



21 January 2012

***A Position Paper  
on the Recommendations of the Task Force on Quality Assurance  
(TFQA, for brevity) regarding the Proposed “Outcomes-and Typology-  
Based Quality Assurance” in Higher Education Assurance Framework  
submitted by the Catholic Educational Association of the Philippines  
(CEAP, for brevity)***

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Frame of Reference:

- a. The Abridged TFQA Report
- b. CHED-TFQA power point presentation
- c. Relevant provisions of the 1987 Constitution, R.A. 7722, B.P. 232, and other related laws

Outline:

- I. **Introduction:** *Setting the Framework for a Discussion on the proposed CHED Outcomes and Typology-Based Quality Assurance Framework*
  - a. The CHED; legal basis for its creation; Powers and Functions.
  - b. The 2011-2016 Strategic Plan; Typologies and Outcomes-Based QA framework.
  - c. The 2012 CHED Budget
  - d. Mode of delivery for this outcomes-and typology based QA: an Omnibus CMO?
    - d.1 *the UNEQUAL playing field between SUCs and private HEIs -- still a reality.*
    - d.2. *unequal application of typology; Typology the new minimum?*
  - e. The plight of small and regional schools; access to education by the poor.
  - f. The “K to 12” dimension
- II. **Comments** on the TFQA Recommendations
- III. **Legal Obstacles**
  - a. Due Process requirement
  - b. Equal Protection Clause; Academic Freedom
  - c. Non-impairment of vested rights
- IV. **Moving forward:** *Towards an “authentic” quality assurance framework within the parameters of “participatory” governance*

## I. **Introduction: Setting the Framework for a Discussion on the Proposed CHED Outcomes- and Typology-Based Quality Assurance Framework**

a. *The CHED; Legal basis for its creation; Powers and Functions.*

The **Commission on Higher Education (CHED)** was created on May 18, 1994 through the passage of Republic Act No. 7722, or the Higher Education Act of 1994. The CHED has been designed to act as a collegial body ***in formulating plans, policies and strategies relating to higher education*** and the operation of CHED.

Pursuant to R.A. 7722<sup>1</sup>, the CHED is mandated to perform, among others, the following functions:

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- (1) <sup>1</sup> Formulate and recommend development plans, policies, priorities, and programs on higher education;
  - (2) Formulate and recommend development plans, policies, priorities, and programs on research;
  - (3) Recommend to the executive and legislative branches priorities and grants on higher education and research;
  - (4) ***Set minimum standards for programs and institutions of higher learning*** recommended by panels of experts in the field and subject to public hearing, and enforced the same;
  - (5) ***Monitor and evaluate the performance of programs and institutions of higher learning*** for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school course;
  - (6) Identify, support and develop potential centers of excellence in program areas needed for the development of world-class scholarship, nation building and national development;
  - (7) Recommend to the Department of Budget and Management (DBM) the budgets of public institutions of higher learning as well as general guidelines for the use of their income;
  - (8) ***Rationalize programs and institutions of higher learning and set standards, policies and guidelines*** for the creation of new ones as well as the conversion or elevation of schools to institutions of higher learning, subject to budgetary limitations and the number of institutions of higher learning in the province or region where creation, conversion or elevation is sought to be made;
  - (9) Develop criteria for allocating additional resources such as research and program development grants, scholarships, and the other similar programs: Provided, that these shall not detract from the fiscal autonomy already enjoyed by colleges and universities;
  - (10) Direct or redirect purposive research by institutions of higher learning to meet the needs of agro-industrialization and development;
  - (11) Devise and implement resource development schemes;
  - (12) Administer the Higher Education Development Fund, as described in Section 10 of R.A. 7722, which will promote the purposes of higher education;
  - (13) Review the charters of institutions of higher learning and state universities and colleges including the chairmanship and membership of their governing bodies and recommend appropriate measures as basis for necessary action;
  - (14) Promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objectives of R.A. 7722; and
  - (15) Perform such other functions as may be necessary for its effective operations and for the continued enhancement, growth and development of higher education.

- (1) to set **minimum standards** for programs and institutions of higher learning recommended by panels of experts and subject to public hearing xxx;
- (2) to **monitor and evaluate** the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions xxx;
- (3) **rationalize** programs and institutions of higher learning and **set standards, policies and guidelines** for the creation of new ones as well as the conversion or elevation of schools to institutions of higher learning xxx;

From the tenor of the law, it is clear that the power granted to CHED is limited to that of *reasonable supervision* and to a certain extent, *regulation*, provided that the same is likewise reasonable. This is evident from its functions of **setting forth minimum standards** as well as in **monitoring and evaluating the performance** of programs and institutions of higher learning.

However, as this paper will elaborate further on, the peculiar relationship of CHED vis-à-vis State Universities and Colleges (SUCs) would even place a further restriction on CHED's authority, such that its *regulatory powers more forcefully applies to private higher educational institutions (HEIs), and remains merely recommendatory with respect to SUCs.*

*b. The 2011-2016 Strategic Plan. Typologies and Outcomes-based QA framework.*

Responsive to the challenge of the Aquino Administration specifically, i.e. *the call to review the existing curriculum of institutions of higher learning and address the problem of "job-skills mismatch" as would better direct programs to industries in need of workers*<sup>2</sup>, the CHED presented its Strategic Plan for 2011-2016<sup>3</sup> in line with its

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<sup>2</sup> See June 2011 SONA of Pres. Aquino

<sup>3</sup> Per CHED Official Website.

vision of “*effectively working in partnership with other major higher education stakeholders*” by promoting relevant and quality higher education that the CHED perceives to be at par with international standards and recognized in the international arena, ensuring that higher education is accessible to all but at the same time guarantee and protect academic freedom and encourage “participatory governance” in the Commission and the subsector.

Within this five year plan, CHED hopes to make this possible by improving the relevance of higher education institutions, programs, systems and research to the Philippine Development Plan, by upgrading quality higher educational standards, programs and systems to achieve international standards (*e.g. ensure permanent membership in the Washington Accord*), by broadening access to quality higher education.

From its identified Key Result Areas (KRA’s), CHED posits the following premises:

- a) In order to rationalize HEIs in the Philippines, a Typology and mapping of HEIs and programs must be made.
- b) In order to improve HEI quality and standards, the following quality assurance (QA) projects must be undertaken: the setting and enforcement of HEI policies, standards and guidelines, monitoring and phasing out of non-compliant programs, IQuAME, and Accreditation.

and all of these have to be done within the CHED's 5-year plan.

How this will be seriously and equitably implemented in light of extant conditions however, remains a very relevant concern.

*c. The 2012 CHED Budget*

Out of the Php 1.816 Trillion Pesos approved annual budget for 2012<sup>4</sup>, the current administration has allocated Php 2.2 billion for CHED. From this amount, P681 million has been earmarked to finance Student Financial Assistance Programs (STUFAPs) while Php 500 million has been reserved for State Universities and Colleges (SUCs). Based on the CHED Strategic Plan<sup>5</sup>, this leaves the Commission *with only less than 150 million pesos for its operating expenses* as the rest of the budget is already allocated to scholarships, SUCs, capital outlay and its Maintenance and Other Operating Expenses (MOOE).

A further perusal of the CHED strategic plan shows its various programs are all geared towards fulfilling its legal mandates. Thus, a question has to be raised at this point. If the proposed QA framework is to be implemented in 2012 (per CHED report/plan), exactly how much will this implementation cost? How will much be allocated for CHED's other programs?

*d. Mode of delivery for the outcomes-and typology based QA: an Omnibus CMO?*

Relative to this proposed outcomes-and typology-based QA framework, it appears that the method of its delivery is through the enactment of a proposed Omnibus CHED Memorandum Order (CMO, for brevity) that shall

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<sup>4</sup> <http://www.gov.ph/2011/07/26/president-aquinos-2012-budget-message/>

<sup>5</sup> <http://202.57.63.198/chedwww/index.php/eng/CHED-Strategic-Plan-for-2011-2016>

set forth the guidelines and policies in the implementation of this proposed outcomes and typology-based QA tool. Inevitably, it shall have the effect of replacing existing standards as embodied in the MORPHE of 2008.

While it may be said that the CHED is still in its “*consultation*” phase as regards this proposed new QA framework, much can be said as regards the manner and mode by which the same has been done, as will likewise be explained below.

*d.1. the UNEQUAL playing field between SUCs and private HEIs -- still a reality.*

Relevant to this proposed CMO on the new QA framework, it has to be pointed out that the proposed measure **will directly impact only private higher educational institutions, to the exclusion of stage colleges and universities.**

As it stands, when the CHED issues a regulation or a Memorandum Order, the extent of its applicability to SUCs has always been questioned in view of existing laws that limits the power of CHED over them. With respect to SUCs, its creation and conversions are governed by a charter, a law, or a legislation passed by Congress<sup>6</sup>.

Until such time that the proposed QA framework would be capable of being *equally* implemented in both public and private HEIs, any CMO issued to that effect would undoubtedly run contrary to the policy directive of CHED as

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<sup>6</sup> Section 25 in relation to section 27 of Batas Pambansa Blg., 232 otherwise known as “Education Act of 1982”

enshrined in sec. 144 of R.A. 7722 which states that the CHED cannot impose any “academic or curricular restriction xxx made upon private HEIs, which are not required for chartered SUCs, in recognition of the *necessary and indispensable role played by private HEIs in the educational system*<sup>7</sup>.

It also goes without saying that when the CHED issues a Memorandum Order in the exercise of its quasi-legislative powers (i.e. the proposed Omnibus CMO), the same cannot in any manner be viewed as superior over a legislative enactment such as a law creating an SUC or converting a state college into a university. To hold otherwise would mean the assumption by CHED of supervisory and regulatory powers that may be regarded as *ultra vires* in nature.

With respect to local colleges and universities (LUCs), local government units are ensured local autonomy<sup>8</sup> by no less than the Constitution and that includes autonomy in the creation and supervision of local colleges and universities through the local education board. This is bolstered by section 8 (m) of the Higher Education Act of 1994 which states that the extent of the powers of CHED over SUCs (and LUCs for that matter) is merely limited to a review of existing charters and recommendations.

This is not the case with respect to private HEIs that are already over-regulated in all aspects of its operation and existence. The policy imbalance inevitably creates doubts as to the sincerity of the CHED to faithfully carry out

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<sup>7</sup> This also has to be read alongside section 4, article XIV of the 1987 Philippine Constitution which states: “*The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.*”

<sup>8</sup> Section 25, Art. II, 1987 Philippine Constitution.

its legal mandate when it would continue to impose new regulations which effectively target only on private HEIs, while the SUCs and LUCs remain unaffected by these.

Viewed alongside CHED's new typology of HEIs, the logical conclusion is that **only** private HEIs are legally constrained to adhere to this new QA framework, if this were to be implemented by 2012, while the SUCs and LUCs that are substandard within this framework have their respective "charters" as their mantle of protection from this type-casting. It only reinforces the unequal applicability of a governmental measure between a private HEI as against a public HEI. It hardly seems fair especially when one takes into account that SUCs/LUCs are funded by the State while private HEIs have to rely on private funding (usually on tuition income), yet private HEIs are directly hit by any CHED regulation.

Thus, when a governmental regulation runs the risk of potentially interfering with a private person's proprietary rights, some semblance of prudence has to be observed by the State (in this case, the CHED). In discharging its functions, it must not do so unreasonably as would unduly and arbitrarily deprive constitutionally-protected rights without due process.

*d.2. unequal application of typology; Typology the new minimum?*

Moreover, under the proposed QA framework, the minimum standards for government recognition of HEIs under new typologies will undoubtedly be raised. The new "minimum standards" however, do not appear, in any way as



minimum. Given the new “minimum”, the grant of CHED recognition would be limited to only a few universities in the Philippines.

Were the proposal be made to apply only to new private HEIs applying for CHED recognition, there would not be much controversy. However, it appears that the proposal intends to cover all private HEIs without any distinction. In addition, it also appears that the proposal shall have mandatory application insofar as CHED reserves the right to “type” any HEI that does not align itself under the new typologies within the allotted period.

The existing universities particularly those in regions outside of the National Capital Region would therefore be hard-pressed to comply with the new standards and requirements now perceived as the “minimum”. In doing so, the CHED is already going beyond its powers to “set the minimum standards for programs and institutions” by imposing requirements that are clearly restrictive and arbitrary.

It is worth emphasizing again that for standards that are over and above the requirements for government recognition, the powers of CHED are limited only to formulation and recommendation.<sup>9</sup>

*d. The plight of small and regional schools and access to education by the poor.*

Given that the proposed QA framework was prepared with scant participation from representatives of those small but well-performing and

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<sup>9</sup> See Section 8, R.A. 7722.

actually developing schools, especially those schools located outside of the greater Manila area, a cursory reading of the proposed QA framework does not appear to give much leeway for compliance with respect to HEIs situated outside of Metro Manila. When this fact is taken into consideration alongside the prevailing market view that still prefers “universities” vis-à-vis other HEI types, it would seem that access to quality university education by the poor becomes even more limited – more so from the standpoint of the poor but deserving students situated in provincial and very remote areas.<sup>10</sup> How is this an appropriate answer to the challenge posed by the current administration regarding greater access to higher education by the poor?

e. The K to 12 dimension

If the CHED is intent on implementing *mandatorily* the proposed outcomes- and typology-based framework by 2012 to all private HEIs, it has to see the complete picture that with the shift to a “K to 12” basic education cycle by 2012 (being a priority measure by the Aquino government), it will undoubtedly create problematic scenarios it may have not taken into account when it drafted its proposed QA framework.

## **II. Comments on the TFQA Recommendations**

a. *Shifting to an “outcomes-based” quality assurance system*

Relevant to the discussion of a QA framework perceived as “outcomes-based” is the question of whether an HEI’s inputs have yielded the desired

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<sup>10</sup> E.g. Christ the King College de Maranding, Lala, Lanao del Norte; Dominican College in Zarraga, Iloilo; Sacred Heart College, Calamba, Misamis Occidental; Liceo de Masbate. But also Ateneo de Zamboanga University, Universidad de Sta Isabel in Naga, St. Paul’s University in Tuguegarao.

outcomes and by what standards will the CHED assess the relation of these two. In previous years, many schools have not experienced any inputs on the part of CHED as to how their performance based on the previous minimum might be improved.

Given the framework in which this QA tool has been designed, is the outcomes-based QA tool intended to place a premium on HEIs to produce graduates who will work abroad (taking into account the overt references by CHED to comply with “international standards” such as the Washington accord) rather than enhancing/developing a local-based workforce that has been given competencies thru quality higher education? If so, this will only perpetuate the “brain-drain” phenomenon that the Philippines is currently beset with. If creating HEI graduates that will ultimately seek employment overseas is the end result, how will this fit with the Philippine Development Plan of eradicating the “jobs-skills mismatch” problem, precisely?

In addition, how does this QA framework enable a more “flexible” regulatory framework for private higher education when the clear import is for private HEIs to align themselves with so-called “international standards” that may not necessarily be appropriate in the Philippine setting?

Thus, a clear connection between an “input- based typology” and “outcomes-based quality assurance” has to be clearly articulated before this QA framework can even be seriously considered.

In the process of this proposed re-articulation, CHED also has to take the trouble of assessing an instructional system in terms of what it actually

outputs. It is not enough to measure laboratories, academic degrees, facilities, that are inputted into the instructional system. If the relation between the “types” and the “output” is ultimately the likelihood that more appropriate inputs will be effected according to type, there is really no necessary “connect” between the input and the output, despite the type. As educators know, educational outputs must be painstakingly shepherded by teacher training, curriculum development, teacher improvement, facilities improvement, appropriate methods of measurement, etc., which can and must be affected whether one types oneself as a public university, a private university, a teaching university, a music university, a sports university, a state university, a graduate college, a liberal arts college, or a community college.

Also relevant to this discussion is the concern that the outcomes between the proposed types are ideally differentiated supposedly to accommodate separate standards for each type. As it is however, the Professional Regulatory Commission has UNIFORM requirements, i.e. - a single licensure examination for each degree as a requirement to practice a profession. Absent a review of existing licensure examination tools by the PRC, does this imply that notwithstanding the typologies, there is only one standard by which the 5 kinds of HEIs and their graduates are to be measured?

*b. On the need for a horizontal typology*

Although the horizontal typology is being presented as “*value-free*” or without presumption of hierarchy or quality, the peremptory stipulations for

each of the types place more demand on one type, i.e. “University HEIs”, over other HEI types. There are more demands on a University than on a Community HEI, for example, that in terms of objective contribution of the HEI to education in the country, the former is presumably more valuable than the other. The proposed typology therefore seems to place a greater premium on the contribution to the country given by a well-performing university than that of a well-performing community college.

Moreover, the criteria for the horizontal typology includes items that are related to quality – i.e. *competencies of the graduates they produce, qualifications of their faculty members, types of learning resources and support structures available*. This effectively raises the “University” type as a class of its own, significantly better than the other four types.

Thus, CHED is misleading when it presents the typologies as “horizontal” when there is clearly a slant towards one HEI type.

If this is the case, then why is there a need to change the status quo classification of HEIs as already embodied by existing standards (which by the way, has been the prescribed “minimum”) with the introduction of this over-reaching “horizontal” typology?

The proposed QA framework has to take into account that the Philippine market clearly prefers a “university”. The evolution of private schools and colleges, being sensitive to the needs and desires of the market, clearly manifests the obvious preference of the Philippine culture for diplomas from “universities” over those from “colleges”.

The international market of skills and labor is likewise biased in favor of a “university”. Degrees from HEIs which are classified as non-“University” will be considered below par by other countries. To that end, the “horizontal” typology is really not the effective mechanism of achieving relevant and quality higher education that is at par with international standards nor would it produce professionals recognized in the international arena, even if they possess the skills required as the clear impact of a horizontal typology would bar our graduates from work or further education opportunities in other countries.

This cannot be the only effective method of rationalizing Philippine education that would respond to the impact of globalization. There is clearly a premium in the global market and in society for university status – and this goal of pursuing university status should be acknowledged as a normal strategy of an HEI in positioning itself in the market.

Pragmatically speaking, it would also be very difficult for an institution to make any appeal on the basis of performance of its graduates within this “horizontal typology” framework because other countries can readily dismiss graduates of Philippine HEIs just on the basis of governmental policies against hiring of graduates of non-Universities.

In addition, the categorization of “university” under the proposed QA framework leaves little room for HEIs to grow creatively into universities as they would in practice be confined to the pre-set conditions. Although ideally presented as a way to promote diversity, it appears that the end-goal of a typology-based QA framework would result in “homogenized” HEIs.

In an age where the *interdisciplinary* approach to learning and the discovery of new knowledge is so important, the types seem to keep the liberal arts/humanities speaking to themselves and the professions speaking to themselves.

Just as it is not the case that the humanities delivers the world from poverty, it is also not the case that science and technology deliver the world from meaninglessness and loss of ethical moorings. Inter-disciplinary dialogue is not supported by the typologies.

A university that has a mix of liberal arts and professional courses is also a service to the student who may wish to complement professional training with more human growth in liberal arts or vice versa. Or a focus in professional training may be complemented by training in the skills of commerce. This would be lost by a regulatory preference for types, that ultimately do not encourage the multi-disciplinary development of the university.

Moreover, the way the “university” type is defined by the typology, it seems to slant towards a “research university” the way it is generally understood worldwide, i.e. with a significant proportion of students in the graduate programs, intense research pursuits among faculty members, and the appropriate doctoral degrees among University professors.

However, there should be room in the national array of HEIs for diverse universities (not just diverse types of HEIs) that deliver quality at varying levels patronized by varying sets of clientele with varying income brackets. Not all universities perform with the privileged private resources of the elite

Metro Manila Universities nor with the privileged state subsidies of the University of the Philippines. But universities do perform acceptably, and can improve and mature over the years. No matter where universities now are, they should also be assessed for their history of improvement.

In fact, the way the 5 types of HEIs are defined in terms of the minimum requirements per type, there would even be existing HEIs that would not qualify under any of the 5 types, just as there are HEIs that can qualify under two or more types. This lack of distinctiveness of the different categories may result in confusion or arbitrary classification.

And if the underlying motive for the proposed “horizontal” typology is to lessen the proliferation of “universities” in the Philippines, it must be argued that the large number of diverse universities in our country is not scandalous in itself. What is scandalous is if some of these universities operate – whether by CHED permit or by legislative fiat or law – at sub-standard levels. On that score, the CHED already has that legal mandate to sanction and even close down these sub-standard HEIs. A horizontal classification is not needed to achieve this goal.

The problem does not lie only with the “university” criteria alone.

As regards the Professional HEI type, the same does not even include graduate degrees for faculty members. This may result in lower quality of instruction and therefore leads to lower quality of graduates. Clearly, there should be no revaluation of graduate degrees of faculty members as “inputs” in higher education, in our move towards an outcomes-based QA; the



requirement of/premium for graduate degrees (at least MA/MS) for faculty members of HEIs should remain.

The solution therefore does not appear to lie in re-organizing the HEIs according to types. For what is the clear nexus between the reorganization of HEIs into five types and quality output based on outcomes? Assuming this reorganization takes place, the problem of poor performance of HEIs remains bypassed. After much pain in re-organization, the problems will remain. After a university has been re-typed into a community college, the quality of instruction may not have improved. Salaries may not be higher. The institutions may not be better able to attract more qualified teachers and pay them appropriately.

*c. On the vertical typology*

In assessing the proposed vertical typology, the same also has to be compared vis-à-vis the current methodology. Under the existing provisions of the MORPHE of 2008, there is sufficient basis for the CHED to implement a vertical classification of HEIs. With this proposal presented by the QA framework however, it would only serve to complicate and confuse the manner of assessing the quality of an HEI by incorporating various modes and levels of QA tools. It would be more appropriate if the vertical classification of HEIs remain *status quo*.

By way of incentive however, CHED can make it a policy thrust to broaden the criteria for the grant of autonomous status to allow for more room for performing HEIs. But these should be measured through a common

instrument, to make CHED monitoring straightforward. Doing so would allow CHED to focus its limited resources on improving the performance of truly “regulated” HEIs, in the process improving the quality of higher education in general.

If there is any room for improvement to be made on this aspect of a vertical classification of HEIs, it would be in the arena of the “ratings” methodology to be applied. The proposal has to recognize *the operational assumptions made by accrediting agencies, in finalizing the ratings mechanism.*

For example, the proposed QA framework recommends scoring academic programs based on the total number of programs offered by an HEI. Accrediting agencies have a similar approach, but make a distinction between the total number of programs in an HEI and the total number of *accreditable* programs (programs eligible for accreditation, and programs which have accreditation instruments), using the latter as a denominator.

A review likewise has to be made on the weight accorded to accreditation vis-à-vis other QA tools. The QA proposal clearly prefers *international accreditation*. While it may be admitted that certain international accreditation may carry higher standards, a blanket higher scoring on international accreditation represents a different policy statement, that *all* foreign quality standards are superior to local quality standards. But that is not necessarily the case. No foreign global universities teach Filipino students in Cotabato, in Leyte and in the Mountain Province.

Moreover, the additional requirement of international accreditation slants the standards unnecessarily towards external standards which may not be relevant to conditions in the Philippines. Since FAAP member accrediting bodies are themselves already accredited by selected external accrediting agencies, this should suffice as an indirect external recognition of FAAP accreditation without the need for a separate external recognition.

In addition, the CHED ought also explain why there appears to be a greater preference for institutional accreditation in its ratings, when the goal is to have an outcomes-based QA framework?

Finally, instead of the “regulatory” approach, the CHED should continue using the “incentives” to achieve reform. The success of autonomy and deregulation, in terms of HEI acceptance and in terms of influencing HEI behavior toward quality, should be both an accolade for CHED as well as a lesson in how to influence HEI behavior (i.e. to motivate them from one type to the other, etc.)

The TFQA recommendation on the proposed QA framework on typologies, however, is limited in its discussion of incentives. A better understanding of the incentives is an important co-requisite in determining how effective the typology will be in improving overall HEI quality.

### **III. Legal Obstacles**

*Due Process requirement.*

In assessing the acceptability of the proposed QA framework, CHED also has to take into account the quality and extent of participation made by the stakeholders affected, if it is truly sincere in its vision of “*effectively working in partnership*” with other major higher educational stakeholders. From the viewpoint of CEAP, the CHED has to acknowledge that because its regulations directly and seriously impact private HEIs, they are truly the major stakeholders in this endeavor. As such, “authentic” deliberations and discussions with all private HEIs affected have to be made before this proposal can be fully implemented.

The discussion has to be in the form of a genuine consultation that will seriously take into account the suggestions of the major stakeholders and not merely provide a *pro-forma* arena where the proposal is presented without affording the stakeholders any say on the matter.

To that end, CEAP is highly critical of the manner in which the current consultations are being made.

For truly, how would *clustering a limited number* of invited HEIs in *one consultation* setting scheduled in a span of *less than four hours*, leaving only less than an hour for open forum and with almost a “*last-minute*” manner of informing the time and date of the consultations comply with the concept of “genuine consultation?”<sup>11</sup>

Is this the CHED interpretation of “effectively working in partnership” with the major stakeholders?

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<sup>11</sup> Pls. Cf. CMO 7, s. 2009 on the consultation process, and discussion of this submitted formally to CHED in 2009.

It may even be argued that this does not satisfactorily comply with the constitutional requirement of due process anent this supposed “consultation” phase that must be afforded to all private HEIs whose rights would be unduly affected with the implementation of this proposal. On this score, CEAP also wishes to place on record that this proposed outcomes-based and typology-based QA framework has not been effectively disseminated by the CHED to its member schools, especially its regional schools oftentimes pressured to perform well even under adverse conditions. At the very least, these schools (small and distantly located from the Greater Manila area they may be) deserve to be genuinely consulted by CHED as these small member schools would undoubtedly feel the impact of this QA proposal more acutely than its greater Manila University counterparts.

Especially so when the attainment of a “university” status by an HEI under existing standards set by CHED is understood as a right within the purview of section 40, Article IX of the MORPHE of 2008<sup>12</sup>. It is not viewed as merely a privilege. Assuming for the sake of argument however that the conferment of university status to an HEI were merely a privilege, the same would still not be sufficient justification on the part of CHED to deprive the small, regional-based schools who have not been consulted on this matter of their right to be notified and to be heard. Where the potential damage or loss to the affected HEI may prove to be serious because of this proposed typology, proper procedural safeguards have to be observed by CHED so as to avoid any arbitrary deprivation of any right.

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<sup>12</sup> University status, being a distinctive honor, is reserved only for truly deserving higher education institutions that have proven their excellence in the areas of instruction, research and outreach.

It may very well be the case that an HEI already accorded a “University” status under the existing standards would find themselves falling short of the requirements needed under the new typology. If so, does the proposal afford a reasonable *moratorium* or *grace period* as regards the implementation period to enable those existing universities to comply with the new set of standards? To hold otherwise would be a clear violation of due process and in utter disregard of a private HEIs vested proprietary rights.

Once a university complies with the minimum standards stipulated (in the case of private HEIs, by the MORPHE), it earns the right to be recognized as such an entity and to conduct business operations in the furtherance of its objectives. Thus, when a proposal is summarily and arbitrarily introduced that effectively removes an institution’s right to operate as such, it constitutes as a deprivation of a vested proprietary right.

In the case of an HEI accorded a “university status” for example, the conferment of this status and its permit to operate as such includes the use of the term “university” that forms part of its corporate name. It is well settled that the right to the use of a corporate name is a property right, protected by the due process clause of the Constitution. (Western Equipment and Supply co. vs Reyes 51 Phil 15) To arbitrarily and summarily implement this proposed typology which could have the effect of divesting its already accorded “university status” would indeed be the denial of a vested proprietary right to use its corporate name without due process.

*Equal Protection Clause.*

Owing to the seemingly preferential exercise of CHED's regulatory powers, private HEIs are unduly targeted without any clear basis for the classification. This may very well fall within the ambit of a governmental measure violating the equal protection clause guaranteed by sec. 1 Article III of our 1987 Constitution as SUCs remain to be outside of the ambit of the proposed governmental measure.

*Non-impairment of vested rights.*

In the case of *Benguet Consolidated Mining Co. vs. Pineda*<sup>13</sup>, the Court explained that a vested right is "some right or interest in the property that has become fixed and established, and is no longer open to doubt or controversy"; it is an "immediate fixed right of present and future enjoyment".

Following this principle, any changes to be made, new provisions to be introduced, and new rules to be laid down which may prejudice or impair vested or acquired rights in accordance with the prior rule shall have no retroactive effect.

The proscription against retroactive effect of laws is provided for by article 4 of the Civil Code of the Philippines. CHED regulations, albeit administrative issuances, are not exempt from this requirement of prospective application as the proposed administrative measure (presented as a mere "academic organization") may undoubtedly interfere with vested rights.

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<sup>13</sup> 98 Phil. 711, 724

HEIs that are currently known and recognized as “University” have worked hard and have over the years been given government recognition and enjoyed vested rights and interests associated with a “university status” following the standards set by the CHED itself and even of other education agencies prior to the creation of CHED.

An implementation of the horizontal typology by 2015 such that existing typology of HEIs will lose CHED’s recognition unless it complies with the new typology is clearly a retroactive application of the proposed regulation. Even if CHED allows HEIs of their continued use of 'university' or 'college' in their published name after 2015 if prior recognition of CHED and all other rights appurtenant thereto as such are withdrawn or revoked, the regulation remains violative of the proscription of law against retroactive application of laws.

V. **Moving forward:** *Towards an “authentic” quality assurance framework within the parameters of “participatory” governance*

This is not to say that the CEAP is against quality assurance or an appropriate quality assurance framework in higher education. On the contrary, it believes that the same is necessary in order to further enhance the quality of HEIs in our country. However, this framework has to be prepared within the parameters of “participatory” governance that ensures ample and equal representation from the affected stakeholders and continuous dialogues are made to ensure that a smooth implementation of a QA framework would be possible.



Concretely, it has to be emphasized that the Task Force preparing the recommendations on the outcomes and typology-based QA did not even consider the nuances and diverse needs of the various regions in the country as would affect the kind of HEIs and programs to be undertaken by such HEIs. A task force whose composition is primarily based in Luzon and coming from the large and prominent universities understandably cannot take these nuances into account in preparing the QA framework, and may even prepare a QA framework that conveniently skews in their favor, to the prejudice of other equally good HEIs located outside of Luzon.

In addition, instead of making the outcomes and typology-based QA framework mandatory in character by penalizing those who cannot comply in terms of reduction of points or the withdrawal of a previous status conferred upon it, CEAP asserts that it would be preferable and perhaps even more effective, if a system of providing incentives would be applied to those HEIs that would opt to align themselves according to the new framework.

In the context of the multifarious issues and concerns faced by private HEIs today - the shift to the K to 12 cycle, the anti-no permit no exam law, the rapid conversions of state colleges into universities, the foreseen migration to public educational institutions with the implementation of the K to 12 program from private HEIs that have not yet put their transition mechanisms in place, and such other related concerns – private HEIs find themselves yet again challenged with this proposed Outcomes and Typology-Based QA framework. Where our CEAP schools over the years

have partnered successfully with DepEd and CHED in providing quality education to our people through a large and creative diversity of dynamically-developing schools, colleges and universities, it believes that that the CHED-proposed Outcomes- and Typology-Based Framework would harm rather than promote the delivery of quality education in the Philippines today.