registered with private universities are accessing publicly-funded loans, while they constitute less than 13 percent of the university population (Otieno 2004).

Apart from the publicly-funded student loans, public and private universities have benefited from bursaries from private foundations, the most notable being the Rattansi Educational Trust. The funds from this trust are now shared between public and private universities almost equally. These developments mean that public universities now have to compete for both public and private resources unlike ten years ago. It is therefore not just the private universities that have to adjust to compete with the public universities: the public have to wake up to new realities of private challenge.



*b) Curriculum*

Granted, public institutions have had a much more diversified/secularized curriculum compared to the private institutions. Three factors seem to determine the programmes offered in these universities: tradition, i.e. original objectives for which the universities were set up; cost; and market demands (Abagi, Nzomo and Otieno 2005). It is hard for institutions with a strong theological foundation to survive in a competitive, secular market. Pressure from two sources has been on the private institutions/universities to diversify. One is market forces that largely demand secular programmes. The other is the regulatory requirement that private institutions diversify their curriculum by introducing programmes other than the religious ones. In doing so, however, the private universities are disadvantaged because the public universities have longer traditions in offering programmes other than religious programmes. They have the facilities, the resources, including the personnel and academics (in numbers and quality), and, therefore, the tradition. Private universities have resorted to 'poaching' lecturers from the public universities, or, where they cannot succeed, to use them as part-timers. For this reason, a number of undergraduate programmes in both public and, especially those in an urban location, private universities are taught by the same faculty. Before private universities mount programmes, the curriculum for the new programmes are scrutinised by the CHE, which in most cases hires personnel from the public universities. Invariably, the hired public university staff equate the proposed programmes to their own, so that there is really no difference between public and private university curriculum content for some programmes. In fact, to be able to pass the CHE scrutiny easily, a number of private universities hire public university lecturers to write their proposals and design their programmes. Four of the elite private universities planned a number of new programmes (Table 3).

All the programmes (in general) offered by private universities are being offered by at least one public university, with the exception of theology. The University of Nairobi is offering all the programmes offered at the private universities. The attempt to diversify curriculum at the private universities is a direct response to the challenge of Module II programmes in public universities. The new programmes are therefore an attempt to address an inherent and historical disadvantage the private universities have faced.

**Table 3:** Planned courses at USIU, Daystar, UEAB and CUEA

University	Planned Programmes in 2004
USIU	Environmental Science, Physics, and Electronic/Telecommunications Engineering
Daystar	MBA, MSc (Management), French, Management Information Systems (MIS), Special education, postgraduate diploma in Education, Law, Public Relations, Electronic and Chemical Engineering and Bio-Chemistry
CUEA	Bachelor of Pharmacy, Bachelor of Medicine, B.Sc. (Chemistry & Biological Sciences)
UEAB	MA (Religion), Master of Divinity)

**Source:** Wesonga et al. (2003).

In a nutshell, there has not been much in terms of innovation by private universities, except to replicate the programmes already being offered by the public universities. Private universities have avoided programmes that are capital-intensive like medicine, even when they are in comparatively advantageous positions. For instance, CUEA has ignored medical courses even though its sponsor, the Catholic Church has one of the biggest and better equipped hospitals in the region which could be used as a teaching hospital, and several other hospitals in the country that could be used for internships. Lack of innovation on the part of the private universities therefore puts the public university at a fairly competitive advantage. Students conscious of this advantage would naturally tilt to public universities. As already demonstrated, total enrolment in Module II/private programmes in public universities is more than the total enrolment in all private universities. Public universities have therefore taken the lead in expanding access to higher education through the Module II programmes. Because of these programmes, private share of total university enrolment is now only 12.1 percent. Lack of diversity in private university curriculum, besides other factors, explains the private decline.

*c) The Not-For-Profit/For-Profit Distinction*

Generally, public higher education is non-profit (and still is, legally, even though the practice is different). Even in private higher education, much of the enrolment remains in non-profit institutions (Levy 2003). In Kenya, neither universities (both public and private) nor NU-HEIs are expressly for-profit, though, in practice, the for-profit behaviour is openly exhibited by private NU-HEIs.

There is a general aversion to for-profit institutions in Kenya for two reasons. First, they are perceived as low-cost, commercially-driven and merely demand-absorbing. Second is the lack of official recognition of for-profit institutions. But there is no law that bars for-profit operations in the provision of higher education, in as much as there is none that defines what they are or stipulates how they are to be set up and governed. Some institutions are for-profits but disguise their practices and intentions. Daystar University is an example. While its Charter indicates that it is a church-based institution, ownership is by a registered private limited company. Other seemingly philanthropic institutions like CUEA also exhibit for-profit behaviour. At CUEA, every late tuition fee payment is subjected to a 5 percent surcharge. Analysis of financial records of some universities revealed that they do register surpluses that are in many cases not ploughed back into supporting needy students (Wesonga et al. 2003). Public universities also make profit from their Module II programmes, but they would rather use the term 'income' even where they register surpluses, and are therefore logically profit-making.

### Conclusion

The transformation of the Kenyan higher education landscape has been rapid, and the terrain more diversified than a decade ago. The Kenyan case typifies the rest of East Africa, and indeed, African experience. There are more higher education institutions, more programmes, increased enrolment, and greater diversification – both in programmes and types of institutions. A strong competition between public and private institutions forces both to adopt coping strategies, which, invariably, entails copying attributes of the other. The result is a blurred boundary between what is purely public and what is purely private, save for the legal definitions, ownership and funding. Many private universities shed off their initial religious tags with the realisation that competition is only viable with a secularised curriculum. Indeed, secularism is enabling the predominantly religious/Christian institutions to mount a viable alternative to the public sector. This further changes the landscape from the public monopoly of yesteryear.

Arising from the competitive dynamics, the transformation is unavoidable, and reflects the practice in most parts of the world where a private sector emerges in the midst of an entrenched public sector, and where both face the challenges of market pressure and financial need. The observed trend in such situations is a convergence of behavioural patterns among public and private institutions (Kraak 2003). The global tendency that Kenya is currently exhibiting is for public institutions to be more entrepreneurial, with the adoption of private sector attributes. Such situations would breed more expansion, diversification and innovation. Besides an increase in the number of institutions, there is also internal expan-

sion of institutional capacities to cater for more students, in most cases, being more than double (especially for the public universities) the capacity before privatization.

The replication of public university programmes by private universities contrasts sharply with the intense diversification by the former, particularly with regard to reaching out to both the urban and rural, fringe locations and introducing new programmes. In a sense, the peripheral public universities have also replicated programmes in the more urban, bigger and more popular universities, meaning that competition is not just between public and private but also between the public themselves, further reflecting the inevitable outcome of inter and intra-sectoral diversification.

How much the private university sector would respond to effectively counter the emerging public dominance in private provision is hard to predict. As much as the (accredited) private universities have tried to diversify by introducing programmes popular in public universities to attract more students, they have retained specific niches: USIU remains a mostly elite institution with a specialty in business studies; Daystar remains popular for communication studies; UEAB is the leading private in nursing and automotive technology studies; and CUEA retains a niche in education among private universities. Public challenge does not therefore necessarily result in the degeneration of serious institutions into mere demand absorbers that attract remnants left out by the prestigious public. But like in other parts of the world, specifically South Africa as observed by Mabizela (2003), private higher education in Kenya is very much on the shadows of the public – which provides the leadership in virtually all areas, perhaps with the exception of private behaviour. But even then, the public sector universities have adopted these behaviour characteristics and use them to out-perform, and compete in, the private market with tremendous success. As the public perfects private attributes with the franchising of NU-HEIs, it is popularizing these colleges even to the extent of posing a challenge to the private universities. The private is therefore left to compete with its own kind from one angle, and, from another, with the public; thus raising more hurdles for private universities. This development provides a serious agenda for researchers on private-public provision, with particular attention to the legal implications of unfettered public franchising of post secondary institutions while private universities reel under public heavy regulation. Such partnerships seem to provide a shortcut for the middle colleges to circumvent regulation and offer degrees that their current status does not otherwise allow. But the strict public regulation of the private sector in Kenya is very much in keeping with international trends. The difference in Kenya is the positive result of making the institutions truly serious rather

than mere demand absorbers. Why Kenya stands out starkly in this regard provides yet another possible area of study.

A study of public–private provision is thus one of diversity and duality. However, it could still be argued that duality is what engenders diversity or differentiation. But differentiation is in itself both an imperative and an outcome of competition, so is convergence of patterns as sectors exhibit each other’s traits in diverse ways and at different times. In the end, there is less diversity/differentiation but more similarities. The Kenyan case thus typifies global trends in higher education development, as revealed in Levy’s (1999) analysis of the ‘limits to diversity’.

### Notes

1. Other than changing dynamics, a core consideration in discussing public-private provision is whether such discourse can be theoretically grounded. There is no theory *per se* but a volume of literature does exist, which could not be reviewed here due to editorial requirements and limitations. Some are indeed old, attesting to the much earlier interest in the subject, while some deal with only aspects, e.g. funding. See Eicher and Chevailier (2002), Sontheimer (2001), Altbach (1999), Johnstone (1986), Smith (1937), and Strumilin (1924), among others.
2. The generalisation of these factors into three major ones is takes cognisance of country specific and even institution-related factors. Country-specific factors for Kenya would include the generally liberal development approach it adopted since independence compared to her neighbours, the relative stability that attracted providers and even immigrant students, rapid population growth and consequent expansion of lower levels of education and concomitant demand for higher education. Institution specific factors relate to programmes offered, distance and cost, among others.
3. Broadly defined, accreditation is a process of external quality review and means by which institutions of higher education are established and continuously assure and improve quality. In the Kenyan context, accreditation means public/state acceptance and confirmation evidenced by either the creation of a university through an Act of Parliament or a grant or award of a charter that a university meets and continues to meet the standards of academic excellence set by CHE in accordance with the provisions of the Universities Act, Chapter 210B and the relevant Rules and/or Guidelines developed under the Act. Accreditation is done by CHE and includes inspection and verification of academic programmes, physical facilities and equipment as well as staff establishment.
4. Governments enforce regulation of private institutions to ensure compliance with standards, not because institutions necessarily offer low-quality education (though many do), but because of a persistent suspicion that left unchecked

this is what they will do. As a result, in some instances, private institutions are sometimes resistant to regulatory regimes, especially when there are clear signs of unequal treatment between public and private institutions. Even when they have cannot resist as effectively as in Kenya, they remain critical even when they comply.

5. The action by CHE is aimed at guarding against the proliferation of low-quality higher education institutions that might aim at merely absorbing excess demand. The institution in question, Wiseman Consultants and Trainers, is neither registered with the CHE nor is it with the Ministry of Education. Instead, it is registered under the Companies Act of the Laws of Kenya. The action also reveals the pitfalls that the openly for-profit institutions face in Kenya: difficulties with accreditation; operating outside the legal framework of higher education provision; and engaging in partnerships with largely unknown foreign institutions.
6. The 'autonomy' of public universities makes it possible for them to enter into partnerships with NU-HEIs without the approval of the CHE, while the intended partner NU-HEIs are required to seek approval of the CHE in accordance with the 2004 Universities Rules. Ironically, such institutions would not be required to seek the authority from CHE if the partnership is initiated by a public university. All that would be needed is for the senate of the public university to approve the linkage and programme. NU-HEIs can therefore circumvent this requirement by asking a willing public university to 'initiate' a partnership.
7. The current State president has delegated this responsibility, but the law has not been changed.
8. The Northern Consortium of British Universities comprises: University of Manchester, University of Bradford, University of Huddersfield, University of Leeds, Leeds Metropolitan University, University of Liverpool and Liverpool John Moores University. Other members of the group are the Manchester Metropolitan University, UMIST, University of Salford, University of Sheffield and Sheffield Hallam University. On the other hand, members of the British Universities in Africa Group include University of Newcastle, University of East Anglia Norwich, University of Bath, Oxford Brookes University and Kingston University London.

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