

**An overview of the policies and legislation implemented in Higher Education in
South Africa from 1994 to 2009**

by

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Declaration

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I hereby declare that the submission is my own independent work; the work has not been previously submitted, either as a whole or in part, to any other university, faculty or department. I also cede copyright of this work to the University of the Free State.

31 January 2011

Signature

Date

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Chapter 1: Introduction

1.1 Background

Significant change took place in South Africa in 1994. This encompassed not only the introduction of the Constitution (Act 108 of 1996) and the Bill of Rights, but changes were also made to what is described in Section 29 of the Constitution as a fundamental right, namely education.

Some of the main changes to the education system were the introduction of outcome-based education (OBE) in 1997; the establishment of the National Commission on Higher Education¹; and the promulgation of the South African Qualifications Authority Act.² The Department of Education (DoE) defines OBE as a way of designing and developing learning and documenting instruction in terms of the outcomes of these activities. In OBE the focus is shifted from objectives derived from a textbook or content outlines to objectives based on desired changes in the learner. The focus is not only on the desired outcome but also on the process of achieving this outcome.³ The main function of the South African Qualifications Authority⁴ is to register qualifications in terms of the National Qualifications Framework (NQF).⁵ Over 30 South African higher education policy initiatives were promulgated in a short space of time after 1994.⁶

The implication for higher education brought about by the new political dispensation has been far reaching. Although the issue has been discussed in detail by experts in the field of education, little scrutiny has been recorded by legal experts. In an attempt to fill this gap, the focus of this research will be on the statutory development and practical effect of the current legal framework for higher education in South Africa.

¹ Hereafter referred to as NCHE.

² 58 of 1995.

³ OBE was implemented in Grade 1 during 1998, with Grade 7 and 2 phased in during 1999. In 2000 it was implemented in Grades 3 and 8 and in 2001 it was implemented in Grades 4 and 9.

⁴ Hereafter referred to as SAQA.

⁵ SAQA and the NQF will be described in more detail in Chapter 3 of this study.

⁶ Hay and Monnapula-Mapesela in Bitzer 2009: 12.

A discussion of the motive for a changed legal framework and the development process of this legal framework for higher education⁷ will ensue, by conducting an investigative legal historical study to establish if these developments did indeed bring about the positive changes it set out to do, i.e. the banishment of discrimination, greater uniformity in standards and an overall improvement in the quality of education. The author trusts that the final document will serve as a comprehensive and systematic guide to the statutory changes to higher education in post-constitutional South Africa.

The South African Qualifications Authority (SAQA) was established in 1995 to implement the NQF. This last-mentioned framework is a list of all the recorded, approved qualifications submitted by education providers, mostly in the higher education sector. Government's main objective with the introduction of the NQF was to gradually raise the standard of higher education through nationally approved programmes and to ensure an integrated system of education and training where learners are allowed free and easy movement between qualifications and institutions.⁸ Quality assurance is of the utmost importance in striving to achieve this goal.

The New Academic Policy for Programmes and Qualifications in Higher Education of November 2001⁹ was aimed at restructuring the programme and qualification offerings in South African higher education. However, this was replaced by Report 116/1995¹⁰ which was further developed into the Higher Education Qualifications Framework (HEQF).

⁷ Hereafter referred to as HE.

⁸ This is called articulation.

⁹ Late in 1999 the Department of Education (DoE) requested the Council on Higher Education (CHE) to develop a new academic policy for higher education. Following extensive research and consultation, the CHE submitted a proposed "New Academic Policy for Programmes and Qualifications in Higher Education" to the DoE.

¹⁰ CHE publication 5 October 2007.

This report/document, titled "A qualification structure for Universities in South Africa", contains the national policy of the Minister of Education on the qualification structure for universities in South Africa, with the understanding that it carries this status for an interim period only until the recommendations of the National Commission for Higher Education will be implemented. This report became policy in November 1995. This report was replaced by the Education White Paper 3, "A Programme for the Transformation of Higher Education" in 1997.

The national academic policies which applied from 2003 to 2008 were replaced¹¹ by the HEQF¹² on 1 January 2009.

These policies are:

- a) The Qualification Structure for Universities in South Africa;¹³
- b) General Policies for Technikon Instructional Programmes;¹⁴
- c) Norms and Standards for Educators.¹⁵

1.2 Post-1994

The following three initiatives developed the basis of post-apartheid higher education policy:

- National Education Policy Investigation (NEPI) - a civil society initiative with origins in the 'people's education' movement
- The Union of Democratic University Staff Unions (UDUSA) policy forum
- The Centre for Education Policy Development linked to the African National Congress (ANC)

The ANC developed a new national education policy framework and pledged with the ANC-led government to appoint a national commission to formulate recommendations for transforming higher education in South Africa.

1.3 Formal process of policy formulation

The National Commission on Higher Education (NCHE) – this commission was established by presidential proclamation at the end of 1994.



The NCHE's report "A framework for transformation" was submitted in September 1994. In producing its recommendations, the NCHE followed an extensive process of consensus-building and received general acclaim for its work.

¹¹ Ian Bunting: UFS workshop 17 October 2009.

¹² Hereafter referred to as HEQF.

¹³ Report 116, November 1995.

¹⁴ Report 150, January 1997.

¹⁵ *Government Gazette* 2000: 415(20844).

↓
A further consultation process around the NCHE's recommendations was needed before the recommendations could be turned into policy. This was led by the Ministry and the new DoE.
↓
The NQF was introduced in South Africa in 1995. This was an 8-level framework in terms of which all higher education qualifications were constructed. The lowest entry-level higher education qualification was at level 5 (with the Senior Certificate or matric presumed to be a level 4 qualification) and the highest higher education qualification was at level 8 which comprised Master's and doctoral degrees. The NQF was passed into law as the SAQA Act and the objectives of the NQF are outlined in the Act.
↓
The SAQA Act had been accepted before the publication of the NCHE report. SAQA ¹⁶ was established in 1995 by the then Ministers of Labour and Education. ¹⁷
↓
In terms of the 1996 Constitution, ¹⁸ education at all levels except the tertiary level became a functional area of concurrent and provincial competence. Thus the DoE ¹⁹ held administrative responsibility for higher education at national level and established a Higher Education Branch (HEB, 1995) to provide much-needed capacity.
↓
This was followed by a Green Paper in December 1996 and a draft White Paper in April 1997.
↓
The DoE managed to forge broad consensus in the new higher education policy published in July 1997 as "Education White Paper 3: A Programme for the Transformation of Higher Education". This document is also referred to as merely "The White Paper". The White Paper formulated policy in support of an intention to transform higher education through the development of a programme-based higher education system that is planned, funded and governed as a single coordinated system.
↓
This White Paper replaced "A Qualification Structure for Universities in South Africa" - NATED Report 116 (99/02).
↓
The Higher Education Act ²⁰ gave legal form to the values, principles and core concepts of the abovementioned policies.
↓
The South African Council on Higher Education ²¹ was established in May 1998 in terms of the Higher Education Act and is an independent statutory body. The members of this

¹⁶ The functions of SAQA are mainly to: 1) advance the objectives of the NQF; 2) oversee the further development of the NQF; and 3) co-ordinate the sub-frameworks.

¹⁷ Grové 2001: 4-1.

¹⁸ 108 of 1996.

¹⁹ Hereafter referred to as the DoE.

²⁰ 101 of 1997.

²¹ Hereafter referred to as CHE.

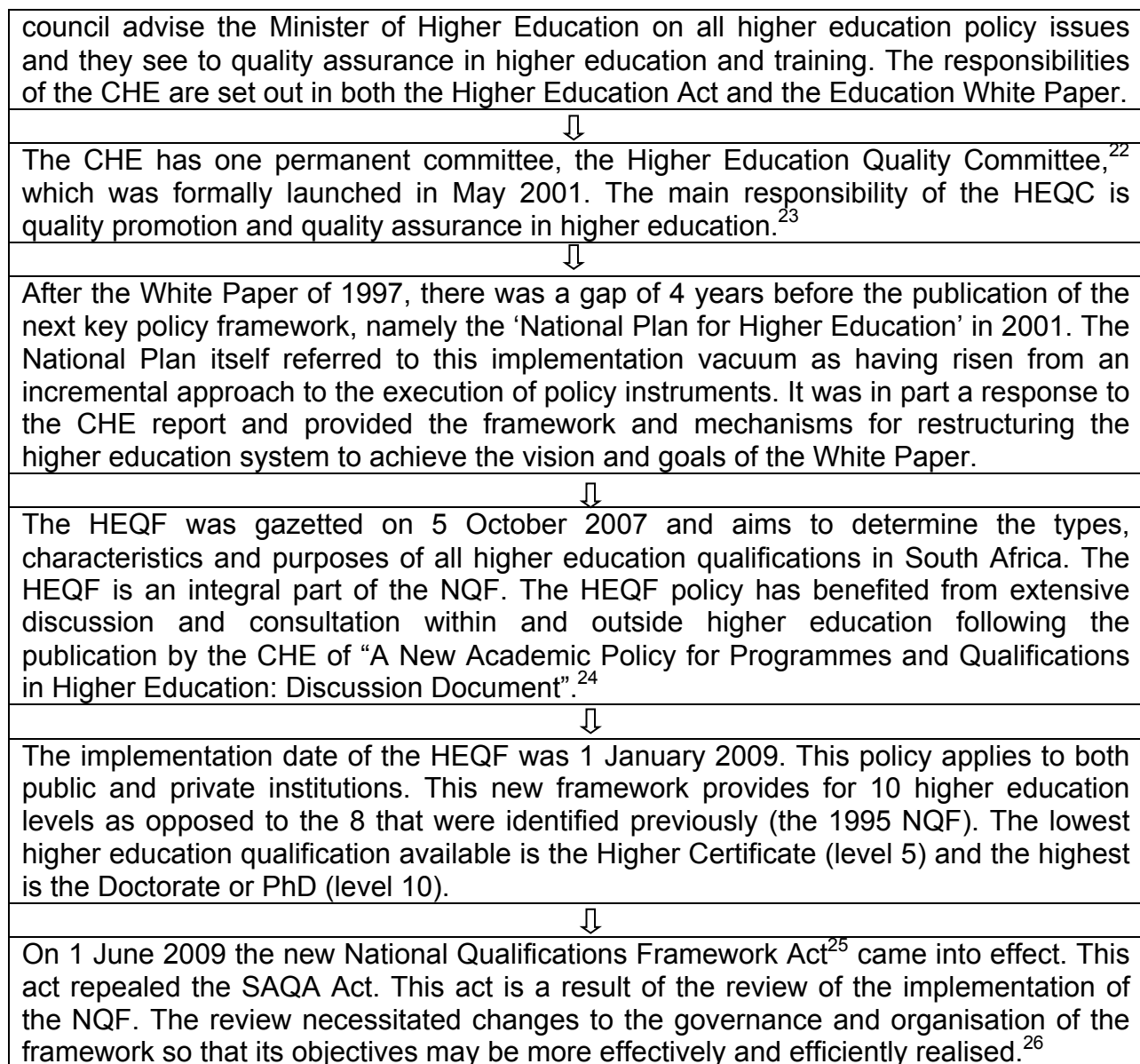


Figure 1: Schematic representation of the development of higher education in South Africa for the post-1994 period.

As indicated above, it is apparent that key changes took place in the field of education after 1994. Numerous legislation and policies governing South African higher education

²² Hereafter referred to as HEQC.

²³ They have 3 main functions: 1) to promote quality in higher education; 2) to audit the quality assurance mechanisms of higher education institutions; and 3) to accredit programmes of higher education.

²⁴ 2002.

²⁵ 67 of 2008.

²⁶ Preamble of Act 67 of 2008.

were implemented that shaped the 'new' face of South African higher education. Chapter 2 offers an in-depth investigation of these new developments. The chapter will start with a short overview of the position before 1994, after which the post-1994 developments will be elaborated on.

Chapter 2: Legislation and policies governing South African higher education pre- and post-1994

2.1 Overview

Before 1994 the South African higher education system was shaped by apartheid ideologies which promoted a division of the education system along race and ethnicity lines.²⁷ This led to the National Education Coordinating Committee (NECC) initiating higher education policy proposals after the disbanding of the African National Congress (ANC) in 1990. The NECC comprised of teachers, parents and students from disadvantaged groups and was formed in 1985.²⁸ They advocated for a non-racist, non-sexist, democratic, unitary system of education.

The pre-1994 system was characterised by a rigid set of distinctions and divisions. The first cluster of divisions was instituted according to membership of certain racial and ethnic groups. In terms of the 1983 Constitution, all coloured education became the responsibility of the Minister of Education and Culture, Administration: House of Representatives.²⁹ All Indian education fell under the Minister of Education and Culture, Administration: House of Delegates. White education prior to September 1974 was the responsibility of the Department of National Education and in terms of the 1983 Constitution, provincial education departments became sub-departments of the Department of Education and Culture, Administration: House of Assembly and higher education became the responsibility of this Minister. African education was administered by the Minister of Education and Training, including Higher Education Institutions³⁰ designated for Africans.

All public higher education institutions were designated for a particular “race” and students from another “race” could not be admitted without special permits obtained by that particular higher education institution’s administering government department. This situation led to a differentiation in governance and funding arrangements. The

²⁷ Mapesela and Hay 2005: 113.

²⁸ Mapesela: Class notes of HOS 710 April 2006.

²⁹ CHE Publication 2004: 23.

³⁰ Hereafter referred to as HEI’s.

fragmentation of institutional types was reflected in the unevenness of governance arrangements and, under the apartheid regime, the relationship between individual public institutions and the state varied considerably. The ten universities reserved for white students enjoyed considerable autonomy and they were funded with block grants allocated on a formula basis according to retrospective student enrolments, research outputs and a number of other factors.

The four English-medium universities emerged as centres of opposition to apartheid policies but were subjected to comparatively little state interference as a consequence. This freedom was equal to that of the Afrikaans-medium universities. They also enjoyed a large degree of freedom in the deployment of their block grants in internal budgeting. Autonomy was relative in the sense that all historically white institutions had to operate within state structures and they collaborated directly with the apartheid project.

The six universities in the “bantustans” and self-governing territories were specifically designed as extensions of these bureaucracies, with tight controls over the appointment of teaching staff and similar attempts to control the curriculum. Their budgets were line-item extensions of administration budgets, as an integral part of the civil service. Technikons had nationally controlled and synchronised curricula and weak or non-existent traditions of academic freedom.³¹ Before 1993, technikons did not award degrees and also did not enjoy their own “independent sphere”, but were subject to central control of their curricula, examinations and certification.

Another set of divisions was made between institutional types: that of universities, technikons and colleges. Legally, each university was a “corporation” founded by an act of Parliament – meaning that its functions were prescribed and could be terminated by the state, but, in policy terms, a university was “an independent sphere of societal relationships”. This meant that as long as the university existed the state could not interfere directly and neither could a university interfere in the affairs of the state.³²

³¹ CHE publication 2004: 174.

³² CHE publication 2004: 23.

In the post-1990 period, three initiatives began to develop the basis for post-apartheid higher education policy:³³ the National Education Policy Investigation (NEPI); the Union of Democratic University Staff Unions (UDUSA) policy forum; and the Centre for Education Policy Development, linked to the ANC.

Between 1990 and 1993 there was a National Education Policy Investigation (NEPI) which held discussions between the NECC and the National Party (NP). The NEPI started the transformation debate by proposing various policies influencing almost all levels and aspects of higher education. The main purpose of their investigation was to question policy options in all areas of education within a framework derived from the ideals of the broad democratic movement. The work of the NEPI and the transformation it advocated were sustained by the National Commission on Higher Education (NCHE) which set a framework for higher education transformation in the post-1994 era.³⁴

2.2 A need for change

Section 29(3)³⁵ of the Bill of Rights states the conditions for establishment of educational institutions. It is clearly apparent that the previous dispensation did not adhere to these criteria, giving rise to the disparity which followed.

Addressing this disparity and aligning higher education with the new constitutional values was an urgent priority after 1994. Therefore, in 1996, the NCHE responded to these transformation needs in higher education by laying down a framework and identifying some fundamental principles to guide and direct the process of transformation. These principles included: equity and redress, diversity, quality, institutional autonomy and public accountability. The principle of equity and redress had the biggest impact on historically “white” universities which only served the needs of a

³³ CHE publication 2004: 24.

³⁴ Mapesela and Hay 2005: 113.

³⁵ (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that-

- (a) do not discriminate on the basis of race;
- (b) are registered with the state; and
- (c) maintain standards that are not inferior to standards at comparable public educational institutions.

homogeneous group of students and staff cohorts since they had to widen their access to other race groups and increase their enrolments of previously disadvantaged students. Diversity entails a shift in the demographics of students as well as in the staff profiles by race, gender, social status and physical status. Quality assurance and quality practices are a high priority for all higher education stakeholders and academics are encouraged to revisit their teaching methods as well as their research outputs.³⁶ Institutional autonomy and the demand to be more accountable can be problematic because the latter may be viewed as an infringement of an institution's autonomy. The NCHE described the benchmark of a transformed higher education as increased participation, greater responsiveness, and increased cooperation and partnerships. These were also issues that needed to be addressed in order to reform the higher education system in South Africa.

Policy developments took place as a result of the NCHE investigations. These policy developments were: The Green Paper of December 1996, the Draft White Paper of April 1997, and the Education White Paper 3 of July 1997.³⁷

2.3 A balancing of constitutional values and institutional autonomy

This 'independence' of societal relationships was a major change in the South African Education field. In terms of the 1996 Constitution,³⁸ education at all levels except the tertiary level became a functional area of concurrent and provincial competence. Thus the DoE had administrative responsibility at national level for higher education and had established a Higher Education Branch (HEB)³⁹ to provide much-needed capacity.

Section 8(4) states that a juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person. Therefore a university is also entitled to the rights stipulated in this bill, since it is a juristic person. Public universities are semi-private juristic persons, since they are not state-owned, but receive state subsidy. The relationship between the activities of the

³⁶ Mapesela and Hay 2005: 114.

³⁷ CHE publication 2004: 25.

³⁸ Section 29.

³⁹ 1995.

juristic person and the fundamental rights of the natural persons behind the juristic person are important since section 8(4) foresees that there should be a link between protecting the activity of the juristic person and protecting the fundamental rights of the natural persons behind the juristic person.⁴⁰ Section 29 of the Bill of Rights is known as the “Education clause” which states that everyone has the right to education.⁴¹ Although this clause is mainly focused on primary and secondary education, the same principles should be applied to higher education. Section 29(1) refers to basic education, adult education and further education, but the rights that apply to these types of education can also be implemented in higher education.

According to section 2 of the Constitution, this Constitution is the supreme law of South Africa and any law or conduct inconsistent with it is invalid. Furthermore, the obligations imposed by it must be fulfilled.

Section 7(2) and (3) state that the state must respect, protect, promote and fulfil the rights in the Bill of Rights and these rights are subject to the limitations contained or referred to in section 36

⁴⁰ Currie and De Waal 2005: 38.

⁴¹ “(1) Everyone has the right-

- (a) to a basic education, including adult basic education; and
- (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions, where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-

- (a) equity;
- (b) practicability; and
- (c) the need to redress the results of past racially discriminatory laws and practices.

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that-

- (a) do not discriminate on the basis of race;
- (b) are registered with the state; and
- (c) maintain standards that are not inferior to standards at comparable public educational institutions.

(4) Subsection (3) does not preclude state subsidies for independent educational institutions.”

The question that arises concerns the limitations placed on higher education institutions through the implementation of numerous policies and legislation and its validity in terms of the rights granted by the Bill of Rights⁴²

Section 36 of the Constitution is known as the “limitation clause”. This section clearly states under which the rights granted by the Bill of Rights may be limited. Section 36(1) states that “the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors...”

These factors include:

- The nature of the right;
- The importance of the purpose of the limitation;
- The nature and extent of the limitation;
- The relationship between the limitation and its purpose; and
- Less restrictive means to achieve the purpose.

Taking the relevant factors into account, the limitations imposed on higher education institutions is justified, since the pre-1994 higher education system was not based on the principles of an open and democratic society, i.e. human dignity, equality and freedom. Therefore, these inequalities need to be rectified.

2.4 Education White Paper 3: A Programme for the Transformation of Higher Education

The White Paper 3 was developed as a consequence of the need to bring higher education closer to reflecting the constitutional values. This July 1997 paper, titled “A Programme for the Transformation of Higher Education”, which followed the Green Paper of December 1996, was the result of investigations done by the NCHE. The main purpose of this (White Paper 3) policy was to identify the different intervention strategies

⁴² This will be discussed in detail in Chapter 3.

necessary for higher education transformation and it outlined and described the challenges, needs, purposes, and goals of a future higher education system.⁴³

The national goals of the White Paper were:

- A planned, funded and governed singly coordinated education system;
- A programme-based higher education system;
- Open education opportunities for all;
- The diversification of institutional missions and programmes;
- Advancement of research capacity; and
- Human resource development

The institutional goals of the White Paper were:

- Democratised governance;
- Cooperation between higher education and other sectors;
- Free and open/critical academic climate;
- Social responsibility; and
- Institutional culture of respect and tolerance.

The White Paper also aimed at redesigning the higher education landscape to benefit all the stakeholders equally and advocated for expansion in post-graduate enrolments at Master's and doctorate levels as one way of addressing the deficit in high-level skills necessary for social and economic development and to provide for the needs of the academic labour market.⁴⁴ To cater for this increase in students, the White Paper also made provision for building capacity in academic management, governance and infrastructure.

⁴³ Mapesela and Hay 2005: 116.

⁴⁴ Mapesela and Hay 2005: 117.

2.5 The National Plan for Higher Education

After the White Paper 3 there was a gap of some four years before the next key policy, namely the National Plan for Higher Education was published.⁴⁵

The National Plan for Higher Education Transformation (NPHE) is a policy which was launched in March 2001 and it set out envisaged strategies for the transformation of South African higher education. This policy gave effect to the visions of the White Paper 3 and also supported all the other higher education policies which came before it, i.e. it emphasises equity and redress as matters of high priority.⁴⁶ The NPHE contains clear targets which higher education institutions should be striving for in terms of student and staff participation rates, as well as enrolment figures for science and technology programmes.

“According to the National Plan the combination of planning and funding levers to achieve policy objectives involves a model of implementation in which the Ministry will determine overall goals for the higher education system and establish incentives and sanctions to steer the system towards those goals.”⁴⁷

The main goals of the NPHE are:

- a) To achieve equity and diversity;
- b) To promote and sustain research; and
- c) To restructure the institutional landscape.

An important result of the White Paper 3 and NPHE is the Higher Education Act⁴⁸ which regulates the South African higher education system. This was the first formal act relating to higher education formulated since 1994.

2.6 The Higher Education Act 101 of 1997

This Act gave legal form to the values, principles and core concepts of policy, making provision for.⁴⁹

⁴⁵ CHE publication 2004: 26.

⁴⁶ Mapesela and Hay 2005: 125.

⁴⁷ Mapesela and Hay 2005: 126.

⁴⁸ 101 of 1997.

- System-level governance: The establishment in law of the CHE (Council on Higher Education), which is an independent, expert body which would give strategic advice to the Minister of Education on matters of higher education policy, in order to support the development and transformation of higher education in South Africa;
- The establishment, declaration, merger and closure of public higher education institutions;
- Institutional governance: The Act set out statutory provisions for the roles, responsibilities and composition of institutional councils, senates and institutional forums;
- Funding: The Minister of Education must determine funding policy for public higher education institutions. It further stipulates that higher education institutions must furnish an annual report of governance, together with audited statements of income and expenditure and various other financial statements;
- Language: The Act states the Minister must determine a language policy for higher education to guide institutional language policies;
- Private higher education institutions: It sets out arrangements for the registration of private higher education institutions;
- The Act abolished the University and Technikon Advisory Council and replaced it with the CHE and made provision for procedures to abolish the statutory status of the Committee of University Principles (CUP), the Committee of Technikon Principles (CTP) and the Matriculation Board.

There have been frequent amendments to the Act since its promulgation. Some of these amendments⁵⁰ were seen by higher education institutions as curbing their institutional autonomy and thus changing the practice of cooperative governance advocated by policy.⁵¹

⁴⁹ CHE publication 2004: 30.

⁵⁰ In 1999: The empowerment of the Minister to appoint an administrator for a public HEI in which financial of other maladministration has occurred; in 2001: the empowerment of the Minister to determine the seat/physical location of an institution; and the general limits set on institutional overdrafts and capital expenditure.

⁵¹ CHE publication 2004: 31.

The aim of this act is to regulate higher education by establishing a Council on Higher Education (CHE) for purposes of this regulation and to ensure quality assurance.⁵² This act also regulates the establishment and merger of higher education institutions and sets out governance structures. It guides the funding of the institutions and regulates general matters such as name changing. The act also established the HEQC (Higher Education Quality Committee) and gave to the formulation of other policies.⁵³

2.7 HEQC and Quality Assurance

The HEQC was established according to the Higher Education Act and to achieve the government's main objective of gradually raising the standard of education. To this end, a quality assurance system was put in place.

The NCHE made provision for the HEQC as an umbrella, independent statutory body, to co-ordinate quality assurance in higher education.⁵⁴ Their focus was on quality assurance at the institutional and programme levels, recognising that separate structures and procedures were necessary to assess research quality and productivity.⁵⁵ The higher education transformation process led to the acceptance of a number of policy documents and related acts to establish the political forum for a quality assurance system on macro-level.

The SAQA Act⁵⁶ was accepted before the publication of the NCHE Report. It provided for the establishment of bodies responsible for the registering and monitoring of the achievements of education providers in offering programmes that meet the standards and qualifications on the NQF.⁵⁷ The Higher Education Act⁵⁸ is a result of the Green and White Papers. Section 7 of this Act makes provision for the establishment of the

⁵² Mapesela and Hay 2005: 118.

⁵³ These policies include:

- Language Policy Framework for Higher Education (November 2002);
- Redress Policy (November 2003);
- National Higher Education Information and Applications Service (March 2004).

⁵⁴ Van der Westhuizen 2006: 2.

⁵⁵ Van der Westhuizen 2006: 2.

⁵⁶ 58 of 1995.

⁵⁷ Van der Westhuizen 2006: 2.

⁵⁸ 101 of 1997.

HEQC.⁵⁹ The prescribed functions of the HEQC include programme accreditation, institutional auditing and quality promotion.

The CHE has a clear policy to fulfil as well as an operational responsibility with regard to quality assurance.⁶⁰ A task team was established to advise the CHE on the most appropriate way to fulfil its quality assurance responsibilities. The task team proposed two options to the CHE: a model where the HEQC would function as a national body which itself would accept operational responsibility for quality assurance and a model where operational responsibility was developed to collective institutional arrangements.⁶¹

In June 1999 the CHE set up the interim HEQC to investigate how to establish a national quality assurance system for South Africa.⁶² The interim HEQC investigated past and current quality assurance activities. As a result of these investigations a founding document was drafted and the existence of the permanent HEQC is based on the final founding document.⁶³ The HEQC started functioning from May 2001.

The CHE took over accreditation activities for private higher education institutions from SAQA in July 2000 and they are accredited as an Education and Training Quality Assurance body (ETQA) for higher education.⁶⁴ However, with the implementation of the HEQF on 1 January 2009, all new higher education qualifications submitted for registration on the NQF and for accreditation by the HEQC (Higher Education Quality Committee) as well as existing programmes and qualifications must conform to the requirements of the HEQF.

⁵⁹ In terms of Section 7(3): "The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality assurance and quality promotion functions of the CHE in terms of this Act and the National Qualifications Framework Act".

⁶⁰ Section 5(c) of the Higher Education Act requires that the CHE promotes quality assurance in higher education; audit the quality assurance mechanisms of the higher education institutions and accredit the programmes of higher education institutions.

⁶¹ CHE 1998. CHE Quality Task Team Report. Unpublished HEQC document drafted by Prof. Mala Singh. 12 November.

⁶² Van der Westhuizen 2006: 5.

⁶³ Van der Westhuizen 2006: 5.

⁶⁴ Van der Westhuizen 2006: 5.

In accordance with the Higher Education Act and the ETQA responsibilities, the HEQC of the CHE interprets its mandate as follows.⁶⁵

- Promote quality among constituent providers in higher education in order to facilitate the development of quality awareness and quality responsiveness in public and private provision;
- Audit the quality assurance mechanisms of higher education institutions;
- Accredite providers of higher education to offer programmes leading to particular NQF-registered qualifications by certifying that they have the systems, processes and capacity to do so. In relevant cases, this will be done co-operatively with professional councils and SETA's;
- Co-ordinate and facilitate quality assurance activities in higher education within a partnership model with other ETQA's.

2.8 Other important post-1994 statutory developments

Another important policy initiative which exercised a great impact on academics in South Africa was the implementation of the South African Qualifications Authority Act⁶⁶. Other important acts that were developed post-1994 and which also regulate higher education in South Africa directly or indirectly are:

- the Skills Development Act;⁶⁷
- the Skills Development Levies Act;⁶⁸
- the Employment Equity Act;⁶⁹ and
- the Labour Relations Act⁷⁰.

The post-1994 policy process in South Africa has shown the enormous complexity of large-scale transformative policy change. Policies are formulated in response to problems. They are then adopted, implemented and then evaluated, at which point they

⁶⁵ Van der Westhuizen 2006: 6.

⁶⁶ 58 of 1995.

⁶⁷ 97 of 1998.

⁶⁸ 9 of 1999.

⁶⁹ 55 of 1998.

⁷⁰ 66 of 1995.

are then either maintained or terminated. The South African higher education sector displays complex, multi-layered, interactive and intersecting policy development and implementation, and is sure to continue to do so.⁷¹

Through the pattern of developments after 1994 it is clear that change is not exclusively driven by the state and national policy. It has also been propelled from within the higher education sector and by economy and society, and anyone of these factors may have a dominant influence.⁷² The first era (before 1994) was symbolic policy: the conceptualisation and establishment of principles. The second era was the concrete era: the implementation and realism of these principles. These principles (to rectify the division in the education system and have a unitary education system) are realised by the implementation of policies, frameworks and acts. The SAQA and the NQF are examples of these policies and frameworks.

Chapter 3 has its main focus on the South African Qualifications Authority and recent developments with regard to policies and legislation in higher education.

⁷¹ CHE publication 2004: 36.

⁷² CHE publication 2004: 37.

A graphic illustration of the higher education system in South Africa prior to 1994 is provided below.

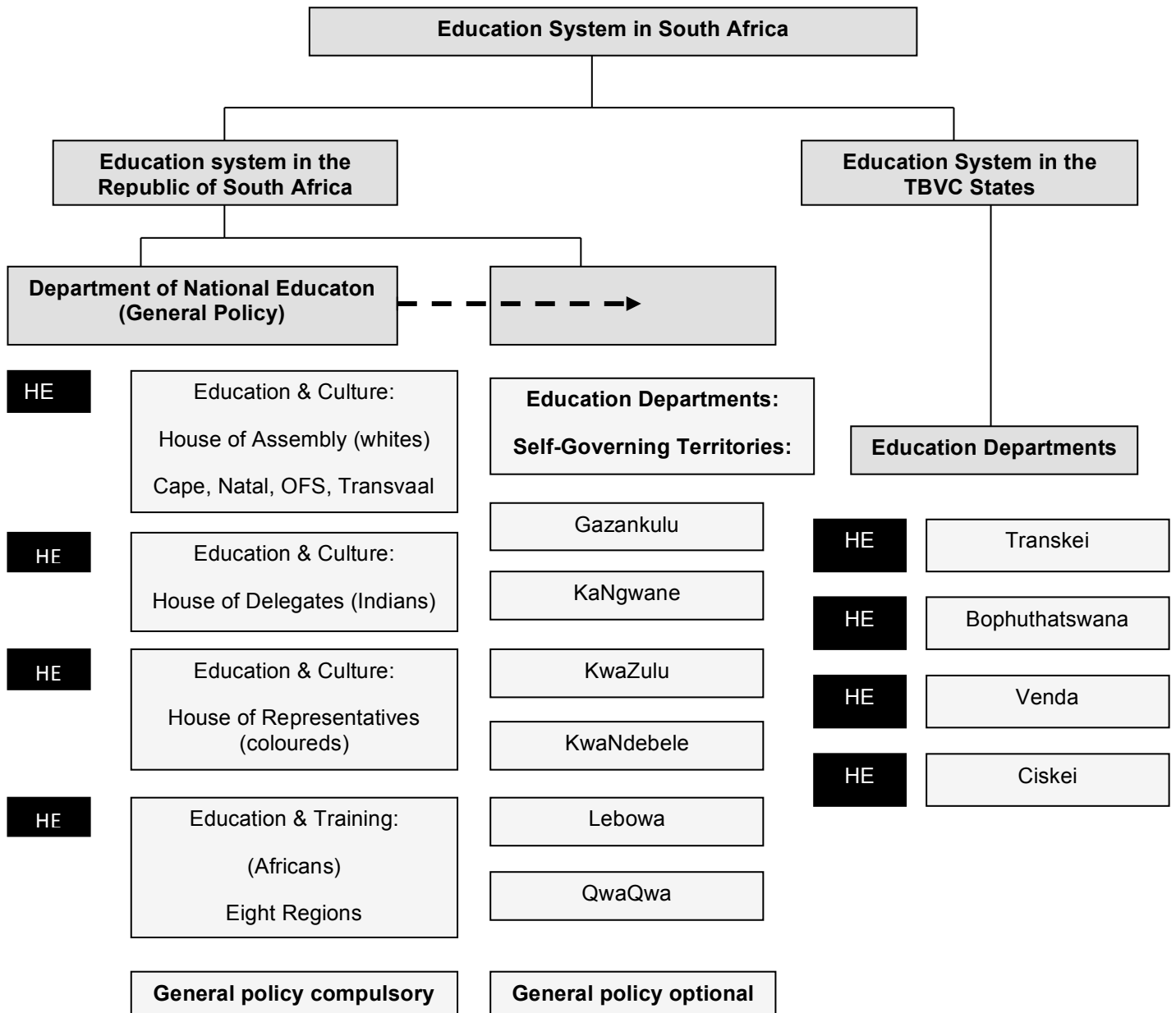


Figure 2: Pre-1994 Public Education and Higher Education System in South Africa⁷³

⁷³ Adapted from CHE publication "South African Higher Education in the First Decade of Democracy". November 2007.

Chapter 3: South African Qualifications Authority and recent developments with regard to policies and legislation in higher education

3.1 South African Qualifications Authority (SAQA)

It has been suggested that policy goals are unlikely to be achieved simply by developing more assertive, centrally driven, comprehensive and coordinated policies and plans. An understanding of the complexity of the system is needed, together with close monitoring of policy implementation and a review of system-level governance.⁷⁴

The South African Qualifications Authority or SAQA as it is more commonly known is a juristic person, who is given legal personality by law.⁷⁵ The motivation behind the establishment of SAQA was to register qualifications in terms of the NQF. They were mandated by the repealed SAQA Act.⁷⁶ The South African Qualifications Authority Act⁷⁷ was repealed by the National Qualifications Framework Act.⁷⁸

SAQA's role is to advance the objectives of the NQF,⁷⁹ to oversee further development of the NQF and to co-ordinate the sub-frameworks.⁸⁰ SAQA must also advise the Ministers of Education and Labour on NQF matters in terms of the NQF Act. SAQA is responsible for implementing the policies and decisions of the Board.⁸¹

⁷⁴ CHE publication 2004: 37.

⁷⁵ SAQA Act 68/1995.

⁷⁶ 58 of 1995.

⁷⁷ 58 of 1995.

⁷⁸ 67 of 2008.

⁷⁹ The objectives of the NQF are: To create an integrated national framework for learning achievements; Facilitate access to, and mobility and progression within education, training and career paths; Enhance the quality of education and training; Accelerate the redress of past unfair discrimination in education, training and employment opportunities; Contribute to the full personal development of each learner and the social and economic development of the nation at large.

⁸⁰ SAQA website: 9 June 2010.

⁸¹ The South African Qualifications Board appointed by the Minister of Education, after consultation with the Minister of Labour. It consists of 12 members.

The NQF is the set of principles and guidelines by which records of learner achievements are registered to enable national recognition of acquired skills and knowledge, thereby ensuring an integrated system that encourages life-long learning.⁸²

In respect of qualifications, SAQA has the following role.⁸³

- 1) It must develop and implement policy and criteria for the development, registration and publication of qualifications and part-qualifications, which must include certain requirements⁸⁴, after consultation with the Quality Councils;⁸⁵
- 2) SAQA must register a qualification or part-qualification recommended by a QC if it meets the relevant criteria; and
- 3) SAQA must develop policy and criteria, after consultation with the QC's, for assessment, recognition of prior learning and credit accumulation and transfer.

SAQA must ensure that South Africa has:

- A standards setting system;
- A quality assurance system; and
- A comprehensive information system that supports the NQF.

This constitutes a great change in the post-1994 higher education system since it aims to create a uniform system to rectify and replace the divided system of the pre-1994 era.

SAQA must maintain a national learner record database comprising registers of national qualifications, part-qualifications, learner achievements, recognised professional bodies, professional designations and associated information.⁸⁶ This is important to ensure that records are available in cases of Recognition of Prior Learning (RPL).⁸⁷ It is SAQA's

⁸² NQF website: 10 September 2010.

⁸³ SAQA website: 9 September 2010.

⁸⁴ SAQA website: 9 September 2010.

⁸⁵ Hereafter referred to as QC. QC's are sector-based structures responsible for the development and quality assurance of qualifications in the sub-frameworks of the NQF. There are 3 QC's for the three main sectors of education, namely: general and further education and training, higher education and lastly the occupational sector. According to the Higher Education Amendment Act, the CHE is the QC for Higher Education.

⁸⁶ SAQA website: 29 June 2010.

⁸⁷ Hereafter referred to as RPL. RPL is described in The Recognition of Prior Learning Policy of the University of the Free State as "prior learning that is given a value, by having it affirmed, acknowledged, assessed or certified. RPL is

responsibility to inform the public about the NQF.⁸⁸ Therefore, SAQA supports the development and implementation of the NQF to ensure the full development of each learner and to ensure that the NQF contributes to the social and economic development of the nation as a whole. SAQA is accountable to the Minister of Education according to section 12 of the NQF Act.⁸⁹

The promulgation of the HEQF policy constitutes an important element in the process of bringing about policy and legislative changes informed by review of the implementation of the NQF.⁹⁰ The revision of the NQF has significant implications for all the stakeholders, including SAQA.

3.2 Higher Education Qualifications Framework

The HEQF, which is set out in the Schedule as policy in terms of section 3 of the Higher Education Act⁹¹ is an integral part of the NQF Act.⁹² The HEQF provides the basis for integrating all higher education qualifications into the NQF and its structures for standards generation and quality assurance.⁹³ The HEQF applies to both private and public institutions. The HEQF's implementation date was 1 January 2009 and all new higher education qualifications that are submitted for registration on the NQF and accreditation by the HEQC (Higher Education Quality Committee) as well as existing programmes and qualifications must conform to the requirements of the HEQF.

intended to support the transformation of South Africa's education system and to act as a vehicle for lifelong learning."

⁸⁸ SAQA website: 29 June 2010.

⁸⁹ 67 of 2008.

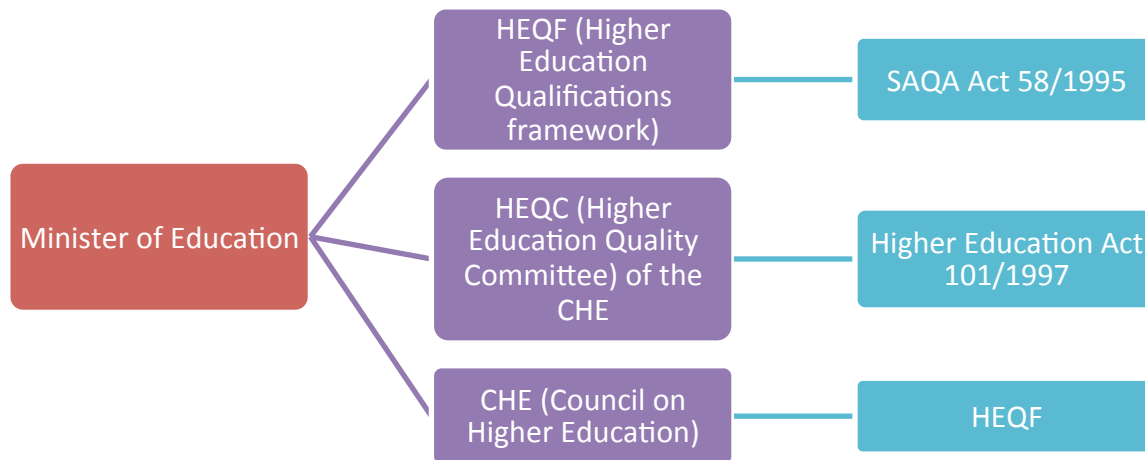
⁹⁰ CHE Joint communiqué 2008: 1.

⁹¹ 101 of 1997.

⁹² 67 of 2008.

⁹³ CHE document 2007: 1.

The following is a diagram of the responsibilities of the different regulatory bodies in terms of the HEQF:⁹⁴



- Minister of Education – Overall responsibility for norms and standards of higher education, including the qualifications structure for the higher education system;
- HEQF – Higher Education Qualifications Framework recognises the role of SAQA to be that of registering standards and qualifications in terms of the SAQA Act (Act 58/1995);
- HEQC of the CHE – holds responsibility for quality assurance in higher education in terms of the Higher Education Act (Act 101 of 1997);
- The CHE – assigned responsibility for the generation and setting of standards for all higher education qualifications and for ensuring that such qualifications meet SAQA's criteria for registration on the NQF. This responsibility is in terms of the HEQF.

⁹⁴ Joint DoE, SAQA and CHE document 2008: 4.

The HEQF is designed in such a way that it is easily understood by members of the public and therefore promotes public confidence in the academic standards of higher education institutions.

This framework also allows higher education institutions to design educational offerings to realise their different visions, missions and institutional plans to serve their respective communities. The HEQF specifies all aspects of a qualification.

The HEQF replaced the following policy documents:

- a) A Qualification Structure for Universities in South Africa;
- b) General Policy for Technikon Instructional Programmes;
- c) Formal Technikon Instructional Programmes in the RSA; and
- d) Revised Qualifications Framework for Educators in Schooling.

This policy (HEQF) clearly defines what is meant by terms such as: “programme” and “qualification”. It also sets out the level descriptors and NQF levels, the naming of qualifications, the award of qualifications, issue of transcripts, etc.

Furthermore, the framework is intended to facilitate articulation between further and higher education, and within higher education. The latest development in terms of policies and legal frameworks in higher education was the National Qualifications Framework Act.⁹⁵

3.3 National Qualifications Framework Act 67 of 2008

In terms of section 4 of the above-mentioned act, the NQF is a comprehensive system approved by the Minister for the classification, registration, publication and articulation of quality-assured national qualifications.

The objectives of the NQF in terms of section 5 are to:

- a) Create a single integrated national framework for learning achievements;

⁹⁵ 67 of 2008.

- b) Facilitate the access to, and mobility and progression within, education, training and career paths;
- c) Enhance the quality of education and training; and
- d) Accelerate the redress of past unfair discrimination in education, training and employment opportunities.

The objectives of the NQF are designed to contribute to the full personal development of each learner and the social and economic development of the nation at large.

In terms of section 5(3), SAQA and the Quality Councils must seek to achieve the objectives of the NQF by:

- Developing, fostering and maintaining an integrated and transparent national framework for the recognition of learning achievements;
- Ensuring that South African qualifications meet appropriate criteria, determined by the Minister as contemplated in section 8, and are internationally comparable; and
- Ensuring South African qualifications are of an acceptable quality.

The sub-frameworks of the NQF are:

- General and Further Education and Training – contemplated in the GENFETQA Act;⁹⁶
- Higher Education – contemplated in the Higher Education Act;⁹⁷
- Trades and Occupations – contemplated in the Skills Development Act.⁹⁸

Chapter 4 of the NQF Act deals thoroughly with SAQA. In terms of the NQF Act, SAQA's objectives⁹⁹ are to:

- a) Advance the objectives of the NQF;

⁹⁶ 58 of 2001.

⁹⁷ 101 of 1997.

⁹⁸ 97 of 1998.

⁹⁹ Section 11.

- b) Oversee the further development and implementation of the NQF; and
- c) Co-ordinate the sub-frameworks.

One of SAQA's roles is research. SAQA must conduct or commission investigations on issues of importance to the development and implementation of the NQF, including periodic studies of the impact of the NQF on South African education, training and employment.¹⁰⁰ These findings must be published.

Chapter 5 deals with Quality Councils and their functions. Professional bodies, their cooperation with the quality councils, their recognition by SAQA, and the registration of professional bodies are contained in chapter 6 of the act.¹⁰¹

It is clear from the outline of the NQF Act that SAQA forms an integral part of the NQF and the interaction between these two is fundamental to the implementation and success of both SAQA and the NQF.

The NQF Act also makes provision for ten (10) framework levels¹⁰² and not eight (8) as was previously the case. Each level on the NQF is described by a statement of learning achievement known as the level descriptor.

¹⁰⁰ SAQA website on 29 June 2010.

¹⁰¹ 67 of 2008.

¹⁰² Framework level can be described as a series of learning achievements arranged in ascending order from one to ten.

Conclusion

Before 1994, the education system in South Africa were characterised by fragmentation, inefficiency and ineffectiveness.¹⁰³

Policy development and implementation are not unique to South Africa, but since 1994 significant changes have taken place in the education sector of South Africa. These changes in the development and implementation of policies and legislation since 1994 have been instrumental in the advancement of transformation in higher education.

The apartheid era left South Africa with a highly contested and racially segregated higher education system.¹⁰⁴ The distinction between the so-called black universities and the white universities was justified in the extension of the University Education Act of 1959.

The establishment of the so-called black universities was based on the policy of separate development and not only were universities classified according to race but also according to ethnicity. A further deformation in the entire higher education system before 1994 was the lack of equity in the distribution of resources to institutions. There were huge disparities between historically black and white institutions in terms of facilities, capacity and the uneven distribution of the student population in some disciplines such as the sciences, engineering and technology.¹⁰⁵

It is clear that universities or higher education institutions prior to 1994 were not fulfilling their duties of contributing towards social, political and economic development and did not constitute places where leaders were trained, minds were shaped and ideas formed.

It is clear that there was a desperate cry for change in the education system but in particular at higher education institutions. Basic human rights as captured in the Constitution, namely equality, human rights and freedom, non-racism and non-sexism and the right to education had to be fulfilled and therefore changes in policies and legislation were of the utmost importance.

¹⁰³ Hay and Monnapula-Mapesela in Bitzer 2009: 12.

¹⁰⁴ Hay and Monnapula-Mapesela in Bitzer 2009: 11.

¹⁰⁵ Hay and Monnapula-Mapesela in Bitzer 2009: 12.

The policies and legislation implemented since 1994 brought positive change to the structure of the higher education as it was known. The objectives of both the policies and the legislation brought hope to those seeking further education as well as to the general public.

The policies and legislation put extra pressure and workload on higher education institutions to ensure that they were timely and correctly implemented. The fact that higher education institutions were autonomous and had their own identity raised questions about whether it was fair of government to expect all higher education institutions and particularly the dominant white universities to comply with those policies and legislation. In terms of Section 36 of the Constitution, the limitations of rights clause, the limitation of rights (such as universities making their own decisions, drafting their own statutes) is justified if the infringement serves a purpose that is considered legitimate by all reasonable citizens in a constitutional democracy that values human dignity, equality and freedom above all other considerations.¹⁰⁶ Thus, the limitations placed on higher education were justified in terms of section 36. According to Hay and Monnapula-Mapesela,¹⁰⁷ the legitimacy of such an overhaul is seldom questioned, particularly by those who stand to benefit from the proper implementation of such policy.

In the strategic plan for 2010 – 2015, as published by the Department of Higher Education and Training in 2009, the Minister of Higher Education and Training, Dr. Blade Nzimande, states that the broader vision is clear: “On the demand side, the system must ensure that the skills needed to drive our country’s economic growth and social development are delivered at an increasing rate, because available, quality skills will enhance both investment and service delivery. On the supply side, the system must serve a growing number of both young people and adults; it must provide different entry points into, and pathways through the learning system; it must provide quality learning wherever learning takes place, be it a college, a university or in the workplace; and, importantly, it must provide easy pathways across the different learning sites.”¹⁰⁸ They will further give attention to the relationship between education and training in South

¹⁰⁶ Currie and De Waal 2005: 185.

¹⁰⁷ 2009: 13.

¹⁰⁸ Department of Higher Education and Training 2009: 8.

Africa, in order to adequately prepare the post-school youth for the labour market. The new NQF Act¹⁰⁹ will give effect to this goal if it is properly implemented.

The changes implemented in higher education since 1994 have contributed significantly to rectify the segregation and discrepancies of the apartheid era and the future of higher education in South Africa looks bright if the policies and legislation are effectively implemented.

The changes implemented in higher education have also affected a greater increase in learner access to higher education, as envisioned in the HEQC CHE report titled “Improving Teaching and Learning Resources”¹¹⁰. An example of this widening of access to higher education may be found in the implementation of an extended LL.B programme at the University of the Free State as of 2005.

Together with other numeracy and language requirements, students must have an admission score of 33 (previously an M-score of 34) to be admitted to the 4-year LL.B programme. This strict admission requirement caused the problem that many students were not able to gain admission to the LL.B programme. The need thus arose to arrange alternative admission to the LL.B programme. The extended programme provides greater access to the LL.B programme with a lower M-score.

The number of registrations for the extended LL.B programme from 2005 to 2010 is as follows:

Year	First registrations	Total registrations
2005	113	113
2006	103	190
2007	103	254
2008	102	274
2009	107	326
2010	107	385

The number of registrations shows that the number of students who register for the extended LL.B programme is maintained, which in turn gives rise to greater access to

¹⁰⁹ 67 of 2008.

¹¹⁰ March 2005, p.81

the LL.B programme. The greatest distinction between the 4-year and the 5-year LL.B programme lies in the difference in admission requirements. For admission to the extended LL.B programme, students only need an admission score of 28 (previously this was an M-score of 28) together with lower numeracy and language requirements. A specific curriculum was designed in order to support students with the lower TP(M)-score and thus increase their chances of success. The extended programme gets its name from the fact that the first-year modules of the 4-year programme are spread out over a 2-year period in the extended programme.

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