

Executive Summary

Developing capacity through cross-border tertiary education

What is cross-border tertiary education?

Cross-border tertiary education refers to the movement of people, programmes, providers, curricula, projects, research and services in tertiary (or higher) education across national jurisdictional borders. Cross-border education is a subset of educational internationalisation and can be part of development cooperation projects, academic exchange programmes and commercial initiatives. The focus of this volume is on the mobility of students, programmes and providers/institutions.

Student mobility remains relatively small, but has grown at an unprecedented pace in the past decade. The provision of tertiary education abroad, through academic partnerships, franchising, the opening of a branch campus or other arrangements, has also grown significantly. These trends raise new issues for policy makers and education stakeholders, in advanced economies as well as in developing countries.

Why is tertiary education crucial to capacity development?

The recent emphasis put on basic education in development policy has sometimes led to overlook the importance of tertiary education for capacity development. Capacity development is the process whereby people, organisations, and society as a whole, create, adapt and maintain capacity over time, that is, the ability to manage their affairs successfully. Among other things, capacity development depends on the acquisition of high skills and on the monitoring of one's progress. Tertiary education contributes to capacity development by training a country's workforce in all fields relevant

to its development, including education, as well as statisticians and policy analysts, measuring and monitoring the progress achieved (or not).

Why should countries consider cross-border education in their capacity development agenda?

Some countries lack the domestic capacity to meet all their tertiary education demand or could benefit from foreign experience and knowledge to improve the quality of their tertiary education system. Cross-border education can typically help to expand quickly a tertiary education system and to increase the country's stock of highly skilled human capital. It also gives a benchmark to academics and institutions on the quality and relevance of their services and can lead to organisational learning, thanks to partnerships, both at the institutional and system levels. Finally, it adds variety and choice to domestic systems, which may lead to healthy competition and quality enhancement.

The mobility of students and academics has long been part of countries' capacity development strategies. Now they should also consider under which conditions programme and institution mobility could lead to positive spillovers in their specific context. Donor agencies should also consider how they could help countries reap the benefits of cross-border education.

Could cross-border tertiary education not lead to capacity development?

Cross-border tertiary education can help develop capacity, but it is not a panacea. It can also adversely affect capacity development: the *quality* of foreign programmes could be low, even if their domestic counterparts are well recognised, and rogue providers could use a foreign crest to operate more easily; foreign provision could be a mere imported capacity with no impact on the local system and its development; student mobility and the acquisition of foreign qualifications could lead to brain drain rather than an increase in the stock of qualified human capital available in the country; it could enhance equity problems if foreign programmes are only available to affluent families; it could be irrelevant to local needs or culturally inappropriate. Cross-border tertiary education may also not lead to capacity development because its scale is too small to have any noticeable impact. Finally, because of wage and cost of living differentials, cross-border education may not always be affordable and thus a realistic option in some contexts, unless it is supported by donor agencies. These challenges are

more or less important depending on the form of cross-border education and have to be addressed by countries with an appropriate regulatory framework for foreign (but also domestic) provision covering issues of accreditation, quality assurance, recognition of foreign qualifications, access to public funds for institutions and students, etc.

Is there any evidence of a capacity development impact of cross-border education?

Student mobility has certainly served capacity development: in 34 countries, domestic students studying abroad represent over 20% of domestic tertiary education enrolments. It is also widely recognised that student and scholar mobility allows developing countries to access recent knowledge and research methodologies. However, there is still little evidence that new forms of cross-border tertiary education have directly contributed to capacity development in tertiary education, mainly because it is still too recent and too small a phenomenon. While some countries such as Malaysia, China, Singapore, or Dubai deliberately and consistently use cross-border education to develop their capacity in tertiary education, it is still difficult to assess the impact of their strategy. Other countries such as South Africa have had less positive experiences about the quality and impact of foreign provision. Many others have not experienced any significant growth of cross-border education at all. The growth of cross-border education worldwide has nonetheless put quality assurance and the regulation of private provision under new scrutiny, even where the phenomenon is still limited or inexistent. This awareness raising is definitely a step towards capacity development.

Can commercial cross-border education contribute to capacity development?

Commercial arrangements are more likely to increase access quickly, especially as development aid and scholarship programmes typically face budget constraints. Moreover, commercial arrangements to some extent embody capacity-building principles and give countries and individuals more bargaining power and allow for more relevant supply. As for any private educational provision, if not supported by specific scholarship or loan schemes, commercial arrangements can raise inequity if they are only affordable to an elite, which ultimately hinders capacity development. With cross-border education becoming an export industry in some donor

countries, another risk is to see development assistance for cross-border education drop for all countries: in low income countries, commercial cross-border education is indeed unlikely to develop unless there is a large enough upper middle class. If a country chooses to use commercial cross-border education in its capacity development strategy, one option to consider is the use of trade agreements such as the General Agreement on Trade in Services (GATS).

Developing capacity in quality assurance

What is quality assurance and how does it assure quality?

There is no common definition of quality in tertiary education, and certainly no common metric with which to measure it. Yet, through the influence of the Bologna Process and the need for harmonisation of learning and recognition of credentials for the purposes of mobility, quality assurance has become important as a way to develop common metrics and provide information to stakeholders. There is clearly a convergence on quality assurance methodologies and increasing agreement on the general principles of good practice. Nevertheless, each country context is unique and therefore each country has its own purposes for quality assurance – whether to protect consumers from poor quality or encourage excellence. Systematic quality assurance practices provide information to governments, students, employers and society about tertiary education institutions and programmes. Such information increases accountability, transparency, and helps policy makers, institutional leaders, students and employers make informed decisions.

What are the characteristics of good quality assurance systems and practices?

Independence of operation is paramount to increase the legitimacy of the quality assurance process. A supportive legal framework must be in place to ensure that quality assurance can operate with sufficient support and away from government interference. In some countries the laws related to tertiary education are the only form of regulation and therefore substitute for a quality assurance system. A variety of mechanisms are available to conduct quality assurance. There is increasing international agreement on the general principles of quality assurance and convergence on methods which tend to

focus on quality assurance agencies to oversee the systems. Collection of accurate, timely and appropriate data remains a challenge, particularly in the area of student learning assessments at the tertiary level. Quality assurance requires both financial and human resources that determine the depth and breadth of quality assurance. To be meaningful, quality assurance processes must not only provide information, but be linked to both rewards and sanctions. Rewards are needed to provide institutions incentives for good performance and stimulate cultures of quality, and sanctions for poor performance are needed to protect stakeholders.

What are the implications for the quality assurance of cross-border higher education?

Many quality assurance bodies around the world have not even begun to consider how to address the cross-border issue. Quality assurance systems tend to seek foremost a quality enhancement role for existing local tertiary education institutions and programmes. In some cases, they do not cover the private domestic sector; in others, the public sector. Yet, governments wish to assure stakeholders that students are receiving a minimum standard of quality no matter the type of provision – whether public, private, domestic or cross-border. At a minimum, receiving countries should endeavour to develop clear policies and strategies toward foreign providers of cross-border tertiary education, particularly as they relate to issues of access, equity, relevance to the labour market and funding. Such a discussion can be viewed as an important part of an overall capacity-building agenda since cross-border provision can fill in the many gaps left by domestic offerings. All relevant government agencies (*e.g.* education, trade, science and technology, health, etc.) should be included in the dialogue. Compliance with locally determined policies by cross-border providers can be verified and monitored through an effective regulatory framework and quality assurance system. While policy makers should consider how quality assurance mechanisms can help to serve a regulatory role for local cross-border provision, such reflections should not be limited to cross-border issues, but should instead be made in a larger context related to key operational decisions for the overall quality assurance system.

Liberalisation of tertiary education services under the GATS: building capacity in trade negotiations

What are the benefits of making commitments under the GATS?

By creating a more transparent and predictable legal framework, the GATS can improve the investment climate and help attracting foreign investment in higher education. This new investment can in turn provide capital and expertise to help develop capacity in tertiary education. At the same time, it is important to recognise that the GATS cannot solve the issue of access to higher education services. It can only play a role in complementing policy decisions by enhancing investors' confidence when countries decide to allow private sector participation in tertiary education. Domestic factors including the state and features of the higher education system and the country's economic, social and political characteristics remain central.

What are the implications for governments' ability to regulate of being a Member of the WTO when commitments on higher education services have not been made?

If commitments have not been made in a particular sector, only limited disciplines apply, the most important of which is the most favoured nation (MFN) principle (provided that countries have not included the sector in question in their lists of MFN exemptions). MFN treatment does not seem to impinge on governments' ability to retain control over higher education services, given that governments retain the right to exclude any foreign participation.

If it is considered beneficial to make commitments on higher education services, what are the implications for public universities?

It is recognised that there are uncertainties on the exact scope of the carve-out for services provided under governmental authority (Article I:3). As such, a country that has made commitments on higher education services may find out for example through the dispute settlement that its

governmental services, thought to be outside the scope of the Agreement, are actually covered by the specific commitments.

What would this practically mean in terms of governments' ability to retain policy control over the provision of these services?

Once specific commitments are made, other more significant obligations kick in, especially on market access and national treatment. The main concern for higher education services relates to national treatment. The measures extended to public universities, should they unexpectedly fall under the Agreement, could trigger equal treatment of like foreign services and service suppliers. The government would then be required, in the absence of appropriate limitations, to extend financial and other benefits to the services and/or suppliers concerned. Otherwise it would need to renege on its commitment under Article XXI, which would entail paying compensation through trade concessions or retaliatory measures of commercially equivalent effect. Although it is difficult to see how foreign providers would be less suited than their domestic counterparts to meet the development objectives of tertiary education, governments should be aware of unintended consequences.

How is it possible to deal with these concerns?

Pending a clarification of terms and establishment of objective criteria of the carve-out clause, countries wanting to make commitments in higher education services should consider scheduling appropriate limitations in commitments on these services. The GATS allows for wide flexibility in this regard. Members can condition specific commitments to the private sector or exclude public funded institutions, or limit funds, subsidies and other public benefits to national institutions and citizens. These possibilities are reflected in the plurilateral request on private education services presented by a number of WTO Members in the spring of 2006.

What about other existing obligations, can they limit countries' ability to regulate higher education services?

Once commitments in a particular sector have been made, other disciplines apply. The most significant of such disciplines for higher

education relate to regulatory measures and are contained in Article VI, in particular paragraphs 1 and 5. A closer look at these provisions reveals that they do not seem to affect governments' policy space to regulate the provision of higher education services. Paragraph 1 only applies to the "administration" of regulation and not to its substantive aspects. And while paragraph 5 does include substantive aspects, it is subject to two important limitations: that the measures in question nullify and impair specific commitments and that they could have not reasonably been expected of that Member at the time the commitments were made. This means in practice that at least all measures that were already in place in 1995 would be excluded.

What about disciplines that are still under development?

Disciplines to be developed under the Article VI.4 mandate on domestic regulation can potentially have an impact on governments' freedom to regulate higher education services not only to ensure quality but also other policy objectives, such as equity. There are early indications that governments will not develop disciplines in this area that may limit their autonomy to regulate services provision. Nevertheless, in light of the importance of quality assurance and other social objectives in higher education, these negotiations require close monitoring and especially involvement by the education community and other relevant stakeholders.

How does the GATS relate to mutual recognition?

Current disciplines regarding recognition in the GATS framework leave considerable regulatory flexibility to Members to accord recognition as they see fit. New disciplines on domestic regulation to be developed under the Article VI.4 mandate might assist in promoting recognition multilaterally. In particular, progress on talks relating to qualification requirements and procedures could prove very helpful in this regard. Nevertheless, delicate issues of necessity and regulatory sovereignty are relevant here as well and call again for active involvement of the education community.

Conclusion

Cross-border tertiary education can be a helpful capacity development tool that countries and donor countries and agencies should consider in their

development strategies. An appropriate regulatory framework in importing countries is important to reap its benefits. Addressing the cross-border challenges and opportunities will typically lead to reconsider tertiary education policies as a whole and not only foreign provision. As outlined in the *Guidelines for Quality Provision in Cross-border Education*, an appropriate framework of quality assurance will be essential, but it can take many forms according to countries' contexts. Finally, with the growth of trade in education services and the inclusion of the sector in the GATS, countries and their education community should develop a better technical understanding of trade agreements. These agreements can be a tool in their capacity-building strategy, but the consequences and uncertainties of making certain commitments should be well understood. Whatever development strategy they chose, countries should consider whether cross-border tertiary education should be part of it, and if yes, how.