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Kenneth K. Mwenda

Doctoral Degree Programs in Law

An International and
Comparative Study
of the English-Speaking
World



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An International and Comparative Study
of the English-Speaking World

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Foreword

The 40th UNESCO General Conference was convened in Paris from November 12 to 27, 2019. The conference focused on emerging initiatives in the education, science, culture and youth sectors. As the Minister of Higher Education for the Republic of Zambia, I was assigned by the Zambian Government to represent its interests on matters for consideration at that conference. I led a high-powered government delegation comprising senior technocrats from my Ministry, including the Permanent Secretary and Directors as well as the Chief Executive Officers of the Higher Education Authority (HEA) and the Zambia Qualifications Authority (ZAQA), the two institutions that serve as implementing agencies under the Ministry of Higher Education.

Of key interest to me, apart from the excitement of spending almost a month in Paris, were the issues of qualifications arising from key education initiatives. These initiatives included the Global Convention on the Recognition of Qualifications concerning Higher Education 2019 and the Qualifications Passport for Refugees and Vulnerable Migrants that was being piloted in Zambia. I was to report on these initiatives during and after the 40th UNESCO General Conference.

The initiatives, once we delved into them as the conference went on, covered further interesting details on the promotion of qualifications portability, standardization and recognition across jurisdictions and regions in a fair and equitable manner so as to give an opportunity to all, including refugees that have been displaced from their home countries, of accessing quality education.

Something that interested me quite abundantly, as a new Minister in charge of Higher Education in Zambia, was the idea of confronting some of the perceived obstacles around the internationalization of higher education and the issue of the portability of students' qualifications given the differences that existed in different education systems across different jurisdictions. I wanted to acquire new understanding, or attempted to understand the issue, of equitable and fair portability of qualifications where such portability did not inhibit or discourage free movement and sharing of knowledge. I knew that if qualifications from different regions were not understood well, or if qualifications frameworks were not compatible and to scale, then qualifications from one region might end up being ignored in another region. It

would mean curtailing movements of people with some skills, trainings and qualifications once they felt that they could be sent to the back of a classroom and asked to start all over again if they were to move to another jurisdiction that did not recognize their qualifications fully or appropriately. This made me pay lots of attention to the deliberations and our submissions, as the conference progressed.

My delegation and I were perfectly aware that education systems and structures across different regions had some differences. It was therefore important to our delegation to follow the plans and initiatives that all member states were putting forward to address this obvious concern. The USA, for example, had a significantly different education progression structure compared to the UK, especially at collegiate level. And, the proposals from the conference called by UNESCO would be speaking to the convergence of these systems through thorough understanding of the various qualification frameworks and their intersections. For easy mobility of students from one region to the next, a clear understanding of levels of qualifications on the framework was extremely important so that entry into different education system were encouraged to happen at the right entrance levels.

Reflecting on the debates and the resolutions from that conference motivated me to agree to write this Foreword, as this book attempts to explore these differences, explaining the education and qualifications differences and offering opinions on each of the education systems under discussion. The different chapters of the book delve into the subject matter expertly on concepts of law and the issue of postgraduate training in law in the USA and the UK. The book further covers the concept of a higher doctorate (beyond the traditional JD or Ph.D. and yes, we thought the Ph.D. was the highest academic degree!) and goes further into the demands of each of those degrees, as per jurisdiction under discussion. This is a comprehensive and well-written book that shares timely and relevant information on distinctions and similarities, if any, in law qualifications across several regions. And, it could not have been written by a better author than Prof. Kenneth K. Mwenda, Ph.D., LL.D., D.Sc. (Econ.), an exceedingly intellectual and thought leader of our time who currently contributes his vast knowledge and competencies on the largest stage at the intersection of academia and geopolitics on the well-being of the world we live in. In writing this Foreword, it was an honor to partner with such a pleasant man and prolific writer, with presidential awards to his name.

As an international student at one point myself and having completed high school and pre-engineering courses in Zambia, I realized how different education systems could be firsthand as I transitioned from the UK-centric educational system to the USA. Knowing what I know now, it was not necessary to do certain courses before joining universities in the USA. This book helps people such as my former self-navigate the terrain while making sense of why some regions administer their educational systems and qualifications the way they do.

Please enjoy the book as it examines interesting topics and puts in context the education systems and qualifications at the highest levels. The topic on the concept of higher doctorate was very valuable to me as a policy maker in Zambia and I learnt a lot. I hope readers will reference the book in their furtherance of understanding of the different degrees and how those differences impact, for example, the duration of

study or which degree demands the addition of new knowledge to the existing body of knowledge on the subject matter. With that understanding, potential students can truly make the best decisions as they seek fulfillment in attainment of further education anywhere in the world.

Lusaka, Zambia
March 2021

Eng. Brian C. Mushimba, Ph.D.
Minister of Higher Education,
Government of the Republic of Zambia

Preface

There is a dearth of literature on international and comparative studies of how law doctoral programs in much of the English-speaking world are structured. A chasm exists between the structure of law doctoral programs in the USA and UK. This book endeavors to fill that gap. The book aims at reconciling the structures of the American and British models of law doctorates. A related issue is the position of legal academia outside the USA and UK on how it regards US-styled doctorates and UK-styled doctorates. Indeed, are law schools in the English-speaking world outside the UK and the USA expected to grow their law doctoral programs along the lines of the American or British doctoral programs, given the disparity in the structure of law doctoral programs in the two countries?

It is a truism that many legal academics in Africa and Asia as well as in the Caribbean and Pacific countries continue to obtain law doctorates from the USA and the UK. Therefore, the influence of American and British legal education on other English-speaking countries cannot be downplayed. Indeed, should law schools in English-speaking world outside the USA and the UK adopt the US-styled Doctor of Juridical Science (JSD or SJD) or retain the UK-styled Ph.D. in Law? And how does legal academia in the English-speak world outside the USA and the UK view the Juris Doctor (JD), the JSD or SJD and the Ph.D. in Law degrees? Indeed, what are the pros and cons of each degree model as far as doctoral education is concerned? Is there something else beyond these degree programs that can help to reconcile the differences?

In this book, I have drawn extensively from my experiences at Harvard University and the University of Warwick, respectively, while carrying out studies there in matters of pedagogy and higher education teaching. Closely related to this, as I began to prepare for my higher doctorate degree in law in the mid-2000s, my intellectual curiosity in the varying structures of law doctoral programs in the USA and the UK grew. This interest benefitted additionally from my academic role as a Ph.D. supervisor and examiner at various leading universities. In 2008, I was admitted to the rarely awarded Higher Doctorate degree of Doctor of Laws (LL.D.) at Rhodes University following the examination of selected scholarly books and peer-refereed journal articles that I have authored. The LL.D. came almost ten (10) years after

completing my Ph.D. in Law at the University of Warwick where I also served as Assistant Professor of Law at the time.

In 2014, following a similar process as in the LL.D., I was awarded a second Higher Doctorate degree, the Doctor of Science in Economics (D.Sc. (Econ.)), by the University of Hull. I hasten to add that I have examined the concept of a higher doctorate degree in Chap. 4 of this book. Here, suffice it to say that although I left full-time academia a few decades ago, I have maintained an active presence in academia. I have served as Extraordinary Professor of Law at the University of Pretoria in South Africa and have taught as Adjunct Professor of Law at American University Washington College of Law (WCL) in Washington DC, USA. I have also served as Visiting Full Professor of Law at a number of leading universities in Europe and South Africa, including the University of Miskolc in Hungary and the University of Cape Town (UCT). Further, I continue to serve concurrently as Extraordinary Professor of Law at the University of Lusaka, Zambia. I have also given lead lectures and presentations at major US universities, including Duke University, George Washington University, the University of Maryland, Temple University, Howard University and the University of South Florida. A number of my former law students have gone on to become judges of the Supreme Court, the Constitutional Court, the Court of Appeal and the High Court of their respective countries. Others have served as Attorney-General for their governments. There are also some of my former law students who are now law professors and prominent Cabinet Ministers in their respective countries.

Over the years, I have maintained a parallel academic and professional life, publishing academic books and other scholarly work in top journals and law reviews as well as holding various senior academic appointments at leading universities internationally, while serving with the World Bank. At the World Bank, I have served for a decade as Senior Counsel in the Legal Vice-Presidency, as well as Senior Counsel in the World Bank's Integrity Vice-Presidency, before taking up my current role as the Program Manager and Executive Head of the World Bank Voice Secondment Program (VSP). I have also been invited and interviewed, as a thought leader and public intellectual, by numerous print and broadcast media, including the *New York Times* (USA), the *Voice of America* (VOA, USA), *CCTV* (USA), the *Times* (UK), the *British Broadcasting Corporation* (BBC, UK), and *Sky TV* (UK). On Saturday, May 25, 2019, the President of the Republic of Zambia, H.E. President Dr. Edgar C. Lungu conferred on me the prestigious Presidential Insignia of Meritorious Achievement (PIMA), the nation's highest civilian honor for meritorious achievement. The PIMA award ranks as the equivalent of the US Presidential Medal of Freedom, and it was conferred on me in recognition of my distinguished scholarly achievements in the field of law, as evidenced by the extensive body of my scholarly publications. A few years before that, President Lungu's predecessor, H.E. Mr Rupiah Banda, through his Minister of Tourism, conferred on me the lifetime achievement award of Honorary Tourism Ambassador for the Republic of Zambia, in recognition of my distinguished thought leadership and scholarship.

In a work of this kind, I am mindful that I owe my gratitude to many people. Indeed, it is not without difficulty that I record my indebtedness to all the people that I owe my gratitude. If I omit or forget to mention anyone, please forgive me.

Let me start by thanking the good Lord, God Jehovah Almighty, and my dearest parents, Mr. Joseph T. Mwenda and Mrs. Esther M. Mwenda. To God, our Father, His mercy endures forever. The fear of the Lord is the beginning of wisdom. To my dearest parents, though you have crossed over, your fatherly and motherly love endures forever. Your words of wisdom will forever remain indelible in my heart, edifying my thoughts and aspirations. I thank you for everything.

I am also exceedingly humbled and most grateful to my good brother, the Honorable Minister of Higher Education for the Republic of Zambia, Dr. Brian C. Mushimba, an astute scholar and thought leader, for honoring this book with a Foreword. There can be no greater honor in a treatise of this kind, that is, a book on higher education, than having the Foreword written by the Minister of Higher Education. For, he deals with what the book is all about on a daily basis. Dr. Mushimba, a Ph.D. holder, with a background in mining engineering, is also a member of parliament in the Republic of Zambia. Thus, he stands at the frontiers of global policy on higher education. Indeed, he has not only walked the path of higher education as a scholar and development practitioner but has also dealt with higher education from the rare heights of a senior government official responsible for formulating and implementing higher education policies in Zambia. And so, I am eternally grateful to Dr. Mushimba for lending his voice to my scholarly work.

On the home front, my lovely wife, Dr. Judith Mvula-Mwenda, and my adorable son, Joseph, have been my rock. I cannot thank them enough. I am grateful for their patience, understanding and support, as I worked tirelessly long hours in the night and on weekends to bring this book to fruition.

Further, I would be remiss if I did not acknowledge the meticulous research support of my dear wife, Dr. Mvula-Mwenda, together with the editorial assistance of my good learned friend, Mr. Mwangala Simataa, at Georgetown University Law Center in Washington DC. That said, the interpretations and conclusions expressed in this book are entirely those of the author. They do not necessarily represent the views of the World Bank, its executive directors or the countries they represent. All the facts and the law presented in this book are as at the date of publication of the book.

Washington, DC, USA
September 2021

Kenneth K. Mwenda, Ph.D., LL.D.,
D.Sc. (Econ.)

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