

**AN EXPLORATORY CASE STUDY OF THE APPLICATION OF THE SOCIAL  
JUSTICE CONCEPTS OF ACCESS, REDRESS AND EQUITY IN EXTENDED  
BACHELOR OF LAWS (LLB) PROGRAMMES AT HIGHER EDUCATION  
INSTITUTIONS IN SOUTH AFRICA**

**Thesis for the degree of Philosophiae Doctor (PhD) in Private Law**

**Faculty of Law, University of the Free State**

**Free State Province**

**Republic of South Africa**

**by**

**L VAN NIEKERK**

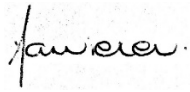
**STUDENT NUMBER: 2002011498**

**PROMOTER: Dr JG Horn**

**2025**

## DECLARATION

I, Leani van Niekerk, declare that the dissertation hereby submitted by me for the Philosophiae Doctor degree at the University of the Free State is my independent work and that I have not previously submitted it for qualification at another institution of higher education.



20 November 2025

-----

Signature

-----

Date

## **ACKNOWLEDGEMENTS**

First and foremost, I thank my Heavenly Father. This journey would not have been possible without His guidance and strength. Through every challenge, He provided the wisdom and perseverance I needed to reach each milestone. Without Him, I am nothing.

To my wonderful husband, Arno. Thank you from the bottom of my heart. Your unwavering support and patience carried me through the toughest moments. You were my sounding board, my cheerleader and my steady rock. Every word of this thesis was written with your loving encouragement.

To my two sons, Stian and Juvan, may this work be a reminder that knowledge is powerful, but the true measure of learning lies in how one uses it to make a difference in the world. I hope it inspires you to dream big and pursue your passions with purpose.

To my mother, your unconditional love has been my anchor. Thank you for always supporting me and for believing in me when the path seemed long. To my late father, who passed away a year before I completed this thesis: Dad, I've done it! I carry your memory and pride with me every day.

To the rest of my family and friends, your encouragement and love have been invaluable. A special word of thanks to Laetitia, who spent countless Saturdays sitting and writing alongside me. Your companionship and support made a world of difference.

To my promoter and dear friend, Dr Marda Horn, your wisdom, guidance and unwavering belief in my abilities were invaluable. Your mentorship not only shaped this thesis, but also me as a person.

To Hesma van Tonder, research librarian at the University of the Free State, thank you for always being willing to assist me in navigating the world of research. Your dedication and support ensured that I had the resources I needed every step of the way.

To Dr Sean van der Merwe, senior lecturer in the Department of Mathematical Statistics and Actuarial Science at the University of the Free State, your statistical

expertise and assistance with the data analysis and figures were crucial to this thesis. I am grateful for your patience and guidance.

To my head of department, Prof Elizabeth Snyman-van Deventer, and all my colleagues in the Department of Mercantile Law at the University of the Free State, thank you for your support and encouragement throughout this journey. Your faith in me gave me the confidence to keep moving forward.

I wish to express my sincere gratitude to Hendrien Rust-Swanepoel for her exceptional language editing of this thesis. Her dedication, generosity with her time and meticulous attention to detail have greatly enhanced the clarity and quality of this work. She did an outstanding job, and I am deeply appreciative of her professionalism and care.

To each person who has played a special role on this journey, this thesis is as much a reflection of your support as it is of my own effort. Thank you!



## ABSTRACT

This thesis examines how the extended Bachelor of Laws (LLB) programmes at South African universities advance social justice through access, redress and equity for underprepared students from disadvantaged backgrounds. Anchored in a social-legal framework, it critiques post-1994 higher education reforms for having broadened physical access without ensuring equitable outcomes, rendering inclusion superficial in the absence of the conditions for academic success. The study addresses the gap between the ideals of inclusion and the realities of inequality in legal education, posing the central question: How do LLB extended curriculum programmes incorporate access, redress and equity to promote both equity of access and equity of success? Subsidiary questions explore conceptual definitions, the legacy of apartheid, international comparisons and institutional strategies.

Historically, apartheid segregation entrenched inequalities in schooling and resources, necessitating extended programmes as a policy response to ensure progressive access under section 29(1)(b) of the *Constitution of the Republic of South Africa*. This research uses a mixed-methods approach to analyse the existing literature, doctrinal policies, historical contexts and empirical data from six universities in South Africa that offer the extended LLB programme. Theoretically, redress requires the dismantling of structural barriers beyond compensation; access extends to epistemological enablement; and equity demands differentiated support for comparable outcomes. Lessons from various international jurisdictions highlight context-specific pathways that may be worthwhile for South Africa to consider in institutionalising equity without compromising quality.

The research concludes that LLB extended curriculum programmes do ultimately promote equity of access as well as equity of success as transformative mechanisms, redefining merit in a contextual sense and empowering graduates as agents of change. However, social justice remains dynamic, requiring sustained resources, innovation and longitudinal evaluation to achieve constitutional transformation in legal education.

## TABLE OF CONTENTS

|                                                                                                                                      |             |
|--------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <b>DECLARATION .....</b>                                                                                                             | <b>ii</b>   |
| <b>ACKNOWLEDGEMENTS.....</b>                                                                                                         | <b>iii</b>  |
| <b>ABSTRACT .....</b>                                                                                                                | <b>v</b>    |
| <b>LIST OF TABLES .....</b>                                                                                                          | <b>xii</b>  |
| <b>LIST OF FIGURES.....</b>                                                                                                          | <b>xiii</b> |
| <b>CHAPTER 1: INTRODUCTION AND BACKGROUND .....</b>                                                                                  | <b>1</b>    |
| 1.1 RESEARCH PROBLEM.....                                                                                                            | 1           |
| 1.2 RESEARCH AIM.....                                                                                                                | 3           |
| 1.3 CONTEXTUALISATION OF THE RESEARCH.....                                                                                           | 4           |
| 1.4 CONCEPTUAL FRAMEWORK.....                                                                                                        | 7           |
| 1.5 MOTIVATION.....                                                                                                                  | 8           |
| 1.6 RESEARCH QUESTIONS .....                                                                                                         | 10          |
| 1.7 METHODOLOGY.....                                                                                                                 | 11          |
| 1.8 STRUCTURE OF THIS THESIS.....                                                                                                    | 16          |
| 1.9 CONCLUSION .....                                                                                                                 | 17          |
| <b>CHAPTER 2: DELINEATING THE SOCIAL JUSTICE CONCEPTS OF ACCESS,<br/>REDRESS AND EQUITY IN THE CONTEXT OF HIGHER EDUCATION .....</b> | <b>19</b>   |
| 2.1 INTRODUCTION .....                                                                                                               | 19          |
| 2.2 CONTEXTUALISATION OF THE CONCEPT OF SOCIAL JUSTICE .....                                                                         | 21          |
| 2.2.1 Theory of social justice .....                                                                                                 | 21          |
| 2.2.2 Criticism against the theoretical approach .....                                                                               | 23          |
| 2.2.3 International instruments on social justice .....                                                                              | 30          |
| 2.3 DELINEATING THE GENERAL CONCEPT OF SOCIAL JUSTICE IN THE<br>SOUTH AFRICAN CONTEXT.....                                           | 31          |
| 2.3.1 The general social justice concepts as found in the context of South<br>African higher education .....                         | 33          |

|                                                                                                                                                    |           |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 2.3.2 The right to education: A foundation for social justice in higher education                                                                  | 35        |
| 2.4 DELINEATING THE SPECIFIC SOCIAL JUSTICE CONCEPTS OF ACCESS, REDRESS AND EQUITY IN HIGHER EDUCATION .....                                       | 38        |
| 2.4.1 Redress in the context of higher education.....                                                                                              | 39        |
| 2.4.2 Foundation grants as a redress mechanism.....                                                                                                | 50        |
| 2.5 ACCESS TO HIGHER EDUCATION .....                                                                                                               | 51        |
| 2.5.1 Differentiating between the two types of access .....                                                                                        | 54        |
| 2.5.2 Access and social justice in higher education.....                                                                                           | 56        |
| 2.5.3 Access and success in higher education .....                                                                                                 | 62        |
| 2.6 EQUITY IN HIGHER EDUCATION .....                                                                                                               | 67        |
| 2.6.1 Capability approach in higher education.....                                                                                                 | 73        |
| 2.6.2 Equity and the cost of higher education.....                                                                                                 | 76        |
| 2.7 CONCLUSION .....                                                                                                                               | 77        |
| <b>CHAPTER 3: APARTHEID AND POST-INSTITUTIONAL APARTHEID HISTORY OF HIGHER EDUCATION .....</b>                                                     | <b>81</b> |
| 3.1 INTRODUCTION .....                                                                                                                             | 81        |
| 3.2 ORIGINS OF UNIVERSITY EDUCATION IN SOUTH AFRICA .....                                                                                          | 82        |
| 3.2.1 Origins of university education in South Africa (1829–1873) .....                                                                            | 82        |
| 3.2.2 Expansion and institutional foundations (1820–1922), including the reorganisation of higher education under the Union Government (1910–1918) | 82        |
| 3.2.3 Government oversight and the legislative framework (1923–1948).....                                                                          | 83        |
| 3.3 HIGHER EDUCATION UNDER INSTITUTIONAL APARTHEID (1948–1994)                                                                                     | 84        |
| 3.4 DEVELOPMENTS IN HIGHER EDUCATION IN THE PERIOD 1990–1994...                                                                                    | 91        |
| 3.5 HIGHER EDUCATION DEVELOPMENTS SINCE 1994.....                                                                                                  | 94        |
| 3.5.1 The National Commission on Higher Education (NCHE) and the policy reform process.....                                                        | 94        |
| 3.5.2 The implementation of the <i>Higher Education Act</i> , the Council on Higher Education, and the National Plan for Higher Education .....    | 98        |

|                                                                                                                                             |            |
|---------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 3.6 THE IMPACT OF THE 1996 <i>CONSTITUTION</i> ON HIGHER EDUCATION ..                                                                       | 102        |
| 3.7 BRIEF HISTORY OF FUNDING MECHANISMS AND THE NATIONAL<br>STUDENT FINANCIAL AID SCHEME (NSFAS) POST-1994 .....                            | 104        |
| 3.7.1 Impact of #FeesMustFall on access and funding in higher education.....                                                                | 108        |
| 3.8 CONCLUSION .....                                                                                                                        | 109        |
| <b>CHAPTER 4: INTERNATIONAL PERSPECTIVES ON ACCESS, REDRESS AND<br/>EQUITY IN HIGHER EDUCATION .....</b>                                    | <b>111</b> |
| 4.1 INTRODUCTION .....                                                                                                                      | 111        |
| 4.2 CONCEPTUALISATION OF ACCESS, REDRESS AND EQUITY IN<br>INTERNATIONAL HIGHER EDUCATION .....                                              | 114        |
| 4.3 VIEWS OF HIGHER EDUCATION AS EXPRESSED IN INTERNATIONAL<br>FRAMEWORKS AND BY GLOBAL INSTITUTIONS .....                                  | 118        |
| 4.3.1 The Sustainable Development Goals (SDGs).....                                                                                         | 119        |
| 4.3.2 United Nations Educational, Scientific and Cultural Organisation<br>(UNESCO).....                                                     | 121        |
| 4.3.3 The World Bank Group .....                                                                                                            | 123        |
| 4.4 THE APPLICATION OF THE SOCIAL JUSTICE CONCEPTS OF ACCESS,<br>REDRESS AND EQUITY IN HIGHER EDUCATION IN DIFFERENT<br>JURISDICTIONS ..... | 125        |
| 4.4.1 Developed countries .....                                                                                                             | 126        |
| 4.4.2 Developing countries .....                                                                                                            | 140        |
| 4.5 CONCLUSION .....                                                                                                                        | 151        |
| <b>CHAPTER 5: THE EXTENDED LLB PROGRAMME – A SOUTH AFRICAN<br/>PERSPECTIVE .....</b>                                                        | <b>156</b> |
| 5.1 INTRODUCTION .....                                                                                                                      | 156        |
| 5.2 CLARIFICATION OF TERMINOLOGY .....                                                                                                      | 159        |
| 5.3 ACADEMIC DEVELOPMENT PROGRAMMES AS A FORERUNNER TO<br>EXTENDED CURRICULUM PROGRAMMES .....                                              | 161        |
| 5.3.1 The three phases of academic development .....                                                                                        | 162        |

|                                                                                                                                                                                 |     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 5.4 THE DEVELOPMENT OF EXTENDED CURRICULUM PROGRAMMES IN GENERAL.....                                                                                                           | 167 |
| 5.5 DIFFERENT TYPES OF EXTENDED CURRICULUM PROGRAMMES.....                                                                                                                      | 169 |
| 5.6 SOUTH AFRICAN UNIVERSITIES OFFERING LLB EXTENDED CURRICULUM PROGRAMMES.....                                                                                                 | 172 |
| 5.7 NEW-GENERATION EXTENDED CURRICULUM: FLEXIBLE DEGREE AS A PROPOSED IMPROVED TYPE OF EXTENDED CURRICULUM PROGRAMME .....                                                      | 174 |
| 5.8 THE DEVELOPMENT OF THE CAREER PREPARATION PROGRAMME AND RECOGNITION OF PRIOR LEARNING AS FORERUNNERS FOR EXTENDED CURRICULUM PROGRAMMES AT THE UNIVERSITY OF THE FREE STATE | 178 |
| 5.9 DEVELOPMENT OF THE EXTENDED CURRICULUM PROGRAMME AT THE UNIVERSITY OF THE FREE STATE .....                                                                                  | 181 |
| 5.10 NATIONAL COMPARATIVE STUDY OF UNIVERSITIES THAT OFFER LLB EXTENDED CURRICULUM PROGRAMMES .....                                                                             | 187 |
| 5.11 RESEARCH METHODOLOGY .....                                                                                                                                                 | 188 |
| 5.12 RESEARCH DESIGN .....                                                                                                                                                      | 189 |
| 5.13 DATA COLLECTION METHOD .....                                                                                                                                               | 191 |
| 5.13.1 Information requested via the questionnaire .....                                                                                                                        | 193 |
| 5.13.2 Administering the questionnaire.....                                                                                                                                     | 196 |
| 5.14 ANALYSING AND INTERPRETING THE DATA.....                                                                                                                                   | 196 |
| 5.15 VALIDITY AND RELIABILITY OF THE CASE STUDY .....                                                                                                                           | 197 |
| 5.15.1 Construct validity .....                                                                                                                                                 | 198 |
| 5.15.2 Internal validity.....                                                                                                                                                   | 198 |
| 5.15.3 External validity.....                                                                                                                                                   | 199 |
| 5.15.4 Reliability .....                                                                                                                                                        | 200 |
| 5.16 ETHICAL CONSIDERATIONS.....                                                                                                                                                | 200 |
| 5.17 LIMITATIONS OF THE RESEARCH.....                                                                                                                                           | 201 |
| 5.18 DISCUSSION OF THE DATA.....                                                                                                                                                | 203 |

|                                                                                                                                            |            |
|--------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 5.19 ANALYSIS OF DEMOGRAPHIC (GENDER AND RACE) DATA.....                                                                                   | 203        |
| 5.19.1 Student headcount: First-time entering newcomers.....                                                                               | 204        |
| 5.19.2 Student headcount: All years .....                                                                                                  | 206        |
| 5.19.3 Proportion of students identifying as female: First-time entering newcomers .....                                                   | 207        |
| 5.19.4 Proportion of students identifying as female: All years .....                                                                       | 208        |
| 5.19.5 Proportion of students classified as African: First-time entering newcomers .....                                                   | 209        |
| 5.19.6 Proportion of students classified as African: All years .....                                                                       | 210        |
| 5.19.7 Proportion of students classified as black: First-time entering newcomers .....                                                     | 211        |
| 5.19.8 Proportion of students classified as black: All years .....                                                                         | 212        |
| 5.20 DISCUSSION OF THE DEMOGRAPHIC DATA AND HEADCOUNTS.....                                                                                | 212        |
| 5.21 DISCUSSION OF THE ADMISSION REQUIREMENTS FOR THE EXTENDED LLB PROGRAMME .....                                                         | 214        |
| 5.22 DISCUSSION OF THE EXTENDED PROGRAMME MODEL USED BY UNIVERSITIES .....                                                                 | 219        |
| 5.23 DISCUSSION OF THE SUPPORT PROVIDED SPECIFICALLY FOR STUDENTS IN THE EXTENDED LLB PROGRAMME .....                                      | 222        |
| 5.24 DISCUSSION OF THE DISTRIBUTION OF FOUNDATION MODULES ..                                                                               | 225        |
| 5.25 DISCUSSION OF HOW THE LLB EXTENDED CURRICULUM PROGRAMME ADDRESSES THE SOCIAL JUSTICE IMPERATIVES OF ACCESS, REDRESS AND EQUITY .....  | 228        |
| 5.26 DISCUSSION OF THE ADDITIONAL SUPPORT PROVIDED EXCLUSIVELY TO STUDENTS IN THE EXTENDED LLB PROGRAMME DURING COVID-19 (2020–2021) ..... | 232        |
| 5.27 CONCLUSION .....                                                                                                                      | 236        |
| <b>CHAPTER 6: CONCLUSION.....</b>                                                                                                          | <b>238</b> |
| <b>BIBLIOGRAPHY.....</b>                                                                                                                   | <b>260</b> |

|                                                                    |            |
|--------------------------------------------------------------------|------------|
| <b>ANNEXURES.....</b>                                              | <b>294</b> |
| ANNEXURE A: Information leaflet and consent form.....              | 294        |
| ANNEXURE B: Consent to participate in this study .....             | 301        |
| ANNEXURE C: Ethics clearance .....                                 | 304        |
| ANNEXURE D: University of the Free State authorities approval..... | 305        |
| ANNEXURE E: University of the Western Cape permission.....         | 306        |
| ANNEXURE F: University of Fort Hare permission.....                | 307        |
| ANNEXURE G: Nelson Mandela University permission .....             | 308        |
| ANNEXURE H: University of Limpopo permission.....                  | 309        |
| ANNEXURE I: North-West University permission .....                 | 310        |

## LIST OF TABLES

|                                                                                                                                             |     |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Table 5.1: Differences between the LLB mainstream and extended curriculum programmes                                                        |     |
| Table 5.2: Admission requirements .....                                                                                                     | 214 |
| Table 5.3: Type of extended programme model used .....                                                                                      | 219 |
| Table 5.4: Support provided specifically for students in the extended LLB programme .....                                                   | 222 |
| Table 5.5: Distribution of the foundation modules .....                                                                                     | 225 |
| Table 5.6: Ways in which the LLB extended curriculum programme addresses the social justice imperatives of access, redress and equity ..... | 228 |
| Table 5.7: Additional support provided exclusively to students in the extended LLB programme during Covid-19 (2020–2021) .....              | 233 |



## LIST OF FIGURES

|                                                                                                  |     |
|--------------------------------------------------------------------------------------------------|-----|
| Figure 5.1: Student headcount: First-time entering newcomers .....                               | 205 |
| Figure 5.2: Student headcount: All years .....                                                   | 206 |
| Figure 5.3: Proportion of students identifying as female: First-time entering newcomers<br>..... | 207 |
| Figure 5.4: Proportion of students identifying as female: All years .....                        | 208 |
| Figure 5.5: Proportion of students classified as African: First-time entering newcomers<br>..... | 209 |
| Figure 5.6: Proportion of students classified as African: All years .....                        | 210 |
| Figure 5.7: Proportion of students classified as black: First-time entering newcomers<br>.....   | 211 |
| Figure 5.8: Proportion of students classified as black: All years.....                           | 212 |

## **CHAPTER 1: INTRODUCTION AND BACKGROUND**

### **1.1 RESEARCH PROBLEM**

This thesis examines how the social justice imperatives of access, redress and equity are applied in the extended Bachelor of Laws (LLB) programmes at South African universities. The different LLB extended curriculum programmes are explored as a multiple-case study, probing both the rationale for their development and the degree to which they implement access, redress and equity in practice. The central concern underpinning this research is that granting students access to higher education based on social justice imperatives, without ensuring that they are afforded a reasonable opportunity to succeed, renders such access meaningless. Therefore, equity ought to extend beyond equitable access; for equity of success to be achieved, there must also be meaningful participation and successful completion.

Against this backdrop, this thesis documents and analyses whether the LLB extended curriculum programme fulfils its intended social justice mandate. While these programmes are designed to address knowledge and skills gaps through academic support and other measures, this thesis questions whether it is realistic to assume that the programmes effectively eradicate these gaps or whether alternative approaches may be necessary to achieve true equity in higher education. To this end, therefore, both the quality and efficiency of these programmes are investigated.

Although legal education in general<sup>1</sup> and mainstream LLB programmes in particular have received significant attention from researchers, little research has been done on LLB extended curriculum programmes. As a result, not much knowledge exists as to whether these extended programmes achieve the aims envisioned at the time of their implementation. When extended higher education programmes were first introduced, the primary purpose was to improve the academic performance of students who were at risk due to their educational backgrounds<sup>2</sup> by providing them with an academic foundation or support to enable them to complete their studies successfully.<sup>3</sup>

---

<sup>1</sup> See Modiri 2013:455-479; Modiri 2014:1-24; Greenbaum 2014; Quinot 2012:411-433; Du Plessis 2016:1-22; Woolfrey 1995:112-151; Field 2005:324-348; Dlamini 1992:595-610.

<sup>2</sup> DHET 2012:1.

<sup>3</sup> DHET 2012:1.

Foundation provision is intended to facilitate the academic development of university students whose prior learning has been adversely affected by educational or social inequalities<sup>4</sup> and who are therefore unprepared or underprepared, despite meeting the minimum admission criteria. According to the Department of Higher Education and Training (DHET),<sup>5</sup> foundation provision in a particular programme must satisfy the following requirements:

- a) The primary purpose must be to provide learning activities to enable students from educationally disadvantaged backgrounds to perform successfully in their chosen field of study.
- b) The components of the foundation provision should be integral parts of the curriculum of the extended programme.
- c) The components into which the foundation provision is divided must be a credit-bearing modules that count towards the conferment of the formal qualification.
- d) The foundation provision must be additional to the coursework prescribed for the relevant mainstream curriculum.

The social justice imperatives of access, redress and equity form the foundation of this thesis and its analysis of the LLB extended curriculum programmes at South African universities. These imperatives are not abstract ideals, but practical measures aimed at addressing the deep-rooted, lingering inequalities produced by apartheid, and perpetuated by barriers in higher education. Redress seeks to correct historical injustices by creating pathways that compensate for past disadvantage, while access focuses on ensuring that students from diverse socioeconomic and educational backgrounds are afforded genuine opportunities to enter and participate meaningfully in higher education. Equity, in turn, demands that institutional structures and teaching practices promote fairness and inclusivity, going beyond mere admission to ensure that all students are also supported to succeed. Together, these three imperatives provide the framework within which this study evaluates whether and in what ways LLB extended curriculum programmes in South Africa contribute to the advancement of social justice in legal education and the broader transformative goals of South African higher education.

---

<sup>4</sup> DHET 2012:1.

<sup>5</sup> 2012:4.

South African universities currently offering an extended LLB programme are the University of the Free State (UFS), the University of the Western Cape (UWC), Nelson Mandela University (NMU), North-West University (NWU), the University of Fort Hare (UFH) and the University of Limpopo (UL). In any context, programme evaluation is vital to determine whether a programme works, to help refine its delivery, and to provide evidence for continuing programme support. Applying this reasoning to the context of legal education, this thesis evaluates how various LLB extended curriculum programmes offered at South African universities achieve the social justice imperatives of access, redress and equity. It assesses the programmes' suitability for the students they serve, and then goes on to identify challenges in implementation and support, highlighting issues that need to be addressed. In investigating the LLB extended curriculum programmes, the focus will be on their structure as well as the support they offer to ensure that students are sufficiently equipped to complete their studies successfully.

## **1.2 RESEARCH AIM**

This research aims to explore and describe the realisation of the social justice concepts of access, redress and equity in the extended LLB programme at universities in South Africa, with the goal of establishing whether these programmes are achieving their intended outcomes. As such, it will not only contribute to the knowledge base on extended programmes in general, but also to the body of knowledge on the LLB extended curriculum programmes offered in South Africa in particular, considering that very limited research has been conducted in the latter regard. By providing a first-of-its-kind in-depth analysis of LLB extended curriculum programmes, the research will assist universities, faculties and departmental administrators in the decision-making process regarding improvements to these programmes.

The aim is to evaluate and strengthen LLB extended curriculum programmes by focusing on their structure and the adequacy of the support they offer. Central to this investigation is the question of whether the models adopted by the various universities are the most appropriate for realising the social justice principles of access, redress and equity. The thesis examines the design and implementation of LLB extended curriculum programmes, the nature of support, as well as external factors that can

impact students' academic performance, such as broader social justice challenges. In pursuing this aim, the social justice imperatives of access, redress and equity serve as the core evaluative framework of the study. This framework provides a means of assessing whether the structure and implementation of LLB extended curriculum programmes genuinely promote transformation rather than simply broaden participation. Redress speaks to addressing historical and systemic inequalities that continue to disadvantage many students entering higher education. Access involves not only entry into the programme, but also ensuring meaningful engagement and progression once admitted. Equity focuses on the fair distribution of opportunities, resources and support to enable all students to succeed according to their individual needs. By examining LLB extended curriculum programmes through this lens, the thesis seeks to determine whether the current programmes fulfil their intended social justice mandate and how they might be strengthened to better achieve these transformative goals.

### **1.3 CONTEXTUALISATION OF THE RESEARCH**

To contextualise and critically assess the South African experience, the research includes an international comparative literature review, drawing on comparative interventions that addressed access, redress and equity in higher education elsewhere. These insights will help determine whether the LLB extended curriculum programmes in South Africa effectively promote meaningful equity of opportunity and outcome, thereby contributing to the scant knowledge base on extended programmes and their role in achieving social justice imperatives. Furthermore, in examining the type of support provided to students, the thesis identifies certain guidelines for universities that already offer LLB extended curriculum programmes as well as those who plan to implement them. These guidelines are supported by quantitative research, using data gathered and analysed to fill the current knowledge gap and expand our understanding of the issues and problems faced by faculties offering these programmes.

At the same time, however, this thesis does not claim to provide a comprehensive analysis of extended programmes in general, nor of the LLB extended curriculum programmes in particular. It acknowledges that other perspectives on this issue exist.

There are also alternative engagements with the social justice concepts discussed that fall outside the scope of this study.

Consequently, rather than adopting a purely critical stance on LLB extended curriculum programmes, the research aims to contribute to informal decision-making. The focus is on identifying ways to enhance the programme and support student success, while engaging constructively with the underlying social justice imperatives of access, redress and equity. By adopting this approach, the thesis seeks to offer practical insights that can enhance LLB extended curriculum programmes without becoming entangled in abstract critique, thereby ensuring that engagement with social justice remains both meaningful and solution-oriented.

Besides the aspects delineated above, it is not the aim of this thesis to investigate the quality of basic education in South Africa, and its resultant effect on the preparedness of prospective university students. Instead, the premise is that students have entered higher education, and while their schooling past cannot be changed, the extended LLB programme can be improved to better their chances of success. The quality of basic education, the school environment and the measure of access afforded to students from different schools warrant a separate study. It is also acknowledged that there are other means of access to higher education, including articulation in and between institutions. For the purposes of this thesis, however, these will not be discussed. Here, the focus is on access via the LLB extended curriculum programme.

Since broadening access to higher education was initially the primary aim of extended programmes, the admission requirements and demographic data of universities offering an LLB extended curriculum programme are one of the key points to be investigated. An investigation into admission requirements is essential, not only to establish whether they broaden access, but also to determine whether the requirements, especially the admission point (AP) score, are not too low, which might help explain any potential ineffectiveness of the programme.

To contextualise the existence and role of LLB extended curriculum programmes in South African higher education, it is essential to remind ourselves of the historical background at play. Therefore, this research investigates the history of higher education under apartheid and in the years after the fall of institutional apartheid, with

a particular focus on how this led to the development of extended programmes in general and the LLB extended curriculum programme in particular.

The international comparative perspective is valuable in identifying similar challenges and issues, and gaining valuable insights to inform and improve our access, redress and equity practices. It is intended to enrich the thesis's contribution. Due to the limited availability of authoritative sources, the international perspective primarily focuses on research produced in the developed countries of the United Kingdom (UK), the United States of America (US) and Australia, as well as in developing countries such as Brazil, Kenya and Tanzania. Including perspectives from both developed and developing countries is essential to form a balanced understanding of how different economic, social and educational contexts shape the design, purpose and outcomes of higher education globally.

The desire to maintain academic standards on the one hand and broaden access on the other is not unique to South African higher education institutions, but is a concern to institutions globally. In this regard, recommendations from the foreign jurisdictions include "making institutions accountable for monitoring and reporting on requirements of non-traditional students", and using "short induction programmes, ... student-placement schemes and mentoring" to reduce attitudinal barriers among students themselves.<sup>6</sup> Insights such as these are worthwhile to analyse to determine what South African higher education stands to learn from them.

As mentioned, the limited availability of academic literature in this field restricts the international component. However, incorporating an international perspective remains essential, as it enables a broader understanding of how other, both developing and developed nations have addressed similar social justice challenges in legal education. Examining these foreign peers as well as global policy instruments can provide valuable insights into how the principles of access, redress and equity are interpreted and operationalised elsewhere, thereby enriching the analysis of the South African context. In this way, South Africa's LLB extended curriculum programmes can be situated within a broader global context so as to highlight how diverse economic, social and historical contexts shape different approaches to broadening participation and promoting equity. The international instruments explored include the United Nations

---

<sup>6</sup> Watt & Paterson 2000:113.

Sustainable Development Goals (SDGs), United Nations Educational, Scientific and Cultural Organisation (UNESCO) frameworks and World Bank policies. These instruments all establish global standards for inclusive and equitable education, and influence how countries conceptualise and implement access and redress in higher education. As such, they provide a universal reference point against which national practices can be critically evaluated.

The chosen countries – the UK, the US, Australia, Brazil, Kenya and Tanzania – intentionally present a balance between jurisdictions with advanced, well-resourced higher education systems and those still navigating the challenges of limited resources and systemic inequality. The developed countries illustrate how long-established systems continue to grapple with class, race and financial barriers despite progress, while the developing nations reveal the creativity and resilience required to expand access amid historical disadvantage and economic restraint. Together, they provide a nuanced benchmark against which South Africa's own approach can be assessed.

Finally, the research also conducts a national comparative study of the LLB extended curriculum programmes currently offered at six South African universities.<sup>7</sup> The six institutions are the only in the country to offer the extended programme, making them critical for evaluating how the social justice imperatives of access, redress and equity are implemented in different institutional environments. By evaluating these programmes, the study assesses whether they genuinely promote equitable participation, facilitate meaningful access to legal education, and provide mechanisms for redress that respond to students' specific needs. In this way, the LLB extended curriculum programmes serve as a critical lens through which the broader challenges of social justice in South African higher education can be investigated, revealing both achievements and areas where transformation remains incomplete.

## **1.4 CONCEPTUAL FRAMEWORK**

The conceptual framework of this thesis is grounded in the interrelated social justice themes of access, redress and equity, explored through the lens of extended higher education programmes in South Africa, with particular reference to LLB extended

---

<sup>7</sup> See par. 1.1.



curriculum programmes. A review of existing literature on these social justice imperatives and their application in extended curriculum initiatives provides the theoretical foundation for the study. The thesis situates LLB extended curriculum programmes within the broader debates about transformation in higher education, enabling a critical examination of how the principles of social justice are translated into programme design and practice. It does so by using the social justice imperatives of access, redress and equity as analytical tools to evaluate whether the extended LLB programmes' structure, demographics and support mechanisms actively promote transformation. It interrogates how historical inequalities are addressed in programme design (redress), how meaningful participation and inclusion are facilitated for students from diverse backgrounds (access), and how institutional practices ensure fair opportunities and outcomes for all (equity). In this way, theoretical understandings of social justice are connected to the LLB extended curriculum programmes, revealing whether these initiatives genuinely contribute to higher education transformation or merely replicate existing disparities.

Within this framework, the thesis examines how the social justice imperatives of access, redress and equity have shaped both the development and implementation of LLB extended curriculum programmes at South African universities. The analysis goes beyond assessing academic support for underprepared students to also consider whether these programmes genuinely advance transformation and embody the principles of social justice in practice. By critically evaluating how these imperatives are applied in the different programmes, the study seeks to identify areas of strength and limitation. Ultimately, it aims to propose evidence-based recommendations to enhance the capacity of LLB extended curriculum programmes to fulfil their transformative mandate and ensure that students are afforded equitable and meaningful opportunities for academic and professional success.

## **1.5 MOTIVATION**

The central problem that prompted this research is the lack of academic research on extended higher education programmes, particularly LLB extended curriculum programmes. This paucity of scholarly work reflects a failure to recognise the significance of extended programmes and the achievements of those completing

them. There is a perception among some academics that students enrolled for extended programmes are not suitable for higher education and will in any event drop out of university in the course of their studies. Frequently, the focus of university and faculty discussions on student success and failure is on those in mainstream programmes rather than their peers in extended programmes. Yet, by offering thorough research on extended programmes, this thesis demonstrates that these programmes are worthwhile and have a place in higher education.

The post-1994 higher education landscape aimed to rectify past educational imbalances by opening access to higher education to all South African citizens, regardless of their race, language or culture.<sup>8</sup> Since the pre-1994 higher education system was not based on the principles of an open and democratic society, those inequalities needed to be rectified by expanding existing opportunities to gain university access as well as broadening access even further.<sup>9</sup> In 1996, the National Commission on Higher Education (NCHE) responded to higher education's transformation needs by laying down a framework and some fundamental principles to guide and direct the transformation process in the sector.<sup>10</sup> These principles included equity, redress and access.<sup>11</sup> Therefore, these social justice imperatives are the focus of the contextual legal framework of this research. LLB extended curriculum programmes offer a valuable lens through which these social justice imperatives can be examined in practice. The programmes embody the principles of access, redress and equity by aiming to create opportunities for students from historically disadvantaged and educationally underprepared backgrounds to succeed in legal education. However, it is essential to investigate the extent to which these ideals are genuinely realised within the programme's structure. Consequently, this research explores how LLB extended curriculum programmes have been designed and implemented across various universities, and whether they have effectively addressed systemic inequalities and fostered meaningful participation. Through a critical socio-legal analysis, supported by empirical data and institutional comparisons, the thesis assesses how the social justice imperatives are reflected in practice, and identify areas where the programme may be strengthened to fulfil its transformative purpose more

---

<sup>8</sup> Hay & Monnapula-Mapesela 2009:12.

<sup>9</sup> Reddy 2004:35.

<sup>10</sup> Hay & Monnapula-Mapesela 2009:13.

<sup>11</sup> Akoojee & Nkomo 2007:386.

effectively. The study is driven by the need to understand and enhance the role of LLB extended curriculum programmes in promoting social justice in South African higher education. By critically examining how the imperatives of access, redress and equity are implemented across universities, the research addresses both persistent inequalities and gaps in existing knowledge. With its findings, the thesis seeks to inform programme development and institutional strategies, ensuring that LLB extended curriculum programme initiatives not only broaden participation, but also provide meaningful and transformative opportunities for students to succeed academically.

## **1.6 RESEARCH QUESTIONS**

The main research question this thesis addresses is: How do LLB extended curriculum programmes at South African universities embed the social justice imperatives of access, redress and equity, and give effect to these imperatives in practice, in supporting underprepared students and promoting both equity of access and equity of success?

The secondary research questions to help answer the main question above are:

- a) What do the social justice imperatives of access, redress and equity entail in the context of higher education, with a focus on the application of these concepts in the support offered to students in LLB extended curriculum programmes?
- b) How did apartheid and its legacy create the need for broadening access to higher education and for redress and equity through the introduction of extended programmes?
- c) How are the social justice imperatives of access, redress and equity addressed in other higher education systems internationally, and what lessons does South Africa stand to learn from this?
- d) What strategies and practices are employed by South African universities offering an LLB extended curriculum programme to realise the social justice imperatives of access, redress and equity?

- e) To what extent do LLB extended curriculum programmes provide at-risk students with the necessary academic foundation and support to successfully complete their studies within the prescribed timeframe?

## 1.7 METHODOLOGY

A descriptive multiple-case study is used as the main research method, as it allows for a holistic and in-depth understanding of how the social justice concepts of access, redress and equity are applied in LLB extended curriculum programmes. Yin<sup>12</sup> states that a case study is the preferred strategy when addressing “how” and “why” questions. It is a flexible form of inquiry best suited for studying a particular phenomenon in its natural context.

This thesis analyses the different views on access, redress and equity in higher education, particularly relating to extended programmes, mainly through a literature review, using case law, academic journal articles, policies and legislation. This informs the discussion on the applicability of these concepts in the extended LLB programme. To illustrate the parallels and differences between international and national extended programmes, a comparative literature review is performed, exploring the realisation of specific social justice concepts in other identified jurisdictions. A descriptive multiple-case study is then conducted to compare the LLB extended curriculum programmes offered at South African universities.

The comparative dimension of the study functions as an interpretive backdrop against which the South African experience can be more critically understood.<sup>13</sup> The international literature is not used to seek direct policy or curricular transfer, but rather to illuminate contrasting responses to educational disadvantage, and to identify broader patterns and tensions relevant to equity-oriented interventions in higher education. Comparison provides a basis for making statements about empirical regularities, and for evaluating and interpreting cases relative to substantive and theoretical criteria.<sup>14</sup>

---

<sup>12</sup> Yin 1994:285.

<sup>13</sup> Ragin 2014:1.

<sup>14</sup> Ragin 2014:1.

At the same time, however, comparative analysis, while valuable for illuminating alternative responses to common problems, also entails several important risks that must be acknowledged and managed in this study.<sup>15</sup> These include the uncritical transplantation of models developed in vastly different socioeconomic, institutional and historical contexts, and the tendency for comparative frameworks to obscure local dynamics of inequality. Comparative analysis can also inadvertently produce false equivalence when similar terms – in this instance, access, redress and equity – are assumed to have identical meanings across different jurisdictions.<sup>16</sup> In fact, conceptual misunderstandings can arise when terminology is applied without careful consideration and contextual calibration. In addition, the process of selecting cases for comparison introduces the risk of selection bias, where what is chosen for comparison may be convenient or familiar rather than genuinely representative, thereby limiting the validity of any conclusions drawn.<sup>17</sup>

Also, to make systems appear comparable, the complexity of institutional arrangements may be simplified, obscuring crucial local specificities and tacit practices that shape educational experiences, especially in contexts marked by historical inequality. A related concern involves data and measurement challenges, as different jurisdictions may collect, categorise and interpret information in ways that are not logically compatible, thereby undermining the reliability of cross-contextual claims.<sup>18</sup> Moreover, comparative studies may inadvertently reflect cultural or epistemic bias, particularly when models from well-resourced Western contexts are treated as benchmarks for less-resourced systems, reinforcing hierarchies that obscure local innovation and deny the legitimacy of indigenous approaches.

Therefore, the comparative perspective is employed cautiously and reflexively, with the aim of sharpening the analytical questions to the South African context, and clarifying the criteria against which LLB extended curriculum programmes are examined, while remaining firmly grounded in the constitutional and structural realities of South African legal education.

---

<sup>15</sup> Klein 1991:279.

<sup>16</sup> Ragin 2014:ix.

<sup>17</sup> Klein 1991:277.

<sup>18</sup> Klein 1991:277.

Chapter 6 of this thesis compares the LLB extended curriculum programmes offered by South African universities, drawing on data collected by means of a structured questionnaire and institutional data analysis. Specific areas for examination are the programmes' demographic data and admission requirements, the composition of the extended/foundational modules offered within the programmes, whether additional support is provided to students, and how the respective programmes address the concepts of access, redress and equity.

To determine the effectiveness of LLB extended curriculum programmes for comparison purposes, data from the period 2018 to 2024 is analysed in chapter 5. The academic programme of universities nationwide was interrupted by the outbreak of SARS-CoV-2, which caused the infectious viral respiratory disease Covid-19. The academic project, including all contact sessions and activities, immediately shifted online. Both students and lecturers found themselves navigating unfamiliar territory as a result of this sudden shift. The demographic data range includes the two years prior to Covid-19 (2018 and 2019), the two years of the pandemic (2020 and 2021), and the three years following the pandemic (2022 and 2024). This seven-year spread offers a proper understanding of the implementation and operation of the extended LLB at UFS, and also facilitates a comparative analysis of data across the different universities.

Most of the data collected from the universities was obtained by means of a two-part questionnaire. Part 1 asked respondents to confirm their consent to participate, and Part 2 required them to provide the following information for the period 2018 to 2024:

- a) Admission requirements for EP (extended programme) students
- b) The demographics of all enrolments in the LLB extended curriculum programme and the mainstream LLB programme (to determine whether the EP broadens access to higher education in terms of race)
- c) Total headcount of enrolments in the EP
- d) Which EP model the university is applying
- e) What support is provided, for example additional language skills specifically for EP students
- f) Module composition/distribution of foundation modules across the study years

- g) How the EP addresses the social justice concepts of access, redress and equity
- h) Whether the university implemented any additional support for EP students during the Covid-19 period (2020 and 2021)

The data was analysed to explore general trends that could explain the demographic profile of the student population in the LLB extended curriculum programmes. Additionally, the composition of the extended programmes and the support provided to the students were examined to determine the programmes' success in achieving equity, redress and access.

The research, therefore, takes the form of a descriptive multiple-case study. This qualitative method is generally prompted by the desire to arrive at a close or in-depth understanding of a number of cases set in their real-world contexts.<sup>19</sup> In this thesis, it enables a holistic understanding of whether the LLB extended curriculum programmes embed the social justice concepts of access, redress and equity to support and improve the academic performance of students at risk due to their educational background, by providing them with the proper academic foundations to complete their studies successfully. According to Maree,<sup>20</sup> an important aspect of case study research is its researcher-centred approach, which often includes observing participants and striving to offer a comprehensive understanding of the research setting (in this instance, the LLB extended curriculum programmes). McMillan<sup>21</sup> similarly argues that the primary purpose of a case study is to “obtain a detailed description and gain an understanding of the case”.

Purposive sampling was used to collect the data, as participants were restricted to the six South African universities offering an LLB extended curriculum programme.<sup>22</sup> According to McMillan,<sup>23</sup> purposive sampling (also called “purposeful sampling”) refers to the selection of study participants for a specific reason, and if only a particular

---

<sup>19</sup> Yin 2018:352; Maree 2023:91.

<sup>20</sup> Maree 2023:90; McMillan 2008:288.

<sup>21</sup> 2008:288.

<sup>22</sup> See par. 1.3.

<sup>23</sup> 2008:119.

sample will provide the best information to address the research questions. As the name suggests, purposive sampling is done with a specific purpose in mind.<sup>24</sup>

To obtain the necessary information, the extended LLB programme director or leader at each identified university was contacted directly. Their contact information is readily available on the respective university websites. As programme directors or leaders, they have sufficient knowledge, and access to the relevant data. The involvement of a data specialist enhanced the reliability and validity of the data analysis, although the researcher retained full responsibility for the conceptual interpretation and scholarly argumentation emerging from the data.

Every effort is made to maintain participants' confidentiality in data reporting. Pseudonyms are used instead of the specific universities' names. The descriptive results provide adequate findings to determine the extent to which the extended curricula serve or fail to serve the intended purpose and how they address the social justice concepts of access, redress and equity.

Two essential aspects of research ethics are the confidentiality of participants' responses and the protection of their identities.<sup>25</sup> This thesis does not reveal the identity of any participant or student. Demographic data was not analysed individually for each student, but collectively for each programme. Gatekeepers' approval was first obtained from the administrative authority of the identified universities, and the data remains in safekeeping. Data collection and storage comply with the prescripts of the *Protection of Personal Information Act 4 of 2013* (POPIA).

The primary theoretical approach is socio-legal. The thesis serves as a descriptive endeavour to fill the existing knowledge gap concerning LLB extended curriculum programmes in South Africa.

With the necessary permission, the respective universities' institutional data, as provided, was utilised to obtain information on enrolments, demographic profiles, and relevant programme information,<sup>26</sup> enabling a determination as to whether the extended curriculum applies the social justice concepts of access, redress and equity.

---

<sup>24</sup> Maree 2023:220.

<sup>25</sup> Maree 2023:43.

<sup>26</sup> See chapter 5, par. 5.13.1.



## **1.8 STRUCTURE OF THIS THESIS**

This thesis is structured to provide a detailed, systematic analysis of how LLB extended curriculum programmes in South Africa embed and give effect to the social justice imperatives of access, redress and equity. Chapter 1 introduces the study by providing its background, rationale and significance, situating it within the broader context of higher education transformation and the legacy of historical inequalities in South Africa. It also presents the research problem, the main and secondary research questions, and the conceptual and theoretical framework, demonstrating how the study is informed by socio-legal perspectives and the imperatives of social justice.

Chapter 2 delineates the concepts of access, redress and equity in higher education and critically examines their operationalisation. The chapter reviews the literature to provide a clear understanding of these imperatives, highlighting their relevance to higher education. It establishes the normative and analytical foundation for evaluating the LLB extended curriculum programmes in the South African context.

Chapter 3 provides a historical overview of South African higher education, tracing its origins and development, the legacy of apartheid, and the trajectory of higher education in the democratic era. This historical context is crucial for understanding why LLB extended curriculum programmes were created and the challenges they aim to address, particularly in terms of promoting social justice and transformation.

Chapter 4 examines international perspectives on the social justice imperatives of access, redress and equity in higher education. Drawing on international policy documents and practices from both developed and developing countries, the chapter identifies approaches and lessons that can inform the way forward for South African higher education institutions. It provides a comparative lens to evaluate how higher education systems globally have sought to realise these imperatives in their respective jurisdictions.

Chapter 5 presents the findings from the South African case studies of LLB extended curriculum programmes. It analyses how the universities that offer the extended LLB programme realise the social justice principles in their admission policies, demographic profiles and student support, and compares approaches across the

institutions. The chapter critically evaluates the effectiveness of these programmes in promoting access, redress and equity, highlighting both successes and areas for improvement.

Chapter 6 synthesises the theoretical, comparative and empirical insights from the previous chapters. This final chapter discusses the broader implications of the findings for higher education, and provides insights for strengthening LLB extended curriculum programmes to better realise the social justice imperatives. It captures the essence of the study's contribution to existing knowledge on legal education, social justice and transformation in South African higher education by reflecting on whether the LLB extended curriculum programmes do indeed realise the social justice imperatives of access, redress and equity. The chapter also emphasises how the research bridges theory, policy and practice.

Chapter by chapter, the thesis builds a coherent, logically connected argument by situating the study within theoretical and policy debates as well as historical context, examining international and national practices, and analysing empirical evidence. This ensures that the research systematically addresses the main and secondary questions while contributing to the broader discourse on access, redress and equity in higher education.

## **1.9 CONCLUSION**

This chapter established the scope, aim and methodological framework of this thesis, positioning it as a descriptive investigation into LLB extended curriculum programmes in South Africa. By adopting a socio-legal approach and utilising institutional data on enrolments, demographics and programme design, the research seeks to assess the effectiveness with which the social justice imperatives of access, redress and equity are implemented in extended programmes. This chapter clarified the central research problem, highlighting the tension between granting access and ensuring meaningful academic success for students at risk. It outlined the main and secondary research questions guiding the inquiry, providing a clear roadmap for the thesis.

Building on this foundation, chapter 2 delineates the social justice imperatives of access, redress and equity in the context of higher education, establishing the

theoretical framework necessary to critically evaluate whether LLB extended curriculum programmes fulfil their transformative mandate and provide students with genuine opportunities for success in legal education.

## CHAPTER 2: DELINEATING THE SOCIAL JUSTICE CONCEPTS OF ACCESS, REDRESS AND EQUITY IN THE CONTEXT OF HIGHER EDUCATION

### 2.1 INTRODUCTION

Education, as a public good, has political and ideological value.<sup>27</sup> Since education is a public good, the state and higher education institutions must expand access, provide fair conditions for success, and rectify past injustices. However, despite the implementation of new legislation,<sup>28</sup> social rights and protections<sup>29</sup> as well as other progressive changes<sup>30</sup> in South African higher education (HE) since 1994, social justice has remained elusive in this sector. The struggle to attain social justice intensified in post-apartheid South Africa as universities became part of the social transformation project.<sup>31</sup> One of the functions of HE institutions is to be agents of social justice and mobility.<sup>32</sup> Therefore, to address the need for and development of social justice in higher education, a new way of thinking is needed about access to higher education, redress of past inequalities of access to higher education, and equity in student opportunities, resources and outcomes. Universities in South Africa need to determine whether their actions (in this instance, the implementation of an LLB extended curriculum programme) take them closer to achieving the goals of social justice in HE and, subsequently, closer to a more equitable HE system. Access to HE has been foregrounded as a key component of HE transformation, and is positioned as integral to achieving equity and redress.<sup>33</sup> Similarly, transformation in HE is considered an indicator of social progress.<sup>34</sup> However, provision of HE access without

---

<sup>27</sup> Deacon *et al.* 2009:1074.

<sup>28</sup> Examples of legislation implemented include the *Constitution of the Republic of South Africa*, 1996, including the Bill of Rights; the *Higher Education Act* 101 of 1997; the *South African Qualifications Authority Act* 58 of 1995; the *National Qualifications Framework Act* 67 of 2008; and the *National Student Financial Aid Scheme Act* 56 of 1999.

<sup>29</sup> Examples of social rights and protections include the rights contained in the Bill of Rights (chapter 2 of the *Constitution*) and the right to basic and further education (sec. 29 of the *Constitution*).

<sup>30</sup> A few examples include the *Constitution*, specifically sec. 29, which addresses the right to education, and the *Higher Education Act* 101 of 1997; the merging of racially segregated universities and technikons; and the expansion of NSFAS from a loan scheme to a fully subsidised bursary model for qualifying poor and working-class students.

<sup>31</sup> Cele & Menon 2006:38.

<sup>32</sup> Boulton & Lucas 2008:4. Social mobility refers to the role that HE institutions play in helping people improve their social circumstances by equipping students with the skills, qualifications, and knowledge needed to access better jobs and contribute meaningfully to society.

<sup>33</sup> Akoojee & Nkomo 2007:385.

<sup>34</sup> Mzangwa 2019:1.

supporting the social conditions necessary for successful university studies represents a type of social injustice and exclusion.

The focus of this chapter is on delineating the social justice concepts of access, redress and equity in the context of HE, as well as exploring the ways in which these social justice concepts have been applied in HE. Establishing and clarifying the application and meaning of the social justice concepts in the HE context will provide a contextual framework within which the LLB extended curriculum programme can be evaluated. This is essential to determine whether the LLB extended curriculum programme has helped achieve the social justice imperatives. This thesis is premised on the view that it is pointless to allow students access to HE based on values such as access, redress and equity without providing them with a reasonable chance to succeed. In other words, equity of success or outcome is as important as equity of access and redress. Sehoole and Adeyemo<sup>35</sup> agree with this view and state:

We link access with success to explain the impact of the transformation agenda on the outcomes of higher education ... [W]e contest neoliberal ideologies of access as merely increasing participation rates ..., without paying attention to the factors that should facilitate success in higher education.

Success in higher education is neither easily measured nor easily attained, as it is influenced by multiple factors, including a student's intellectual ability, motivation, commitment, financial support, the quality of their basic education, the language of instruction, and their ability to identify with the dominant institutional cultures.<sup>36</sup> If these factors are met within an institutional culture that is responsive to students' life experiences, success becomes more likely.<sup>37</sup> Institutional culture refers to the shared values, norms, assumptions, practices and power relations that shape how a university understands knowledge, belonging and success. It is reflected not only in formal policies, but also in everyday teaching and learning practices, assessment standards, language use and student support. When these embedded norms privilege historically dominant groups, institutional culture becomes a structural barrier to equity in both access and success, even where formal admission policies are inclusive. Addressing this barrier requires more than broadening access; it demands intentional cultural

---

<sup>35</sup> Sehoole & Adeyemo 2016:1.

<sup>36</sup> Coughlan 2006:214; Soudien 2010:19.

<sup>37</sup> Coughlan 2006:214.

transformation through curriculum reform, inclusive pedagogies and responsive support structures.

Social justice is broadly defined as “justice at the level of a society or state as regards the possession of wealth, commodities, opportunities and privileges”.<sup>38</sup> From a human rights perspective, social justice is the principle that everyone deserves equal social rights and opportunities. Social justice can also be defined as “understanding and interrogating how different individuals and groups are faring in comparison with others in a specific context or more broadly in society”.<sup>39</sup>

Although the origins of social justice are relatively unknown, the foundation of the concept stems from philosophy, religion and politics.<sup>40</sup> These disciplines contributed to the idea that every individual deserves equal rights, opportunities, and fair treatment within society. As a result, social justice has evolved into a multidimensional concept concerned with addressing inequality, promoting human dignity, and ensuring the equitable distribution of resources and opportunities. A proper understanding of the concept of social justice is vital to be able to determine whether an extended LLB programme meets social justice imperatives.

## **2.2 CONTEXTUALISATION OF THE CONCEPT OF SOCIAL JUSTICE**

### **2.2.1 Theory of social justice**

Social justice is traditionally seen as a theory concerned with the fair distribution of income and other essential resources needed by human beings.<sup>41</sup> While social justice is rooted in philosophical and political thought, its principles gained widespread visibility and momentum during the civil rights movement in the US, which was powerfully advanced as a political movement by Martin Luther King Jr. in 1963.<sup>42</sup> In his famous “I have a dream” speech,<sup>43</sup> King called for equality, freedom and justice for all. He laid a moral and political foundation for the modern understanding of social

---

<sup>38</sup> Oxford English Dictionary “Social justice”, <https://www.oed.com> (accessed on 25 April 2021).

<sup>39</sup> Wilson-Strydom 2015:145.

<sup>40</sup> Bales 2017:5.

<sup>41</sup> Mncube 2007:130.

<sup>42</sup> Notably in his speech at Western Michigan University on 18 December 1963. For a transcription, see <https://files.wmich.edu/s3fs-public/attachments/MLK.pdf>.

<sup>43</sup> Delivered during the March on Washington for Jobs and Freedom, August 1963.

justice. His advocacy not only challenged institutional racism, but also highlighted the need for systemic change to ensure equal access to education, employment and civil rights. This movement helped shape the global discourse on social justice, as well as the fight against oppression, poverty and exclusion. Yet the term “social justice” was already used more than a century before. One of the first known mentions was in 1848, when it developed from the Thomistic natural law philosophy of Antonio Rosmini Serbati (1797-1855) and Luigi Taparelli d’Azeglio (1793-1862), who coined the term *la giustizia sociale* with their work *The Constitution under Social Justice* in 1848 (by Serbati) and *Theoretical Treatise on Natural Law* in 1840 (by Taparelli).<sup>44</sup> They were Catholic priests who led a Thomistic revival in order to meet the challenges posed by the French Revolution and the rise of modern philosophy and science.<sup>45</sup>

Social justice initially emerged as a response to the severe inequities<sup>46</sup> experienced by the European working class during the mid-nineteenth century under the capitalist mode of production.<sup>47</sup> Following the widespread injustice, economic collapse and global turmoil caused by two World Wars, the Great Depression and the dismantling of colonial empires, there was a push to establish a moral framework that placed social justice at its core.<sup>48</sup> As the Second Industrial Revolution wound down, American scholars applied the term “social justice” to economics as well, and to the civil rights movements led by King.<sup>49</sup>

The term was introduced into the political discourse only from the late nineteenth century, when there was a growing public controversy about economic and political institutions and the role of the state.<sup>50</sup> The most influential theory of social justice has been John Rawls’s notion of “justice of fairness” in his work *A Theory of Justice* in 1972.<sup>51</sup> Rawls’s thoughts centred on ideas of fair distribution and political freedom, which were based on the existence of basic freedoms and equality of opportunity.<sup>52</sup>

---

<sup>44</sup> Kraynak 2018:3.

<sup>45</sup> Kraynak 2018:4.

<sup>46</sup> “Inequality” refers to uneven differences in outcomes or resources, while “inequity” refers to unfair and avoidable differences caused by systemic barriers or discrimination.

<sup>47</sup> Bales 2017:5.

<sup>48</sup> Grant & Gibson 2013:82.

<sup>49</sup> Kraynak 2018:3.

<sup>50</sup> Miller 1999:2-4.

<sup>51</sup> Rawls 1999:3; Barak 2015:393.

<sup>52</sup> Bales 2017:5. In essence, Rawls believed that a just society ensured equal basic rights for all and arranged inequalities so that they improved the situation of the most disadvantaged persons, while providing everyone with a fair chance to succeed.

Rawls aimed to balance equality and freedom by ensuring equal basic liberties for all, while allowing only those inequalities that benefited the least advantaged. Through this approach, he developed a theory that upheld individual liberty and advanced social justice and fairness. Rawls argued for social justice, as he believed that fairness and inequalities could only be just if they led to the greatest benefit for the least well-off members of society.<sup>53</sup> Other theorists usually prioritise one or the other: Marxist theories, for instance, rally behind equality, whereas neoliberal theories rally behind freedom.<sup>54</sup> Karl Marx believed that the class system caused the oppression of ordinary people, and that once they became aware of their alienation from their true potential, they could bring about change through revolution.<sup>55</sup>

The notion of social justice continued to develop over the next century and a half, with Marxist, feminist, Christian, anarchist, conservative and liberal versions of the concept making an appearance.<sup>56</sup> There was no consensus on a technical definition of social justice, however.

Rawls's distributive justice approach<sup>57</sup> is not without critique.<sup>58</sup>

### 2.2.2 Criticism against the theoretical approach

Sen<sup>59</sup> rejects Rawls's theoretical approach to social justice, stating that it searches for solutions to questions of perfect justice and suffers from problems of unfeasibility and redundancy.<sup>60</sup> According to Sen, Rawls's approach falls short by not fully considering individuals' varying abilities to use resources effectively in their lives.<sup>61</sup> By focusing primarily on the distribution of resources as the measure of justice, other important views of inequality are overlooked, which could potentially result in further injustice.<sup>62</sup>

---

<sup>53</sup> Rawls 1999:6-7; Wilson-Strydom 2015:146.

<sup>54</sup> Marxists see equality as the main goal, while neoliberals see freedom, especially economic freedom, as most important, even if it results in some inequality.

<sup>55</sup> Ntombana *et al.* 2023:3.

<sup>56</sup> Bales 2017:5.

<sup>57</sup> Distributive justice is about fairness in the way that society shares its resources and opportunities, aiming to reduce inequality and support the wellbeing of all, especially the disadvantaged.

<sup>58</sup> Sen, Fraser and Young critique Rawls's distributive justice approach. See Wilson-Strydom 2015:147.

<sup>59</sup> Sen 2009:7. The researcher acknowledges with thanks Prof Karin van Marle, who introduced her to the works of Amartya Sen, which informed aspects of this research.

<sup>60</sup> Sen 2009:7.

<sup>61</sup> Wilson-Strydom 2015:146.

<sup>62</sup> Wilson-Strydom 2015:147.



Sen's main theoretical proposal is to eliminate evident injustices.<sup>63</sup> He also argues that the presence of remedial injustice, to a large extent, may be connected to behavioural transgressions rather than institutional defects, and that justice would thus be fundamentally linked to how people lived, and not merely to the nature of the surrounding institutions.<sup>64</sup> Furthermore, Sen states that the principles of justice need to be focused directly on the lives and freedoms of the people involved, and that institutions play only an instrumental role in the pursuit of justice.<sup>65</sup> Hee also defends the importance of people's basic capabilities as an adequate measure of social justice.<sup>66</sup>

In her critique of Rawls's distributive theory of justice, Young,<sup>67</sup> in turn, states that a focus on the allocation of resources and/or material goods masks important structures and institutional contexts that determine distribution patterns, and that distributive theories of justice tend to take the form of ideal theories.<sup>68</sup> Young's concept of social justice centres on the experiences of disadvantaged groups, making groups central to her theoretical perspective.<sup>69</sup> She defines oppression and injustice as conditions that affect groups<sup>70</sup> and argues that structural injustices tend to affect various groupings of people rather than individuals.<sup>71</sup> In her later work, Young does acknowledge that her initial politics of difference were more concerned with structural differences rather than issues of cultural toleration and repression, and that promoting justice and equality should not be limited to specific groups.<sup>72</sup> A common critique of Young's approach is that it overlooks individual agency and differences, which are particularly important in the context of education.<sup>73</sup> While her focus on group-based oppression is valuable, it may not fully capture the complex ways in which individuals navigate and respond to structural inequalities.<sup>74</sup> By contrast, Bourdieu offers a more nuanced framework by identifying three forms of capital, namely economic, cultural and social, which

---

<sup>63</sup> Sen 2009:7

<sup>64</sup> De Lucca-Silveira 2016:3.

<sup>65</sup> Sen 2009:xii.

<sup>66</sup> Sen 2009:18. The concept of basic capabilities is discussed under par. 2.4.2.1 below.

<sup>67</sup> 1990:3.

<sup>68</sup> Young 1990:18.

<sup>69</sup> Young 1990:40.

<sup>70</sup> Young 1990:40.

<sup>71</sup> Wilson-Strydom 2015:148.

<sup>72</sup> Young 2006:103.

<sup>73</sup> Wilson-Strydom 2015:148.

<sup>74</sup> Wilson-Strydom 2015:148.

individuals possess and use differently depending on their backgrounds and social positions.<sup>75</sup> Cultural capital is when learners from privileged backgrounds acquire skills and knowledge as a consequence of their upbringing that will enhance their chances of success in HE. These learners will achieve success due to their parents' input and investment of their time, as the HE environment values such knowledge and skills.<sup>76</sup> Social capital, on the other hand, refers to the benefit of belonging to a group of a particular social class that confers advantages in terms of networking, resources acquired from group membership, as well as the benefits inherent to the group's support.<sup>77</sup> An increase in both the cultural and social capital of students can lead to better success in HE for students from disadvantaged backgrounds.<sup>78</sup> The opposite is also true, however, namely that social class plays a significant role in educational inequality.<sup>79</sup> A young person's family background frequently influences whether they consider attending university. Education systems often highlight the gap between rich, middle-class and poor students. For many low-income families, higher education is simply not an option. That is why, in debates on inequality in HE, access and participation are always at the heart of the discussion.

While Rawls's distributive theory of justice offers an important framework for thinking about the fair allocation of resources and opportunities, it tends to overlook how structures and institutions reproduce inequalities, and why these inequalities persist, even when resources are allocated fairly. Therefore, Young's critique is more persuasive in the South African context, as it highlights the structural injustices that affect groups that were disadvantaged by apartheid. However, because Young underplays the role of individual agency, her theory is best complemented by Bourdieu's concept of capital, which illustrates how students' family backgrounds and social positions shape their ability to succeed. Together, these perspectives provide a multidimensional lens for this thesis. Rawls reminds us of the need for a fair distribution; Young emphasises the structural barriers that must be addressed for redress; and Bourdieu explains why outcomes remain unequal despite access. This discussion directly informs the evaluation of the LLB extended curriculum programmes

---

<sup>75</sup> Bourdieu & Richardson 1986:82.

<sup>76</sup> Bourdieu & Richardson 1986:82.

<sup>77</sup> Brenner 2015:314; Bourdieu & Richardson 1986:82.

<sup>78</sup> Brenner 2015:314.

<sup>79</sup> Mzangwa 2019:8.

as a mechanism for achieving social justice in HE in general, and in legal education more specifically.

Success in HE is seen as producing graduates who are productive citizens.<sup>80</sup> Educational disadvantage in an HE institutional setting refers to the disjuncture between a student's internalised cultural context and the institutional environment that has not yet been internalised.<sup>81</sup> Fraser's<sup>82</sup> insistence on the integration of the three dimensions of economic redistribution, cultural recognition and political representation to achieve social justice can be applied in the following manner to the South African HE context. When applying the economic dimension, it is clear that there is injustice based on the experiences of marginalisation of first-generation black working-class students.<sup>83</sup> Students from economically disadvantaged backgrounds often struggle to participate equally in HE. Lacking adequate financial support, they experience structural marginalisation that limits both their ability to attend HE institutions and participate meaningfully in (i.e. obtain physical and epistemological access to) academic work.<sup>84</sup> Some students drop out of HE institutions because they cannot secure sufficient funds to complete their studies.<sup>85</sup> With regard to the cultural dimension, South African HE has made notable strides in recognising and valuing diverse cultural identities and perspectives, thereby ensuring greater respect and equal opportunities, yet more work is needed.<sup>86</sup> In terms of the political dimension, which involves representation and setting boundaries, HE institutions determine who is included or excluded, thereby deciding which individuals or groups have access and influence. This was especially prevalent during the apartheid era.<sup>87</sup> According to Fraser, all three dimensions need to be present to allow for participatory equality. Affirmative approaches are, however, not enough to address persistent inequalities, and therefore, the focus should rather be on transformative approaches.<sup>88</sup>

Fraser argues against taking an overly narrow approach to distributive justice, and she equates justice with the ability of people to participate as equal peers in social

---

<sup>80</sup> Cele & Menon 2006:38.

<sup>81</sup> Brenner 2015:315.

<sup>82</sup> Fraser 2009:68.

<sup>83</sup> Hlatswayo & Fomunya 2019:67.

<sup>84</sup> See par. 2.4.3.1; Jonker 2020:114.

<sup>85</sup> Cele & Menon 2006:43.

<sup>86</sup> Bozalek & Boughey 2012:689.

<sup>87</sup> Hlatswayo & Fomunya 2019:68.

<sup>88</sup> Hlatswayo & Fomunya 2019:68.

interactions.<sup>89</sup> Her three-dimensional approach to social justice<sup>90</sup> implies that social arrangements should be made to allow individuals to participate as equals in the economic, cultural as well as the political dimension.<sup>91</sup> These three dimensions could be separated analytically; however, in practice, they intersect in either enabling or constraining participatory equality.<sup>92</sup> The economic dimension involves the fair distribution of material resources that allow individuals to participate equally in society. When resources are mismanaged, participatory inequality increases, making class-based inequalities a central barrier that prevents individuals from interacting as equals.<sup>93</sup> When resources in HE are not allocated and managed effectively, patterns of inequality are reinforced. This deepens unfairness in student experiences, and social class differences continue to prevent students from participating as equals. In the cultural dimension, social arrangements should facilitate equal respect and equal opportunities for achieving social esteem.<sup>94</sup> Lastly, the political dimension entails that social arrangements must allow everyone to have a political voice and, thus, a say in decisions that affect them.<sup>95</sup> The critique against Fraser is the same as that against Young: Fraser's focus, too, does not pay sufficient attention to individual agency, since HE is an activity done *with* students and not just *to* students.<sup>96</sup> This focus on collective justice contrasts with neoliberalism's emphasis on individual participation as a means to economic growth and competitiveness.

Arguably, acknowledging individual agency within a collective justice framework is essential in the South African HE context. While structural redress and collective equity are necessary, students' personal engagement, resilience and sense of

---

<sup>89</sup> Fraser 1999:30.

<sup>90</sup> Fraser 2009:68. Fraser's three-dimensional approach differs from Bourdieu's three types of capital, in that Bourdieu describes the forms of capital that create inequality, whereas Fraser defines the broader requirements of social justice, emphasising equal participation and recognition beyond mere distribution of resources. Bourdieu 2011.

<sup>91</sup> Fraser 2009:68.

<sup>92</sup> Hlatshwayo & Fomunya 2019:67.

<sup>93</sup> Hlatshwayo & Fomunya 2019:67. In *Head of Department; Mpumalanga Department of Education vs Hoërskool Ermelo* 2010 (2) SA 415 (CC):45, 47, the Constitutional Court stated: "Apartheid has left us with many scars. The worst of these must be the vast discrepancy in access to public and private resources. The cardinal fault line of our past oppression ran along race, class and gender. It authorised a hierarchy of privilege and disadvantage. Unequal access to opportunity prevailed in every domain. Access to private or public education was no exception. While much remedial work has been done since the advent of constitutional democracy, sadly, deep social disparities and resultant social inequity are still with us."

<sup>94</sup> Hlatshwayo & Fomunya 2019:67.

<sup>95</sup> Hlatshwayo & Fomunya 2019:68.

<sup>96</sup> Leibowitz 2009:94.

belonging also play an important role in transforming their academic trajectories. Social justice in the LLB extended curriculum programme context, therefore, demands a balance, ensuring that institutional structures create enabling environments while recognising students as active participants in their own development and success.

Neoliberalism views social inclusion as an investment in human capital and skills for the purpose of economic growth, and relies heavily on increasing participation rates of disadvantaged groups for the purpose of economic growth and global effectiveness. However, it does not address how social justice in HE ought to be ensured in the process of providing access.<sup>97</sup> Although the policy of social inclusion did find expression in a neoliberal theory, access should be viewed through the lens of social inclusion, which is about respecting individual rights, dignity and fairness for all in terms of both access and success, rather than through a neoliberal lens, where increasing access and participation is merely for the sake of economic growth.<sup>98</sup> The social inclusion theory was first introduced in HE in Australia in 2002 to address the challenges of inequity, and to ensure the realisation of equity and equality in a social context.<sup>99</sup> The social inclusion theory can be narrowly interpreted in South African HE as merely increasing participation rates of disadvantaged black people and women for economic reasons. This is linked to the ideology of neoliberalism.<sup>100</sup>

The South African government has embraced the neoliberal ideology and introduced social inclusion in HE, with historically disadvantaged groups benefiting from equity policies that give them access to skills acquisition to improve their chances of participating in the country's socioeconomic sphere. Yet neoliberalism, in its strict application, does not address social justice in HE: Its focus is more on increasing access than on increasing the success of those students who have access, which results in increased participation, but a high dropout rate. The cost of a high dropout rate in terms of development, human capital, monetary and personal losses is

---

<sup>97</sup> Sehoole & Adeyemo 2016:13.

<sup>98</sup> Sehoole & Adeyemo 2016:13. Bitzer 2010:301 also states that both equity and access are important considerations, since HE provides significant individual benefits in terms of social status and earnings, among other things, and improving participation by disadvantaged groups and individuals in HE is essential for a more economically successful society.

<sup>99</sup> Gidley *et al.* 2010:129.

<sup>100</sup> "Neoliberal ideology is a global political ideology based on the belief that government involvement, including education, should be constrained to allow economic growth and human capital accumulation." Harvey 2007:22.

immense.<sup>101</sup> One could argue that it is crucial for policies to move beyond a sole focus on the mere provision of access, and to put greater emphasis on supporting students to successfully complete their degrees. Ultimately, true transformation can only be achieved when all students are empowered to thrive in, and not just enter, the system. Since education plays an important role in shaping an individual's opportunities and life outcomes, helping students to succeed in their education is important not just for academic reasons, but also for the sake of fairness and justice. The focus, therefore, should shift from access alone to matching access with meaningful participation.

Justice is the bedrock of any legal system, and is also the critical point from which judgments are made over various ways in which society functions. Social justice is the type of justice achieved when everyone in society receives their due, which is determined by fair principles, laws and social agreements that recognise individuals' rights, needs and contributions in that particular society.<sup>102</sup> In other words, social justice is concerned with the fair and just distribution of social benefits or resources stemming from the economic, political and cultural organisation of a specific community,<sup>103</sup> or as Rawls put it, "the adequate repartition of benefits and burdens arising from social cooperation".<sup>104</sup> It has also been defined as the fair, just and equitable distribution of power, resources, opportunities and obligations in society, to all people, without any form of discrimination.<sup>105</sup> The resources at stake can take many forms, including educational opportunities, health resources, access to cultural resources, and adequate housing. Although this thesis does not intend to elaborate on the different approaches to interpreting social justice, or to decide on a preferred approach, taking note of the various interpretations remains important for analysing how social justice is applied in the LLB extended curriculum programme.

Social justice is ultimately about the equal enjoyment of all rights and freedoms by all, regardless of human diversity and historical injustices. The Bill of Rights<sup>106</sup> in the *Constitution* provides for equal civil and political rights, social and economic rights, cultural rights as well as environmental and developmental rights as basic human

---

<sup>101</sup> Wilson-Strydom 2015:144.

<sup>102</sup> Mazzoleni *et al.* 2015:1.

<sup>103</sup> Mazzoleni *et al.* 2015:1. See also Jackson 2005:358.

<sup>104</sup> Rawls 1999:4.

<sup>105</sup> Hage *et al.* 2011:2794.

<sup>106</sup> *Constitution of the Republic of South Africa*, 1996:chapter 9.

entitlements. Social justice should promote individual flourishing, but must also support collective solidarity and shared wellbeing.<sup>107</sup>

For the purpose of this thesis, social justice is understood to go beyond economic considerations and the fair sharing of resources. It also includes political, cultural and religious freedoms, with the goal of freeing people from all forms of unfair social, political and ideological limitations.<sup>108</sup>

### 2.2.3 International instruments on social justice

The various ideologies of social justice are embedded in numerous global initiatives, official statements and guidelines, spearheaded by the United Nations (UN) Universal Declaration of Human Rights (UDHR) of 1948, which, in its preamble, formally recognises the “equal and inalienable rights of all members of the human family”.<sup>109</sup> The UN further elaborates on the notion of equality by connecting human rights to concepts of social and economic equity in its document *Social Justice in an Open World: The Role of the United Nations*.<sup>110</sup>

The four main principles of social justice are understood to be human rights, access, participation and equity.<sup>111</sup> Although they are not officially outlined as such by the UN, they are widely recognised as foundational goals of social justice, particularly in education and social policy frameworks. These principles align closely with the UN’s broader commitment to human dignity, equality and inclusive development, as reflected in the Universal Declaration of Human Rights and the SDGs.<sup>112</sup>

In this thesis, the focus is on access, redress and equity in the context of South African HE, particularly legal education. It is important to recognise, however, that HE represents just one of several pathways to meaningful social participation and

---

<sup>107</sup> Walker 2003:168.

<sup>108</sup> Bales 2017:5.

<sup>109</sup> UN “Universal Declaration of Human Rights”, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on 17 November 2025).

<sup>110</sup> UN 2006.

<sup>111</sup> Human Rights Careers “Four Principles of Social Justice”, <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 17 November 2025).

<sup>112</sup> Human Rights Careers “Four Principles of Social Justice”, <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 17 November 2025).

inclusion. While schools and career guidance offered to school learners often focus on HE, less emphasis is placed on alternative routes to social participation, such as skills training and learnerships, which may also make for meaningful education and have a significant positive societal impact. HE is seldom challenged as the appropriate route for engaging individuals' intellect and motivation in pursuit of their aspirations, goals and capabilities,<sup>113</sup> and HE uptake has indeed increased. Yet choosing not to attend university does not prevent one from participating meaningfully in society and feeling included.

Since the concept of social subject is subject to so many interpretations, it is important to delineate what it means in the HE sphere, specifically in South Africa. The meaning of social justice in the South African setting varies depending on the theoretical perspective or lens through which it is viewed, with each perspective having their own limits, as mentioned earlier.<sup>114</sup> Against this backdrop, the following section moves from the broader theoretical understanding of social justice to a more context-specific analysis, delineating how social justice is understood and applied in the unique historical and sociopolitical realities of South Africa.

## **2.3 DELINEATING THE GENERAL CONCEPT OF SOCIAL JUSTICE IN THE SOUTH AFRICAN CONTEXT**

Smith<sup>115</sup> argues that social justice in the South African context requires a process of equalisation to narrow gaps that arose from “morally irrelevant accidents of birth and subsequent contingencies”, such as being born and brought up in an affluent suburb as opposed to a township. However, because of the complexity of the concept of social justice in general, and South Africa's unique history in particular, one is inclined to

---

<sup>113</sup> Coughlan 2006:214.

<sup>114</sup> Rawls's theory of justice, while foundational, does not adequately engage with how individuals convert resources into real capabilities and functioning – an aspect particularly relevant in educational contexts marked by inequality. Similarly, Young's emphasis on groups as the central unit of analysis may obscure the nuances of individual difference and agency, which are essential in understanding how students navigate and respond to systemic barriers. Fraser's multidimensional approach expands on the scope of justice beyond mere redistribution to include recognition and representation. However, it, too, offers limited analytical space for considering students' personal agency and the complex lived realities that they encounter in higher education. As such, there is a need for a more integrated framework that balances structural critique with an understanding of individual capacity and experience. See also Wilson-Strydom 2015:150.

<sup>115</sup> 2005:60.



believe that determining exactly what social justice means in a South African setting is nearly impossible. Therefore, this thesis does not intend to offer a detailed theoretical analysis of social justice in South Africa, although such work may be valuable. Rather, it provides a concise overview of initiatives aimed at advancing a more universal experience of social justice in South Africa, centred on fulfilling the basic needs of all citizens. At the national level, the *Promotion of Equality and Prevention of Unfair Discrimination Act*<sup>116</sup> was passed in 2000 to address inequality; yet the chapter of the Act that seeks to address inherited disparities on the grounds of race, gender, disability and the like<sup>117</sup> remains largely unimplemented. Those affected by accumulated socioeconomic disadvantage because of past injustices, as well as other disadvantaged persons, are left behind, again. In schools and education resource allocation policy, the one-size-fits-all approach championed by the Act – being a neoliberal and predominantly utilitarian approach – has perpetuated inequality by unwittingly reinforcing accumulated advantage and disadvantage. In fact, this one-size-fits-all approach in law reform and policy interventions is among the greatest challenges to social transformation and socioeconomic inclusion, along with the inadequacy of systems and the lack of funding for social change. Policy changes in South African HE have not translated into material benefits for most of society due to poor implementation and compliance monitoring.<sup>118</sup> Poorly managed social transformation in HE can undermine social cohesion, as perceived unfairness can lead to resentment. Therefore, programmes such as the LLB extended curriculum programme must balance redress with fairness and inclusion.

In response, the capability approach was developed. Wilson-Strydom rightly argues that the capability approach is better suited for application in education than the ideas proposed by Rawls, Young and Fraser. In short, the capability approach centres on the wellbeing of individuals, and the extent to which individuals are able to be and do what they value being and doing.<sup>119</sup> This, then, is also the social justice theory applied in this thesis.<sup>120</sup>

---

<sup>116</sup> 4 of 2000.

<sup>117</sup> Chapter 5.

<sup>118</sup> Mzangwa 2019:2.

<sup>119</sup> Wilson-Strydom 2015:149.

<sup>120</sup> The capability approach is discussed in detail under par. 2.6.1.

### **2.3.1 The general social justice concepts as found in the context of South African higher education**

It is important at this stage to clarify that HE in the South African context is not synonymous with university education alone. The post-school education and training system encompasses universities, universities of technology, technical and vocational education and training (TVET) colleges, community colleges and other vocational and occupational pathways. These diverse institutional forms serve different purposes and respond to varied social and economic needs. Conflating HE with university studies risks reinforcing a hierarchy of esteem that undervalues vocational and technical routes, and may inadvertently contribute to the perception that university education is the only legitimate pathway to success. This thesis does not suggest that university education is the only, or necessarily the most appropriate, route for all school leavers. Rather, it focuses specifically on LLB extended curriculum programmes offered at universities because of the particular historical and constitutional significance of legal education in South Africa.

According to the Council on Higher Education (CHE), “the overall well-being of nations is vitally dependent on the contributions of higher education to the social, cultural, political, and economic development of its citizens”.<sup>121</sup> Understanding social justice in the context of South African HE is important to comprehend inequality in the sector. As stated earlier, different social justice theories are applied to the HE context.<sup>122</sup> Social justice in education should be assessed not only in terms of formal citizenship rights, but also in terms of equality of opportunity and equality of outcomes.<sup>123</sup>

Due to the legacy of apartheid, most black students regard an HE qualification as a means to escape poverty, and a way to acquire the higher skills needed to participate in a globalised economy; failure to graduate these students would have a negative impact on their economic development.<sup>124</sup>

While the social order in South Africa successfully transferred political power from the white minority to the black majority, this was only the first step towards constructing a

---

<sup>121</sup> CHE 2000:10.

<sup>122</sup> See par. 2.2.

<sup>123</sup> Hill *et al.* 2012:246.

<sup>124</sup> Boughey 2012:137.

multiracial and sustainable social order.<sup>125</sup> The new democracy required new institutional structures built on the values embodied in the new *Constitution*, including the transformation of the education and legal systems. A key outcome of addressing educational inadequacies is that it reduces disadvantage and can act as a multiplier of capabilities in developing other human capacities.<sup>126</sup> According to Dlamini,<sup>127</sup> legal education used to be riddled by contradictions, anomalies and inconsistencies due to the governmental policies of apartheid. Although the students who typically enter the HE sphere today did not personally experience the dehumanising racism of apartheid, the apartheid legacy in basic education means that many black learners still attend schools with inadequate resources, and thus, the poor and unequal schooling system remains one of the most serious obstacles to success in tertiary studies.<sup>128</sup>

In a 2018 study, Kirby and Dempster noted that at least 80 per cent of schools in South Africa remained highly ineffective, and the quality of education was problematic.<sup>129</sup> Previously disadvantaged schools were still disadvantaged, marked by overcrowded and underresourced classrooms, laboratories and libraries.<sup>130</sup> In many cases, even basic necessities such as electricity, running water, toilets and desks were limited or entirely absent. Although the school system is not the primary focus of this thesis, being aware of the persistent disadvantage suffered by many schools is important for understanding learners' preparedness for HE. Recognising the inequalities that persist in many South African schools highlights the need for programmes such as the extended LLB to promote access, redress and equity, and provide students with a fair opportunity to succeed.

Considering the ten capabilities listed by Nussbaum,<sup>131</sup> the capability approach challenges universities' dropout statistics, which convey little useful information about individual experiences of HE.<sup>132</sup> The high enrolment rates of both girls and boys in basic education in South Africa compared to other African countries do not necessarily reveal the school system's ability to retain learners or provide them with a quality

---

<sup>125</sup> Fiske & Ladd 2004:ix.

<sup>126</sup> Walker & Mkwanzani 2015:14; Spreen & Vally 2006:361.

<sup>127</sup> 1992:598.

<sup>128</sup> Greenbaum 2014:11; Hill *et al.* 2012:240; Soudien 2010:16; Downs 2010:98.

<sup>129</sup> Kirby & Dempster 2018:3.

<sup>130</sup> Kirby & Dempster 2018:3.

<sup>131</sup> Nussbaum 2000:78-80.

<sup>132</sup> Despite significant attempts to equalise funding and resource allocation, stark material inequalities between schools remain.

education.<sup>133</sup> Consequently, many students enter HE unprepared. In order to bridge this gap between enrolment and genuine preparedness, HE institutions need to work closely with schools to improve learners' transition into, and success in, HE.<sup>134</sup> Policymakers, researchers and HE institutions concerned with addressing inequalities in access and success in HE are conceptualising interventions in secondary schools.<sup>135</sup> Deacon *et al.*<sup>136</sup> criticise both the educational underpreparedness of students and the failure of universities and academics to adequately equip themselves to manage the resulting influx. Therefore, it is imperative to narrow the gap between the outputs of the schooling system and the influx into, and entry expectations of, HE institutions. The CHE defines underpreparedness for studies as difficulty in adapting to the prescribed curriculum, and an inability to engage in independent learning.<sup>137</sup> Other scholars expand this definition to include a lack of complex skills typically required for success in a chosen field of study.<sup>138</sup> It is important to note that underpreparedness does not necessarily imply that a student is intellectually incapable. Rather, from a capability perspective, underpreparedness highlights the lack of opportunities for students to develop the skills, knowledge and practical reasoning necessary to fully realise their potential in HE. Understanding underpreparedness through the capabilities lens also highlights why principles of equity and redress are critical, necessitating historically white universities not only to admit students from disadvantaged backgrounds, but also to provide them with the support and opportunities needed to succeed.

Indeed, the principles of equity and redress generally have a more significant impact on historically white universities. Having previously served only the needs of a homogeneous group of students and staff, these institutions have had to broaden access to include other racial groups and increase enrolments by previously disadvantaged students.

### **2.3.2 The right to education: A foundation for social justice in higher education**

---

<sup>133</sup> Spreen & Vally 2006:359.

<sup>134</sup> Bitzer 2010:298.

<sup>135</sup> Walton *et al.* 2015:264.

<sup>136</sup> Deacon *et al.* 2009:1077.

<sup>137</sup> CHE 2013:57.

<sup>138</sup> Nyoni & Agbaje 2021:246; Young 1990.

Section 29<sup>139</sup> of the *Constitution* deals with the right to education. From the section, it is clear that the right to basic education differs from the right to further education, in that the former is immediately realisable. The right to further education in section 29(1)(b), however, is qualified by stating that the state must take reasonable measures to make further education progressively available and accessible. This progressive realisation of the socioeconomic right to further education is similar to the progressive realisation of other socioeconomic rights.<sup>140</sup> Therefore, the right to basic education is a fundamental human right, comparable to the right to life. The right to further education, on the other hand, is a second-generation human right. As such, the state's obligation to realise it will depend on the available resources.

The question is whether "further education" includes university education. In *Mbana v Walter Sisulu University*,<sup>141</sup> for instance, the court found that the university's conduct was in breach of its constitutional obligation in terms of section 29(1)(b) of the *Constitution* not to prevent the student from exercising his right to further education. This implies that the court acknowledged university education, or HE, as falling within the scope of further education. A number of other cases<sup>142</sup> also considered section 29(1)(b), focusing on the realisability of the right to further education. Although they did not directly address the issue of whether university education was included under "further education", they proceeded on the assumption that it was. Similarly, this thesis also assumes that the right to further education includes university education. Socioeconomic rights encompass constitutional rights to conditions that ensure

---

<sup>139</sup> "(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."

<sup>140</sup> For example, sec. 26 of the *Constitution* states: "(1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right."

<sup>141</sup> (846/2023) [2023] ZAECHMHC 9.

<sup>142</sup> *Gelyke Kanse v Chairman of the Senate of the Stellenbosch University* (2018) 1 All SA 46 (WCC); *Moko v Acting Principal of Malusi Secondary School* (2022) 43 ILJ 2269 (CC); *Mnqandi v Walter Sisulu University* (440/2024) [2024] ZAECHMHC 40.

material welfare.<sup>143</sup> These rights give people access to certain basic necessities (food, healthcare services, housing, education, etc.) to lead a dignified life.<sup>144</sup> Socioeconomic rights are not so much about the object of the right, but the standard or degree of entitlement to such object.<sup>145</sup> Socioeconomic rights can also be limited in terms of section 36<sup>146</sup> of the *Constitution*. Because socioeconomic rights are progressively realisable,<sup>147</sup> a person does not have the positive right to further education as a basic right. The state does not have a duty to provide further education or HE to everyone immediately; it only has a duty to take reasonable measures over time and within its available resources to provide access to university and other further education opportunities. The mere fact that a person is not receiving further education or HE, therefore, is not necessarily a limitation of the constitutional right to further education.<sup>148</sup>

A limitation will have occurred only if the state's programmes to provide access to further education over time are found to be unreasonable.<sup>149</sup> The distinction between basic and further education was reiterated in *Governing Body of the Juma Musjid Primary School v Essay NO*,<sup>150</sup> where the court stated that the right to basic education is immediately realisable<sup>151</sup> and, therefore, distinguishable from the right to further education. Although the right to further education is not immediately realisable, it still has the same constitutional values attached to it, such as protection against unfair discrimination on grounds of race, gender and sexual orientation, to name but a few.<sup>152</sup>

---

<sup>143</sup> Brand 2003:34.

<sup>144</sup> McQuoid-Mason 2015:444.

<sup>145</sup> Brand 2003:34.

<sup>146</sup> Known as the limitations clause. "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, including - (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose."

<sup>147</sup> Meaning that the government must ensure that socioeconomic rights are realised over time. McQuoid-Mason 2015:446. The duty to take incremental steps over time is known as "progressive realization". McConnachie *et al.* 2020:26.

<sup>148</sup> McConnachie *et al.* 2020:27.

<sup>149</sup> McConnachie *et al.* 2020:27.

<sup>150</sup> *Governing Body of the Juma Musjid Primary School v Essay NO* 2011 (8) BCLR 761 (CC); 2011 ZACC 13.

<sup>151</sup> Which implies that the government cannot take incremental steps over time to realise the right, but needs to realise the right here and now, and failure to do so will result in a limitation of the right, which is tantamount to failure to fulfil the right. McConnachie *et al.* 2020:27.

<sup>152</sup> Liebenberg 2010:249.

In other words, when access to HE is provided, it must be done fairly and without discrimination, respecting the aforesaid constitutional protections.

In an HE context, Rawls's social justice theory supports improved access by challenging unfair advantage and merit-based systems, and by highlighting the need to help the most-disadvantaged students.<sup>153</sup> A common criticism of his theory is that it does not fully address how individuals turn resources into real opportunities and abilities.<sup>154</sup> Young's theory, in turn, explains how social structures, institutions and group identities create and sustain injustices.<sup>155</sup> However, her focus on groups is said to overlook the importance of individual differences and personal agency. Finally, Fraser's approach offers a broad view of social justice, but does not sufficiently consider individuals' choices and actual lived realities.<sup>156</sup> In this thesis, Fraser's multidimensional framework combined with Sen's capability approach seems to be the most preferred theory to adopt: Fraser's theory helps address the economic, cultural and political injustices in HE (access, recognition, participation), while Sen's capability approach complements this by focusing on how students convert resources and opportunities into real success and wellbeing. The latter emphasises agency, where the student becomes an active participant in HE rather than a passive recipient of HE resources.

## **2.4 DELINEATING THE SPECIFIC SOCIAL JUSTICE CONCEPTS OF ACCESS, REDRESS AND EQUITY IN HIGHER EDUCATION**

It is argued that the effectiveness of HE depends on the extent to which it promotes equity and social justice by giving people more chances to improve their lives through the knowledge, skills and competencies they gain.<sup>157</sup> Yet one can arguably identify three fundamental measures of the effectiveness of any public HE system, namely quality, efficiency and equity.<sup>158</sup> Considering what has been stated about social justice in general,<sup>159</sup> social justice in HE may be defined as a fair distribution of knowledge,

---

<sup>153</sup> Wilson-Strydom 2015:153.

<sup>154</sup> Wilson-Strydom 2015:153. Abilities of function (often called "functionings") refer to what people are actually able to do and be in their lives, i.e. their real opportunities and capabilities.

<sup>155</sup> Wilson-Strydom 2015:153.

<sup>156</sup> Wilson-Strydom 2015:150.

<sup>157</sup> Sehoole & Adeyemo 2016:3.

<sup>158</sup> Bitzer 2010:301; Allen 2005:20; Coates & Krause 2005:40.

<sup>159</sup> See par. 2.2.

skills, educational success and qualifications.<sup>160</sup> This thesis assesses whether the LLB extended curriculum programme implemented at six South African universities has contributed to equity and social justice in the HE sphere by improving the academic performance of students at risk of underachievement due to disadvantaged educational backgrounds. It also determines whether the extended programme is a meaningful strategy to increase access to, and success in, legal education. However, it is first imperative to delineate the concepts of access, redress and equity in HE.

When considering access, redress and equity, it is often asked how greater access influences the quality of education. Sehoole and Adeyemo<sup>161</sup> address this issue by linking quality to both access and social justice. They note that HE institutions may exclude certain students through their admission criteria, but such exclusions must be guided by principles of justice to ensure fairness.

There is some tension between HE access and HE quality. HE quality should not be reduced to input measures, such as admitted students' prior school results, socioeconomic background and standardised test scores, as these tend to reflect structural inequalities in schooling rather than individual potential. While it is true that institutions are often judged by the calibre of those they admit, real quality lies not merely in selecting well-prepared students, but in an institution's ability to transform all students, especially those who are underprepared, into capable, critical and socially responsible graduates. This perspective is particularly relevant to the extended LLB programme, which aims to broaden access for students from disadvantaged educational backgrounds. In doing so, these programmes serve as a test for whether HE institutions can simultaneously uphold quality and advance social justice. Social justice plays a major part in reconciling this tension. The role of extended programmes is not merely remedial, but transformative, allowing HE to meet the imperatives of both quality and social justice. Social justice demands a fair process of inclusion, which involves recognising the impact of uneven schooling and the state's constitutional responsibility to rectify it.

## **2.4.1 Redress in the context of higher education**

### ***2.4.1.1 Concept and policy of redress in higher education***

---

<sup>160</sup> Walker 2005:108.

<sup>161</sup> 2016:6.



Redress in the context of this thesis may be defined as the implementation of practical measures aimed at correcting the inequalities that arose from South Africa's history.<sup>162</sup> Redress funding, in turn, refers to financial support directed at correcting past imbalances or inadequacies in institutional functions as a result of uneven or lacking development due to apartheid.<sup>163</sup>

By 1996/97, different interpretations of institutional redress were starting to emerge in the South African HE landscape.<sup>164</sup> In general, historically disadvantaged institutions saw redress as something they were rightfully entitled to.<sup>165</sup>

Barnes<sup>166</sup> argues that many previously disadvantaged HE institutions believed that, because they had supported the anti-apartheid struggle, they would naturally benefit after 1994. Instead of receiving the anticipated level of support from the government, though, they found themselves facing growing competition from other HE institutions. This, Barnes says, indicated that the government's overall policy had shifted from redistribution to business-related viability in an atmosphere of fiscal restraint.<sup>167</sup> In light of this development, it is argued that the aim of redress was not merely to provide more financial support to previously disadvantaged HE institutions, but rather to focus on the broader HE landscape. This brings to mind Fraser's argument against taking an overly narrow view of distributive justice.<sup>168</sup> The government's approach to redress after the end of apartheid seems more in line with a systemic change. This is important, as it means that the LLB extended curriculum programmes may be seen as a part of this systemic change effort. These programmes are not merely remedial interventions for individual students, but are structural mechanisms designed to advance access, equity and social justice across the HE sector. This also strengthens the notion that true quality in HE cannot be assessed solely in terms of student inputs, but must be measured by the institution's ability to transform students from diverse and often disadvantaged backgrounds into capable graduates.

Redress would also not take place if one were simply to remove the formal barriers of apartheid, since the effects and scars of apartheid ran too deep. Under apartheid, the

---

<sup>162</sup> Nkomo *et al.* 2007:410.

<sup>163</sup> Barnes 2006:149.

<sup>164</sup> See chapter 3 of this thesis.

<sup>165</sup> Barnes 2006:160.

<sup>166</sup> Barnes 2006:160.

<sup>167</sup> Barnes 2006:160.

<sup>168</sup> See par. 2.2.2.

education system was designed to benefit white students by giving them the largest share of the budget, qualified teachers and good facilities, while denying those same resources to African, coloured and Indian students.<sup>169</sup> The newly elected government faced the task to transform the entire education system into one that reflected the values of the new democracy and Constitution, and in this way, try to achieve redress in the HE industry.

#### ***2.4.1.2 Redress, funding and institutional transformation***

As a result of historical inequalities and mounting social welfare demands, South Africa in 1996 adopted a macro-economic policy that aimed to meet the country's vast social welfare needs over time by avoiding new debt and focusing on repaying existing loans.<sup>170</sup> This meant that social programmes, including HE funding, had to be carefully justified. For historically disadvantaged universities, extra funding now had to be earned not based on past inequality alone, but also on how well they were performing after 1994. These institutions, already struggling due to years of underfunding, found it difficult to meet the new expectations. Consequently, their claims for redress started losing support, and large-scale funding for these institutions was soon seen as an unfair reward for poor performance.<sup>171</sup> Instead of the initially envisioned redress for previously disadvantaged HE institutions specifically, what occurred was redress for the entire HE landscape, including previously advantaged institutions, which may seem unfair.

This shift in thinking marked a turning point in the redress debate. It revealed a growing emphasis on efficiency, accountability and measurable outcomes, which was often at the expense of historically disadvantaged institutions. While the intention may have been to ensure fair use of public funds, the policy overlooked the deep-rooted structural inequalities that continued to limit the capacity of historically disadvantaged institutions. It seems unrealistic and unjust to have expected historically disadvantaged institutions' performance to match that of their historically advantaged

---

<sup>169</sup> Fiske & Ladd 2004:ix.

<sup>170</sup> Barnes 2006:161.

<sup>171</sup> Barnes 2006:161.

peers immediately after 1994. True redress requires more than just equal treatment; it also demands equitable support.

The 1997 White Paper dealing with HE transformation<sup>172</sup> made redress a specific remedy and distinguished between two types of redress post-1994, namely social and institutional.<sup>173</sup> Social redress refers to funding targeted at individual students,<sup>174</sup> while institutional redress is aimed at historically disadvantaged institutions. Institutional redress encompasses all initiatives aimed at enhancing the physical infrastructure necessary for teaching, learning and the effective administration of a particular previously disadvantaged HE institution's campus.<sup>175</sup> The distinction between the forms of redress stemmed from the realisation that providing opportunities for individual students from disadvantaged backgrounds did not automatically mean that the institutions they entered had been transformed. Deeper institutional changes were required to achieve true redress and equity. The White Paper<sup>176</sup> envisioned a future where, through effective policy implementation, the gap between advantaged and disadvantaged institutions would gradually become irrelevant. For this reason, it was specific about redress, particularly institutional redress.<sup>177</sup>

The subsequent *Higher Education Act*<sup>178</sup> provided the legal framework for the principles and vision of the White Paper. The Act provided the Minister of Higher Education and Training with the legal authority to implement institutional redress through differentiated funding allocations. As a result, redress was no longer a discretionary measure, but became a formal requirement of the funding policy. The *Higher Education Act*, therefore, gave legal force to redress funding.

Bozalek and Boughey argue that the goal of redress in the context of HE should be to strengthen universities to fulfil their role in a fair and transformed HE system.<sup>179</sup> This means that institutions must define a clear mission and purpose aligned with national

---

<sup>172</sup> DHET 1997:1.18; Barnes 2006:150.

<sup>173</sup> The 1997 White Paper included recognition of foundation provision and extended programmes as key means of addressing the "articulation gap", being the gap between the exit level of secondary education and the entry level of higher education.

<sup>174</sup> Barnes 2006:150. An example of social redress is NSFAS.

<sup>175</sup> Barnes 2006:150.

<sup>176</sup> DHET 1997:2.21.

<sup>177</sup> The concept of redress was dealt with in the first guiding principle. DHET 1997:1.18. In chapter 3 of this thesis, the position of the advantaged and disadvantaged institutions after the implementation of the legislation is discussed in more detail.

<sup>178</sup> 101 of 1997.

<sup>179</sup> Bozalek & Boughey 2012:696.

equity and development goals. Institutions must also build the necessary leadership and administrative and academic systems to support and carry out that mission effectively. HE institutions must deal with past discriminatory practices in a manner that is consonant with the underpinning values of the *Constitution*. One way to do so is to undertake redress of past injustices with a view to ensuring institutional efficiency.<sup>180</sup> Indeed, true redress in HE arguably extends beyond policy compliance or symbolic gestures. It demands intentional structural and pedagogical transformation that aligns institutional practices with constitutional values, ensuring that equity and efficiency reinforce rather than undermine each other.

This, however, creates tension between access and efficiency, with each having far-reaching and complex implications.<sup>181</sup> For example, if the growth in student enrolments (by providing increased access) is not accompanied by a corresponding increase in professional support staff, institutional efficiency is likely to suffer. Therefore, access, efficiency and redress need to be balanced. Although the democratic government's focus in relation to access to HE after 1994 was to achieve equity, the rapidly globalising economy also prompted an increasing focus on producing graduates who could contribute to South Africa's and the global economy. Consequently, the conversation around redress in the new dispensation shifted from what was historically just to what was practically achievable in terms of institutional function and available funding.<sup>182</sup> The aim of redress was to enable historically disadvantaged institutions to actively contribute to expanding access to HE for black students. However, redress gradually came to be viewed as a separate goal rather than a core part of the broader transformation agenda. In terms of funding, these institutions could no longer rely on redress as a general form of compensation for past injustices, as was common in the early 1990s.<sup>183</sup> Instead, they were now required to justify funding based on specific, targeted needs and measurable outcomes. This shift reflects a movement from a historically grounded and morally anchored understanding of redress<sup>184</sup> to a more performance-driven funding logic, raising questions about

---

<sup>180</sup> Nkomo, Akoojee & Motlhanke 2007:399.

<sup>181</sup> Nkomo, Akoojee & Motlhanke 2007:400.

<sup>182</sup> Barnes 2006:161.

<sup>183</sup> Barnes 2006:161.

<sup>184</sup> For example, the preamble to the *Constitution* proclaims that the divisions of the past must be healed, and that a society based on democratic values, social justice and fundamental human rights is established. It also aims to improve the quality of life of all citizens by unlocking the true potential of each person. Sec. 9 of the *Constitution* also supports this notion of redress.

whether the constitutional commitment to transformation was being narrowed in practice.

One could argue that this marked a pivotal turning point in the discourse about transformation in HE. While the emphasis on accountability and efficiency introduced necessary rigour, it also risked narrowing the moral and social imperatives of redress to mere administrative targets. True transformation requires that redress remain central to the system's purpose, which is anchored in justice, inclusion and the restoration of dignity, rather than being treated merely as a conditional or instrumental mechanism to achieve other policy objectives.

#### **2.4.1.3 Constitutional and transformative foundations of redress**

The *Constitution* provides a normative framework within which past injustices are to be rectified so that a fairer and just society can be created.<sup>185</sup>

Transformative constitutionalism departs from the premise that a constitution may transform a society by correcting the wrongs of the past, but also by pursuing a desired society that is based on social justice, democratic values and fundamental human rights.<sup>186</sup> Although there is no single definition for transformative constitutionalism, the main authoritative voice in this regard is Klare,<sup>187</sup> who defines transformative constitutionalism as

... a long-term project of constitutional enactment, interpretation, and enforcement committed (not in insolation of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law.

Justice Pius Langa<sup>188</sup> defined transformative constitutionalism in terms of economic transformation<sup>189</sup> as well as a change in legal culture. Langa and Klare both critique the prevailing legal culture in South Africa and argue for a transformative shift in legal

---

<sup>185</sup> Liebenberg 2010:25.

<sup>186</sup> Van Niekerk 2013:20.

<sup>187</sup> Klare 1998:150.

<sup>188</sup> Langa 2006:353.

<sup>189</sup> The provision of services to all and the levelling of the economic playing fields that were so drastically skewed by the apartheid system must be absolutely central to any concept of transformative constitutionalism. Langa 2006:352.

education. Although Klare views transformative constitutionalism from a legal culture perspective, while Langa approaches it from a legal education perspective, they share the same values and objectives. Their specific objections against the prevailing legal culture may be summarised as follows:<sup>190</sup>

- a) Both scholars reject the uncritical acceptance of legal authority. Law students need to critically engage with legal principles and not blindly accept legal principles on the strength of the authority.
- b) There should be a shift away from doctrinal formalism to constitutional values. Social justice and constitutional values should be foregrounded, and students should understand that the law is transformative and ever-changing.
- c) Constitutional values must be embedded in all areas of the law and reflected in the entire law curriculum.
- d) A transformative legal mindset should be cultivated in students. They must understand the historical role that the law played in oppression, as well as its potential for transforming a society. The way in which the law is taught and thought about should change so that it becomes transformational in essence.

Koraan and Geduld<sup>191</sup> note that most leading scholars agree on the transformational nature of the *Constitution*, namely that it envisions a change from South Africa's divided and discriminatory past to a more equal society, and that the causes of past inequality can be traced back to institutions, law and social norms. They rightly conclude that "transformative constitutionalism is a project directed towards the positive change of the norms of society by means of the law".<sup>192</sup> Langa<sup>193</sup> recognised legal education as one of five factors that could either promote or hinder the achievement of transformative constitutionalism.

According to Brickhill and Van Leeve,<sup>194</sup> transformative constitutionalism envisions a meaningful improvement in the material conditions of people's lives, alongside a legal culture that reflects this transformation. Pieterse,<sup>195</sup> in turn, views transformative

---

<sup>190</sup> Langa 2006:355-356.

<sup>191</sup> Koraan & Geduld 2015:1935.

<sup>192</sup> Koraan & Geduld 2015:1935.

<sup>193</sup> Brickhill & Van Leeve 2015:141.

<sup>194</sup> Langa 2006:355-356.

<sup>195</sup> Pieterse 2005:156.

constitutionalism as a social-democratic concept that mandates achieving substantive equality and social justice, infiltrating human rights norms into private relationships, and fostering a culture of justification for every exercise of public power. To Van Marle,<sup>196</sup> transformative constitutionalism is a critical project committed to radically altering existing assumptions about law, politics and society, involving a break from traditional liberal legalism. Roux describes it as a collective project of legally driven social change that can be realised through a “best interpretation” approach, where the *Constitution*’s progressive values are put in the most favourable light.<sup>197</sup> Hailbronner<sup>198</sup> identifies the legal core of transformative constitutionalism as the constitutional entrenchment of a vision for fundamental social change where the *Constitution* serves as a comprehensive order and a tool to prompt state action rather than just restraining it. Klare<sup>199</sup> notes, however, that the prevalent legal culture demonstrates a detachment from the transformative aspirations of the *Constitution* and continues to reflect the conservative nature of the previous legal culture. He states that the legal culture needs to transform the understanding of, for example, legal interpretation.<sup>200</sup> Both Klare<sup>201</sup> and Langa<sup>202</sup> regard transformative constitutionalism not as a destination, but as a process.

A number of scholars also identify several limitations and challenges for transformative constitutionalism. A primary limitation is a conservative or formalist legal culture, which Klare<sup>203</sup> describes as “cautious traditions of analysis”. Such a culture displays a technical, rule-bound faith in the determinacy of legal texts, which discourages constitutional innovation and reduces transparency. Pieterse<sup>204</sup> notes that a conservative legal culture’s insistence on political neutrality masks a preference for classical liberalism and often baulks at the idea of transformative adjudication. Another limitation for transformative constitutionalism is the law’s limitations and incapacity. Van Marle<sup>205</sup> highlights the tension between the utopian ideal of the constitutional project and the reality on the ground by suggesting that the law may be a limited

---

<sup>196</sup> Van Marle 2009:288.

<sup>197</sup> Roux 2009:259.

<sup>198</sup> 2017.

<sup>199</sup> Klare 1998:151.

<sup>200</sup> Klare 1998:151.

<sup>201</sup> Klare 1998:151.

<sup>202</sup> Langa 2006:351.

<sup>203</sup> Klare 1998:168.

<sup>204</sup> Pieterse 2005:165.

<sup>205</sup> Van Marle 2009:292.

structure, unable to fully address the other position. Roux<sup>206</sup> also points out that the transformative constitutionalism project is strategically risky, with the South African Constitutional Court, for instance, having faced aggressive political attacks aimed at curtailing its powers.

Collectively, the definitions of transformative constitutionalism underscore that transformation is not confined to the text of the *Constitution* or to judicial enforcement alone, but is deeply dependent on the institutions and practices that mediate constitutional values in everyday social life. In this sense, HE in general, and legal education in particular, is pivotal to the transformative project. If transformative constitutionalism requires a shift in legal culture, modes of reasoning and justificatory practices, law faculties are not merely sites of technical skills transmission, but central arenas where the *Constitution's* transformative ambitions are either enabled or constrained.

It is safe to say that this places an obligation on legal education institutions to move beyond formal access to the study of law and to engage substantively with questions of access, redress and equity. LLB extended curriculum programmes, as an institutional response to historical and systemic disadvantage, constitute one of the most concrete mechanisms through which the transformative aspirations of the *Constitution* can be advanced in HE. However, their transformative potential depends not only on their implementation, but also on how their curricula, pedagogies and institutional cultures actively give effect to constitutional values.

Understanding transformative constitutionalism as an ongoing process further suggests that the success of such extended programmes cannot be assessed solely through compliance with policy frameworks or stated commitments to transformation. Rather, it requires an examination of whether these programmes meaningfully disrupt inherited assumptions about merit, preparedness and success in legal education, and whether they cultivate forms of legal reasoning and professional identity aligned with substantive equality and social justice. In this way, the realisation of transformative constitutionalism in legal education becomes inseparable from the question of whether

---

<sup>206</sup> 2009:285.



LLB extended curriculum programmes enable underprepared students not only to access legal education, but to succeed in it on equitable terms.

The limitations and challenges of transformative constitutionalism highlight its fragility and non-self-executing nature, demonstrating that its realisation largely depends on institutional and educational practices. Legal education and LLB extended curriculum programmes specifically emerge as critical sites where formalism may be reinforced or resisted, and where the transformative project is either constrained or reimagined through pedagogical choices, curricular design and the cultivation of a critical legal consciousness.

#### ***2.4.1.4 Redress and academic development initiatives***

In HE, these transformative aims often find expression in academic development initiatives. Many students entering HE come from school backgrounds that were (and, regrettably, still are) characterised by underresourcing and inadequate teaching practices. This has led to inappropriate learning cultures that hinder academic success and limit meaningful participation in HE.

In response to these challenges, and in pursuit of broader transformational goals, the principle of equity and redress is firmly entrenched in the 2017 White Paper.<sup>207</sup> The National Plan for Higher Education, which Cabinet approved in February 2001, also addressed race and gender equity by identifying five key policy goals and strategic objectives necessary for achieving the overall goal of transforming the HE system.<sup>208</sup> One of these goals, as reflected in a subsequent DHET document on the transformation and reconstruction of the HE system, issued in 2002, reads as follows: “To promote equity of access and outcomes and to redress past inequalities through ensuring that student and staff profiles reflect the demographic composition of South African society.”<sup>209</sup>

---

<sup>207</sup> DHET 1997:1.14, 1.18. “Promote equity of access and fair chances of success to all who are seeking to realise their potential through higher education, while eradicating all forms of unfair discrimination and advancing redress for past inequalities.”

<sup>208</sup> DHET 2002:1.

<sup>209</sup> DHET 2002:1.

The post-apartheid government has used funding as a tool to both broaden access to HE institutions and make resources available to support the success of those students who qualify for access.<sup>210</sup> This creates two types of redress, namely individual redress, where funding is provided to individual students, and institutional redress, where state funding enables HE institutions to support student success.<sup>211</sup> It is important to investigate the criteria used to determine eligibility for both individual and institutional redress. The effectiveness of these funding mechanisms depends largely on whether the criteria are aligned with the broader goals of equity and redress. If they are only narrowly applied, they risk excluding many students or institutions still bearing the consequences of past educational disadvantage. Creating alternative avenues to access HE for learners from disadvantaged backgrounds is one of the redress strategies of South African HE institutions.<sup>212</sup>

Funding, it would seem, is best understood not merely as a financial instrument, but as a transformative tool that actively reshapes patterns of inclusion and opportunity. When funding mechanisms are designed and implemented with a genuine commitment to social justice, they can be powerful drivers of systemic change rather than perpetuating existing inequalities under the guise of merit-based allocation.

#### ***2.4.1.5 The National Student Financial Aid Scheme as a redress mechanism***

To enable individual redress and promote access, the National Student Financial Aid Scheme (NSFAS) was officially established in its current form in 1999 in terms of the *National Student Financial Aid Scheme Act*.<sup>213</sup> According to the preamble to the Act, NSFAS was established “to redress past discrimination and ensure representivity and equal access” and “to respond to [the] human resource development needs of the nation”. Essentially, NSFAS provides funding to students who meet the academic requirements of HE, but lack the necessary financial means to afford it. In 2023, a task team mandated by the Minister of Higher Education and Training, Science and Innovation to “determine and advise on alternative financing and operating models for

---

<sup>210</sup> Sehoole & Adeyemo 2016:6.

<sup>211</sup> Sehoole & Adeyemo 2016:6.

<sup>212</sup> Waetjen 2006:200.

<sup>213</sup> 56 of 1999. NSFAS and its functions are discussed under par. 3.7 of this thesis.

funding poor and missing middle students” concluded their work.<sup>214</sup> This set into motion the finalisation of the comprehensive funding model (CFM) for universities and TVET colleges in South Africa. The key feature of the CFM is that it includes funding for students from the missing middle, representing households with incomes between R350 000 and R600 000.<sup>215</sup> The CFM is a sustainable, phased approach introduced in 2024 to fund missing-middle students through loans, alongside existing NSFAS bursaries for poor students. It covers public universities and TVET college students, although 70 per cent of the funding is allocated to STEM (science, technology, engineering and mathematics) programmes.<sup>216</sup> NSFAS rewards missing-middle loan recipients partially by converting a percentage of the loan into a bursary if the student achieves an average of at least 70 per cent in all their registered modules and completes their studies within the minimum time prescribed.<sup>217</sup>

#### **2.4.2 Foundation grants as a redress mechanism**

To help achieve institutional redress, the funding framework makes provision for foundation grants in support of institutions that admit students from disadvantaged backgrounds. This was confirmed in the 2001 National Plan for Higher Education, and the government subsequently provided funding for extended/foundation programmes to motivate HE institutions to implement these programmes as a way to redress past inequalities and broaden HE access in South Africa.<sup>218</sup> Extended programmes admit students who do not meet standard university admission requirements for the specific programme, extending the years of study needed to complete the degree by one year.<sup>219</sup> This is typically done by distributing the first year of study across two years.<sup>220</sup> As Cele and Menon<sup>221</sup> rightly note: “Universities have to promote and monitor social inclusion through admission and access programmes, ensuring that equity of access as a critical social redress lever translates to equity of outcomes.” In other words, for efforts to fix past injustices to be truly effective, universities must not only provide

---

<sup>214</sup> NSFAS 2025:4.

<sup>215</sup> NSFAS 2025:4.

<sup>216</sup> DHET 2024a.

<sup>217</sup> NSFAS 2025:15.

<sup>218</sup> Sehoole & Adeyemo 2016:7; Kishun 2007:455.

<sup>219</sup> Boughey 2010:1.

<sup>220</sup> See chapter 5 of this thesis for a more detailed discussion.

<sup>221</sup> Cele & Menon 2006:39.

access to more students from disadvantaged backgrounds, but should also support them properly so that they can succeed and graduate. Universities have a responsibility to actively support transformation and inclusion.

Indeed, access without adequate support merely reproduces the very inequalities it seeks to address. Genuine transformation requires universities to create environments where all students, regardless of their background, are not only able to enter the HE system, but also to thrive in it, academically, socially and personally.

## **2.5 ACCESS TO HIGHER EDUCATION**

The concepts of access and equity are closely intertwined.<sup>222</sup> Access refers to educational opportunities that are open to everyone who is eligible and meets the criteria. This naturally ties in with equity, which is about fair and socially just distribution of educational opportunities and resources. Many argue that improving access is the first step towards achieving equity, as it requires HE to be available to a broader range of students.<sup>223</sup>

Broadening access to HE institutions is addressed in mainly two ways: One way is to provide financial aid to students from low-income families; the other is to change admission policies and selection criteria to be sensitive to students' socioeconomic backgrounds.<sup>224</sup> Therefore, access implies ensuring that all eligible students have a fair chance to enter HE. True equity is possible only when access is expanded.

The concept of HE access needs to be situated in the relevant historical, political and economic context. Access to education in a post-apartheid context is often assumed to mean access to basic education. For the purpose of this thesis, however, the focus will be on access to HE. Yet basic education and HE are closely linked, as the context and meaning of access to basic education has a direct effect on access to HE. For example, access to basic education implies quality schooling, the provision of good teachers, adequate learning materials, and sound teacher-to-student ratios.<sup>225</sup> The measure to which these issues in basic education are addressed has a direct influence

---

<sup>222</sup> Onsongo 2007:118.

<sup>223</sup> Onsongo 2007:118.

<sup>224</sup> Mzangwa 2019:5.

<sup>225</sup> Fataar 1997:346.

on students' ability to access HE. It is a known fact that the greater the fit between prior educational experience and the HE institution, the greater the likelihood of university success.<sup>226</sup> This suggests that the government must address fundamental basic education issues in South Africa to ensure that students achieve greater success in HE.

One could argue that the disconnect between basic education and HE reinforces structural inequality. Urgent systemic reforms at the basic level and efforts to broaden access to HE are necessary; otherwise, the system risks becoming superficial, admitting students without adequately preparing them to succeed. However, as stated earlier, an analysis of the state of basic education in South Africa does not fall within the ambit of this thesis.

Cele and Menon<sup>227</sup> identify five levers that have been put in place in relation to regulating access in HE, namely the size of the HE system; programme and qualification mixes; capping of student numbers; the funding formula; and financial support for students. Access is often measured in terms of increasing participation, especially of previously disadvantaged students, but seldom through a social justice lens, where equity of access is closely linked to equity of success.<sup>228</sup> Access should be understood as access to participate, epistemological access as well as access to success. Access is compromised by selective admission, student dropout, low throughput rates, and low graduation rates.<sup>229</sup> Wilson-Strydom rightly notes that recognising educational disadvantage, marginalisation and exclusion creates a critical space for intervention aimed at advancing social justice in HE and fostering meaningful opportunities for access that are accompanied by the likelihood of success.<sup>230</sup>

Arguably, too much emphasis is still placed on numerical access, while insufficient attention is paid to ensuring the conditions necessary for meaningful participation and completion. Without a deliberate focus on the quality and inclusiveness of the learning experience, particularly for students from underresourced backgrounds, access remains symbolic rather than substantive. True access must extend beyond admission

---

<sup>226</sup> Coughlan 2006:210.

<sup>227</sup> 2006:41.

<sup>228</sup> See Boughey 2012; Wilson-Strydom 2011.

<sup>229</sup> Cele & Menon 2006:38.

<sup>230</sup> Wilson-Strydom 2011:410.

to the system. It must also include the capability to navigate the system, engage with it, and ultimately succeed in it.

In South Africa pre-1994, white students received preferential access to HE, while limited HE opportunities were afforded to the black majority.<sup>231</sup> As a result, the new democratic government had to redress the inequalities of apartheid by adopting policies that would broaden access to HE for all South Africans and ensure their success.<sup>232</sup> However, the implementation of social inclusion policies often creates tension between policy aims and consequences.<sup>233</sup> The practical effect of the policy frequently differs from the policy's original aim of redress and transformation.<sup>234</sup> The unequal access to HE opportunities in the previous system had an impact on participation rates.<sup>235</sup> As the shackles of apartheid started loosening in the early 1990s, large numbers of African students sought to enrol at historically white institutions. These institutions were perceived to be better resourced and more prestigious, and the qualifications they could obtain there would offer them access to high-esteem, high-earning occupations.<sup>236</sup> HE has the potential to contribute to wider social shifts in the country, especially in relation to the professional working classes.<sup>237</sup> An HE system characterised by unequal access to learning cannot help promote democratic values and a just society. At the same time, increased access must be matched by improved graduation rates; otherwise, it risks creating a new form of social exclusion in HE.<sup>238</sup> This highlights the urgent need to shift institutional priorities from merely broadening access to actively supporting student success while transforming the learning environment to be more responsive to the needs of underprepared and marginalised students. If not, we risk reproducing the very inequalities higher education claims to address.

The National Plan for Higher Education and other policy instruments<sup>239</sup> were drafted to advance access to, and attempt to transform, South African HE. One way to address

---

<sup>231</sup> Sehoole & Adeyemo 2016:1.

<sup>232</sup> Sehoole & Adeyemo 2016:1.

<sup>233</sup> Cele & Menon 2006:39.

<sup>234</sup> Cele & Menon 2006:39.

<sup>235</sup> Sehoole & Phatlane 2013:493.

<sup>236</sup> Boughey 2012:135.

<sup>237</sup> Boughey 2012:136.

<sup>238</sup> Wilson-Strydom 2011:407. For the period 2001-2007, there was an increase in access, but this did not necessarily translate into increased output. Steyn 2009.

<sup>239</sup> Legislation and policy frameworks that inform and shape access include the *Constitution of the Republic of South Africa*, 1996; the *Higher Education Act* 101 of 1997; the *National Qualifications*

segregation and inequality in HE was by broadening access. Broadening access is a matter of justice, as it addresses both the ethical and economic purposes of HE.<sup>240</sup> Yet there is often a measure of conflict between increasing access to HE and improving students' chances of HE success.<sup>241</sup> The unregulated broadening of access frequently leads to more inequality.<sup>242</sup> Institutions struggle to increase their throughput rates due to students' underpreparedness<sup>243</sup> and experience undue pressure to account for their failure to graduate these students out of the system.<sup>244</sup>

Broadening access without the necessary academic and psychosocial support structures in place risks setting students up for failure. Access must be intentional and supported, grounded in a commitment to equity that goes beyond admission numbers to include curriculum transformation, inclusive pedagogy and meaningful student support. If not, the broadening of access may inadvertently deepen existing inequalities instead of addressing them. This raises the critical question of how institutions can ensure that access is not only expanded, but also regulated and supported in ways that promote real student success and social justice.

Clearly, therefore, access must be understood as more than just entry into HE; it must be accompanied by deliberate strategies to address historical disadvantage and educational gaps. Expanding participation without providing corresponding support risks superficial inclusion; on the other hand, well-structured access initiatives can empower students and advance broader goals of equity and social justice.

### **2.5.1 Differentiating between the two types of access**

Initially, access was viewed in physical terms only. It has, however, broadened to also include the expansion of educational opportunity by increasing access to quality education.<sup>245</sup>

---

*Framework Act 67 of 2008; the Continuing Education and Training Act 16 of 2006; the Skills Development Act 97 of 1998; the National Development Plan; the White Paper for Post-School Education and Training, 2013; the NSFAS Eligibility Criteria and Conditions for Financial Aid, 2025; the Language Policy Framework for Public Higher Education Institutions, 2020; and the Policy on Extended Curriculum Programmes, 2012/2018.*

<sup>240</sup> Walker 2003:171.

<sup>241</sup> Wilson-Strydom 2011:407.

<sup>242</sup> Bitzer 2010:304.

<sup>243</sup> Wilson-Strydom 2011:407; Bozalek & Boughey 2012:697.

<sup>244</sup> Cele & Menon 2006:40.

<sup>245</sup> Hill *et al.* 2012:239.

Access is divided into physical access and epistemological access.<sup>246</sup> Physical access (access from outside) is the ability to enter HE institutions, which includes gaining access to their spaces and resources. In practice, it involves ensuring that all students who enter a programme meet the minimum programme requirements to be able to engage with and complete the curriculum.<sup>247</sup> Epistemological access (access and success from within) is the ability to access the content and knowledge needed to succeed in HE.<sup>248</sup> The NSFAS grant supports physical access, while epistemological access is supported by the foundation programme (for first-years) and teaching development grants (beyond the first year).<sup>249</sup> While students may be granted physical access to university, many, especially those from disadvantaged communities, find it difficult to gain epistemological access.<sup>250</sup>

The term “epistemological access” was first used by Morrow in the early post-apartheid days.<sup>251</sup> He argued that formal access to HE institutions was not enough<sup>252</sup> and defined epistemological access as “learning how to become a participant in an academic practice”.<sup>253</sup> Ultimately, access does not only mean gaining entry to a university, but also becoming part of a specific academic field, and understanding how scholars and practitioners in that field think and work.

Epistemological access refers to the ability to acquire knowledge and learn how to meaningfully participate in the academic process.<sup>254</sup> It involves understanding the unwritten and unspoken rules and values that form part of the institutional culture.<sup>255</sup> It cannot be granted in the same way as physical access. Epistemological access requires HE institutions to reflect on what they teach, how they teach, and how they engage students in learning.<sup>256</sup> Ironically, programmes designed to assist underprepared students to succeed in HE often overlook the importance of epistemological access.<sup>257</sup>

---

<sup>246</sup> Cele & Brandt 2005:3; Holtman, Marshall & Linder 2004:188.

<sup>247</sup> Sehoole & Adeyemo 2016:4.

<sup>248</sup> Sehoole & Adeyemo 2016:4.

<sup>249</sup> Sehoole & Adeyemo 2016:7.

<sup>250</sup> Brenner 2015:315.

<sup>251</sup> Morrow 1994:40.

<sup>252</sup> Morrow 1994:41; Clarence in Hutchings & Garraway 2010:19

<sup>253</sup> Morrow 1994:40.

<sup>254</sup> Coughlan 2006:213; Morrow 1994:40.

<sup>255</sup> Brenner 2015:315; Scott & Letseka 2010:41; Garraway in Hutchings & Garraway 2010:31.

<sup>256</sup> Coughlan 2006:213.

<sup>257</sup> Shay 2011:315.



In the digital era, it is also important to consider that the high costs of digitalisation may create epistemological access barriers. The sudden transition to online learning during the Covid-19 pandemic revealed and intensified the digital divide. Many students struggled without stable, reliable internet, appropriate devices or the financial resources to cover data costs, which made online learning a challenge or, for some, entirely impossible.<sup>258</sup>

Epistemological access, therefore, requires institutions to take proactive responsibility for equipping students with the skills, resources and support they need to fully participate in the learning process. Yet students, too, have a responsibility to ensure their own epistemological access. Students need to self-reflect on what they have gained access to, and learn how to become meaningful participants in the HE institution.<sup>259</sup> They need to be motivated to participate in the academic process.<sup>260</sup> Without making an effort to gain epistemological access, success is unlikely.

Simply opening the doors to higher education is insufficient; students must be able to navigate and thrive in the academic environment for access to translate into genuine opportunity and social justice. Without bridging the gap between students' prior educational experiences and the academic demands of higher education, true equity remains out of reach.

### **2.5.2 Access and social justice in higher education**

When considering access to HE, one tends to focus on the functioning (outcomes) of the system, such as the number or proportion of diverse students who are granted access, as well as the resources, such as financial aid. The focus is seldom on students' capabilities, their opportunities, and their freedoms to make effective use of the opportunity of university study.<sup>261</sup> Access is as much a right as it is a responsibility.<sup>262</sup>

---

<sup>258</sup> Mallinson in Hutchings & Garraway 2010:23; NEON 2021.

<sup>259</sup> Coughlan 2006:213.

<sup>260</sup> Coughlan 2006:214.

<sup>261</sup> Wilson-Strydom 2011:415. See also par. 2.4.2.1.

<sup>262</sup> Coughlan 2006:215.

Inclusion in an education system is vital for the development of confidence, resilience, motivation and the knowledge skills that are required for dynamic participation in the world of work, one's community, and life in general.<sup>263</sup> Any analysis of access to HE, therefore, must take account of students' access to opportunities for enrolment, as well as their access to experiences and outcomes that can enhance their life opportunities.<sup>264</sup> Access not only refers to inclusion in an HE system, but also to the accessibility of knowledge, ways of knowing as well as participation and progression for non-traditional students once they enter the system.<sup>265</sup> HE authorities' commitment to increase and broaden access as well as to promote social justice in HE is reflected in various policy and legislative reforms since 1994.

It is essential to prioritise access based on the quality of students' results rather than relying solely on race and gender as access criteria.<sup>266</sup> True transformation in higher education requires a shift beyond numerical inclusion towards meaningful participation and success. Therefore, access should not only be measured by who enters the system, but by the quality of outcomes they achieve. This is especially important given the legacy of apartheid education, which left many black and female students structurally disadvantaged. As highlighted in the 1997 White Paper,<sup>267</sup> increased and extended access must be accompanied by improved success and graduation rates. It is precisely this link between access and success that this research engages with by emphasising the need to develop support structures that enable underrepresented students not just to enter HE, but to thrive in it.

According to the DHET, the strategic objectives in transforming the HE system are "[t]o promote equity of access and outcomes and to redress past inequalities through ensuring that student and staff profiles reflect the demographic composition of South African society".<sup>268</sup> Broadening access to HE was one of the vehicles that was used to ensure redress of past injustices. Yet access goes beyond increasing HE participation rates. Increased participation is not necessarily synonymous with an

---

<sup>263</sup> Walker 2012:384.

<sup>264</sup> Hill *et al.* 2012:245. Although the authors meant this in a basic education context, the same can be said for access to HE.

<sup>265</sup> Walker 2003:173.

<sup>266</sup> Sehoole & Adeyemo 2016:6.

<sup>267</sup> DHET 1997:16.

<sup>268</sup> DHET 2002:1; DHET 1996:4.3.

increased ability to participate equally in the academic practice of HE (epistemological access).<sup>269</sup>

Although the principle of broadening access is common practice in many countries, South Africa faces extremely challenging sociopolitical and economic factors that complicate access to HE.<sup>270</sup> It is evident that there is a link between the right to education and equity, redress and access, and that all of these factors need to be considered collectively when investigating broadening access in HE.<sup>271</sup> The diversity in the student intake, particularly in respect of unequal educational backgrounds, challenges traditional, unitary educational processes, which merely perpetuate past inequalities.<sup>272</sup> Universities often make admission decisions based on personal conversion factors, such as a student's prior academic preparation. However, they seldom consider social and environmental conversion factors, such as family responsibilities, financial pressures or access to support networks. This oversight is reflected in the lower success rates of students admitted primarily on the basis of their personal conversion factors.<sup>273</sup> Nelson Mandela University is one of the few universities in South Africa that takes into account students' school background to help level the playing field in terms of access and success on their academic journey.<sup>274</sup> Allowing access simply to increase participation without a reasonable chance of success might only lead to further injustices in the HE sphere, such as students dropping out of university, saddled with debt and self-doubt.<sup>275</sup>

Applying the capability approach in considering access may help address this issue by establishing social structures that enable different individuals to make choices about what they want to be and do, to provide them with access in pursuit of just outcomes.<sup>276</sup> However, it should be kept in mind that even when these capabilities are acquired, they may play out differently in terms of the higher-order success they

---

<sup>269</sup> Coughlan 2006:209.

<sup>270</sup> Reddy & Moores 2008:51. Although strides have been made to overcome this injustice, the court in *MEC for Education: Kwazulu-Natal v Pillay* 2008 (1) SA 474 (CC) notes that "the pattern of disadvantage engraved onto our education system by Apartheid has not been erased". Although this specific case dealt with religious and cultural rights, the comment regarding HE is relevant to this study.

<sup>271</sup> Liebenberg 2010:256.

<sup>272</sup> Van Niekerk 2013:29.

<sup>273</sup> Wilson-Strydom 2011:415; Robeyns 2017:45.

<sup>274</sup> Ntombana *et al.* 2023:11.

<sup>275</sup> DHET 2009:75.

<sup>276</sup> Wilson-Strydom 2011:415.

enable.<sup>277</sup> In other words, even though a student might acquire all the capabilities, this may still not guarantee success in HE.

The flip side is equally valid: Access to HE could be kept selective, and other routes for economic participation, such as learnerships, workplace learning and further education, could be positioned as equally credible, and be developed and strengthened accordingly.<sup>278</sup> As early as 1993, however, scholars observed that many students demanded access, viewing it as a right, regardless of whether they met the entry requirements or whether the institution had the capacity to accommodate them.<sup>279</sup> This sense of entitlement creates a political space where new efforts to narrow, limit or redefine the rules of physical access are regarded as anti-transformational.<sup>280</sup> Arguing for selective physical access is politically sensitive, as it may be said that the available opportunities for excellence are uneven.

The current system clearly does not afford all students a fair chance to excel. Many, especially those from disadvantaged backgrounds, lack the level of preparation, resources and support to meet the academic expectations of HE. Therefore, when access to a university is based mainly on academic performance, it often ends up reinforcing the very inequalities it should help overcome. This creates tension between universities' need to maintain strong academic standards in order to ensure quality and success, and universities' responsibility to recognise the uneven playing field many students face. Balancing these two priorities is not easy, as it raises difficult political and ethical questions about how to ensure fairness and promote transformation, and still protect the quality of HE. This is the paradox that universities in South Africa continually face: They are expected to maintain academic quality while enrolling underprepared students, yet their commitment to inclusivity is undermined if they exclude those who have been historically disadvantaged or who are still experiencing the legacy of apartheid.

According to Ratangee,<sup>281</sup> HE policy driven by access demands requires institutions to broaden access through secure entry testing procedures<sup>282</sup> and to enhance

---

<sup>277</sup> Coughlan 2006:210.

<sup>278</sup> Coughlan 2006:211; Morrow 1994:46.

<sup>279</sup> Morrow 1994:34.

<sup>280</sup> Coughlan 2006:211.

<sup>281</sup> 2006:13.

<sup>282</sup> Secure entrance testing procedures are trusted, objective and fair assessment methods that help institutions select students who are ready for HE studies, while maintaining the integrity and

success rates in HE through academic development. Many students in HE come from school backgrounds characterised by underresourcing, inappropriate approaches to teaching and learning, or socioeconomic inadequacies.<sup>283</sup> Many do not have the language proficiency necessary to engage meaningfully in learning in a language that may not be their mother tongue.<sup>284</sup> In this regard, Sehoole and Adeyemo<sup>285</sup> validly remark that “access should ... be measured by the equitable admissions of qualified blacks, whites and women who have the potential to succeed in higher education – not, necessarily, by the number of blacks and women on the admission lists”.

This insight highlights a critical distinction between increasing numbers and creating genuine opportunities. True transformation in HE requires us to look beyond quotas, and focus on supporting those who have the real potential to thrive academically. Without addressing underlying issues of preparedness, such as language skills and foundational knowledge, access becomes a superficial gesture rather than a meaningful step towards equity and success.

After 1994, black students’ ability to self-elect which university they wanted to attend created a push towards transformation on former white campuses and saw those universities seeking to recruit students from black social groups.<sup>286</sup> This recruitment was achieved by offering bursaries, alternative access routes, and assessing these students on their potential rather than their actual achievement in school-leaving examinations.

The 1997 White Paper<sup>287</sup> included the recognition of foundation provision and extended programmes as key means of addressing the articulation gap, being the gap between the exit level of secondary education and the entry level of higher education.<sup>288</sup> This recognition was confirmed in the National Plan for Higher Education in 2001.<sup>289</sup> As the CHE notes,<sup>290</sup> “(t)he widening of higher education (HE) access ... relates to the strategies and procedures that an institution undertakes to make its

---

credibility of the admissions process. Examples include mathematics or language proficiency tests, or entrance examinations for specific programmes.

<sup>283</sup> Ratangee 2006:14.

<sup>284</sup> Ratangee 2006:14.

<sup>285</sup> 2016:6.

<sup>286</sup> Boughey 2012:135.

<sup>287</sup> DHET 1997:14.

<sup>288</sup> Jonker in Rollnick & Lubben 2020:113.

<sup>289</sup> DHET 2001:22.

<sup>290</sup> 2004:81.

educational services accessible to a diversity of students". Indeed, there are various strategies and procedures in place to ensure broader access to HE, including recognition of prior learning, academic development programmes, foundation courses and extended curriculum programmes.<sup>291</sup>

So-called "extended programmes with an integrated foundation phase" were developed in the early 2000s thanks to redress funding<sup>292</sup> from the then Department of Education.<sup>293</sup> The primary purpose of foundation provision is to improve the academic performance of students who are at risk due to their educational backgrounds, and to ensure that these students are given the necessary academic support to succeed in becoming graduates.<sup>294</sup> These programmes, together with financial, social and psychological support, are designed to mitigate the effects of unequal schooling and socioeconomic disadvantage.<sup>295</sup> The DHET further defines foundation provision as<sup>296</sup>

... the offering of modules, courses or other curricular elements that are intended to equip underprepared students with academic foundations that will enable them to successfully complete a university qualification that has been approved by the Minister of HE and Training. Foundation provision also focuses particularly on basic concepts, content and learning approaches that foster advanced learning. Even where the subject matter is introductory in nature, foundation provision must make academic demands on the students.

The additional year of instruction made possible by the extended programme is used to provide learning opportunities that either lay a foundation for mainstream learning or other forms of support.<sup>297</sup> Foundation provision is directly linked to the government's performance-based funding framework for universities through earmarked funding allocations. Under this framework, institutions are responsible for promoting access and equity, and are accountable to the government for how these funds are used to achieve both equitable access and successful student outcomes.<sup>298</sup>

Foundation provision supports first-time entering, educationally disadvantaged students who, despite meeting the minimum admission criteria, are unprepared or underprepared for HE, providing them with an academic foundation or support system

---

<sup>291</sup> The history of career preparation programmes and the development of foundation or extended curriculum programmes are discussed in detail in chapter 5.

<sup>292</sup> In the form of the foundation programme grant and the teaching development grant.

<sup>293</sup> Boughey 2011:1.

<sup>294</sup> DHET 2012:1-2.

<sup>295</sup> Walton *et al.* 2015:263.

<sup>296</sup> DHET 2012:3.

<sup>297</sup> Boughey 2011:1.

<sup>298</sup> DHET 2012:3; Sehoole & Adeyemo 2016:6.

so that they can complete their studies successfully. Performance trends show that students who are at risk because of disadvantaged educational backgrounds are often placed in mainstream programmes.<sup>299</sup> As a result, a significant proportion of the mainstream intake is underprepared in relation to programme requirements.<sup>300</sup> Extremely low throughput rates at university, along with ongoing pressure on institutions to enrol more students, lead to a revolving-door syndrome,<sup>301</sup> which has been of concern for efforts to broaden access.<sup>302</sup> Care should be taken not only to admit students for the sake of broadening access and rectifying past wrongs, but also to provide them with adequate support to ensure that they have a reasonable chance of succeeding in their studies. The mere broadening of access may not be sufficient if redress and equity are not also part of the picture.

Building on this understanding, the discussion now turns to how access and student success are intertwined in HE, highlighting the strategies and challenges involved in supporting meaningful participation.

### 2.5.3 Access and success in higher education

Universities are autonomous<sup>303</sup> and admit students who meet their admission requirements, whether in a mainstream or a foundation grant-funded programme. Sehoole and Adeyemo<sup>304</sup> raise a pertinent question that speaks to the essence of this thesis, namely: “If the students who are admitted meet the admission criteria, why do they drop out?” They<sup>305</sup> propose that to address high dropout rates,

---

<sup>299</sup> DHET 2012:1.

<sup>300</sup> DHET 2012:2.

<sup>301</sup> When admitted students who are unable of graduating either stay in the system or drop out. “[E]quity of access must be complemented by a concern for equity of outcomes. Increased access must not lead to a ‘revolving door’ syndrome for students with high failure and drop-out rates.” DHET 1997:16.

<sup>302</sup> Greenbaum 2014:15.

<sup>303</sup> In this thesis, institutional autonomy refers to the authority granted to universities to regulate their internal academic, administrative and governance affairs, including the determination of programme-specific admission requirements, curriculum development and assessment standards. In the South African context, universities operate within the framework of the *Higher Education Act* and broader national transformation policies, and remain bound by constitutional imperatives, including the advancement of equality, dignity, and access to education. Within this framework, institutional autonomy enables universities to develop alternative curriculum pathways, such as extended curriculum programmes, as mechanisms to address systemic inequalities and promote substantive access and success in HE.

<sup>304</sup> 2016:14.

<sup>305</sup> Sehoole & Adeyemo 2016:15.

there needs to be an alignment of funding to every category of dropout scenario, in order to achieve student success. This could include, for example, changing the funding system so that universities receive only part of the government payment for the student on admission and receive the balance when the student successfully completes the course.

With this proposal, Sehoole and Adeyemo directly link funding to student success and place the onus primarily on universities to ensure that students complete their studies successfully. This is debatable, however. While universities do play a significant role in student success, students themselves surely also carry some responsibility for ensuring their own academic success. Furthermore, although funding is a significant barrier to achieving HE success, it certainly is not the only one.<sup>306</sup>

A major success barrier is the underpreparedness and unequal preparedness of students entering HE.<sup>307</sup> It is no secret that the current South African school system is failing the country badly, with aspiring black students bearing the brunt of it.<sup>308</sup> As a lecturer in the extended LLB programme, the researcher has witnessed first-hand how this underpreparedness manifests in students' studies – not only in their academic gaps, but also in diminished confidence, language barriers, and a lack of critical thinking skills. Importantly, these students are not less capable; they are simply less equipped. If HE institutions fail to acknowledge and address this systemic inequity, they risk reproducing the very inequalities they seek to redress.

Coughlan rightly states that access to HE institutions should focus on granting access for success.<sup>309</sup> This means that access should be underpinned by the effective and efficient deployment of scarce HE resources; that in granting access, criteria should directly relate to what is required for HE success; and that HE should be freed from the burden of being perceived as the only viable route to economic participation and out of poverty for all.<sup>310</sup> By implication, therefore, HE institutions cannot rely solely on matriculation results as a measure of success in HE. As Coughlan states: "When resources are scarce, access needs to be made available on the basis of defensible principles directly related to the purpose of the resource so that the purpose of the resource can most effectively be realised."<sup>311</sup> In other words, if we do not make

---

<sup>306</sup> Bitzer 2010:304.

<sup>307</sup> Coughlan 2006:212. See also par. 2.3.1 and 2.4 on poor schooling in South Africa. Bozalek & Boughey 2012:697.

<sup>308</sup> Bitzer 2010:303. See also par. 2.3.1 and 2.4.

<sup>309</sup> Coughlan 2006:215.

<sup>310</sup> Coughlan 2006:215.

<sup>311</sup> Coughlan 2006:215.



responsible decisions regarding access, we are wasting the resource and being socially irresponsible.

Conceivably, another barrier to success may be increasing competition for student enrolments among public HE institutions.<sup>312</sup> Where the economic (as opposed to the equity) rationale behind HE access weighs heaviest, competition among HE institutions becomes the main driving force for increasing access.<sup>313</sup> Institutions not only compete for high numbers of enrolments, but also vie for students with the highest level of school achievement,<sup>314</sup> as these students are more likely to contribute positively to performance indicators and completion statistics. Competition also extends to securing government subsidies linked to enrolment and throughput rates, enhancing institutional rankings, and maintaining or improving reputational standing. This competitive environment has structural implications for equity. Where institutional incentives reward selectivity, performance metrics and prestige, admission practices may favour academically strong applicants, potentially marginalising students from underresourced schooling backgrounds. In unequal societies, this dynamic can reinforce stratification in the HE system rather than promoting substantive equality. Extended curriculum programmes, therefore, operate within a competitive framework that may simultaneously enable access and constrain the transformative objectives of broadening participation and ensuring student success.

It stands to reason why top universities in South Africa aim to attract top achievers. Yet this approach deepens inequality, as top-performing students often come from well-resourced schools. As a result, many capable students from underprivileged backgrounds are overlooked. This is not because they lack talent, but because they have not had the same opportunities. Real transformation means recognising and nurturing potential wherever it exists; not just rewarding those who have had a head start.

While the prevailing beliefs about the requirements for achieving success in HE are insufficient to identify the precise factors that contribute to success, success is commonly attributed to individualistic perspectives about learners and learning. These perspectives view success as stemming from the inherent qualities of the individual,

---

<sup>312</sup> DHET 2001:7.

<sup>313</sup> Gidley *et al.* 2010:125.

<sup>314</sup> Bitzer 2010:303.

such as intelligence, ability, aptitude and motivation, as well as factors such as language barriers and deficiencies in skills necessary for excellence, including reading and writing.<sup>315</sup> In attempting to explain the disparities between black and white students' HE success, Boughey<sup>316</sup> notes: "If we locate the potential to succeed in factors inherent to the individual, then black students' lack of success compared to their white peers would result in a claim that these factors were not distributed evenly across the population." Such a claim, she then says, would be abhorrent in any context; yet this is the dominant thinking about why students succeed or fail in HE. Thus, learning must be recognised as a socially embedded phenomenon, since the social contexts in which students are raised and live shape their learning.<sup>317</sup>

The persistent legacy of apartheid in the basic schooling system despite decades since the dawn of democracy remains a barrier to students entering HE.<sup>318</sup> Many schools in historically disadvantaged communities continue to struggle with inadequate infrastructure, a shortage of qualified teachers, and a lack of learning resources. Even though the country has been a democracy for more than 30 years, the schooling system remains highly unequal, especially for black learners,<sup>319</sup> who consequently often lack the necessary preparation when they enter HE. They often struggle with a lack of academic skills and self-confidence, and experience language barriers, not because they lack potential, but because they have not been given a fair chance.<sup>320</sup> This ongoing inequality makes it harder for them to access university, participate in it, and succeed in their studies, keeping the cycle of disadvantage in place.

This confirms that the efforts to create a just and democratic education system by merely removing the physical barriers to access and participation in HE are not enough. In some prospective students, the removal of these physical barriers has created the assumption that they are entitled to gain access, and that once they have done so, they should succeed.<sup>321</sup> An entitlement-driven approach to HE could thwart

---

<sup>315</sup> Boughey 2012:137.

<sup>316</sup> 2012:138.

<sup>317</sup> Boughey 2012:138.

<sup>318</sup> Hill *et al.* 2012:240. Barriers for learners include poorly resourced schools, low pass rates, and failure to graduate high school and obtain university admission. See also par. 2.3.1 and 2.4.

<sup>319</sup> Greenbaum 2014:11; Hill *et al.* 2012:240; Soudien 2010:16; Downs 2010:98.

<sup>320</sup> Coughlan 2006:214.

<sup>321</sup> Coughlan 2006:210. Physical barriers include restrictive admission criteria, financial constraints, and historical educational exclusion.

its success.<sup>322</sup> Those who have gained access and participated, but failed to graduate, often leave with a significant burden of debt and some psychological and social experience of failure.<sup>323</sup>

Importantly, in pursuit of equitable access, not all who wish to gain access should necessarily be allowed to do so.<sup>324</sup> While HE holds significant value, equity requires recognising that it is not universally suited to all individuals, and access should be structured accordingly. HE represents but one of the routes to equip an individual with the necessary knowledge, skills and values to achieve meaningful social participation and inclusion, and become an effective citizen. It is unreasonable to burden any one sector, in this instance HE, with the responsibility to meet the demands for access and create the means for economic participation and escape from poverty for all.<sup>325</sup> An increase in HE enrolments, therefore, should go hand in hand with a rigorous system to ensure that those with the appropriate abilities and commitment have access.<sup>326</sup> Providing access to those who demonstrate that they can and will make optimal use of the scarce and expensive resource that is HE does not automatically mean that students from disadvantaged backgrounds will be disadvantaged. This would be to assume that those from disadvantaged backgrounds will not succeed, which is inherently discriminatory, as it implies that they will be found wanting on all measures of achievement and excellence based on which access is granted, even measures other than matric results.<sup>327</sup>

Instead, the significance of epistemological access should be more clearly understood, and physical resources should be directed accordingly to ensure that students who gain physical access have a reasonable prospect of success. Epistemological access extends beyond physical presence in a lecture hall. It involves the ability to understand, engage with and contribute to academic knowledge. This means that institutions must invest in targeted academic support, inclusive teaching practices and language development to bridge the gap between access and actual learning.

---

<sup>322</sup> Coughlan 2006:210.

<sup>323</sup> Coughlan 2006:211.

<sup>324</sup> Walton *et al.* 2015:264; Mbirigenda 2021:23; McCowan *et al.* 2018:98; Arise 2022:52; Nkomo *et al.* 2007:407-408.

<sup>325</sup> Coughlan 2006:212.

<sup>326</sup> Mbirigenda 2021:23.

<sup>327</sup> Coughlan 2006:216.

## 2.6 EQUITY IN HIGHER EDUCATION

Equity is one of the fundamental measures of the effectiveness of any public HE system.<sup>328</sup> Equity in HE, while complex and hard to define, includes the following:<sup>329</sup>

- a) Individuals who have the ability to attend university should be able to do so.
- b) Barriers to access should be kept to a minimum.
- c) Selection for admission should be on merit.
- d) Selection for access should be without discrimination.
- e) Individuals should have a fair opportunity to develop their talents.

Before discussing equity in HE further, it is important to establish whether equity should be viewed as fairness or inclusion in the context of this thesis.<sup>330</sup> Equity as fairness argues for and measures growth in terms of absolute numbers of underrepresented groups in HE; equity as inclusion, on the other hand, focuses on the proportional representation of previously underrepresented groups.<sup>331</sup>

In this thesis, equity is primarily approached as a form of inclusion. While fairness, measured by growth in the numbers of underrepresented students, remains important, the focus here is on the active participation and proportional representation of historically excluded groups in HE, and on assisting them to succeed. The extended LLB programme is examined for its effectiveness to enable such inclusion by addressing systemic educational disadvantage and supporting meaningful engagement with the LLB curriculum.

Due to the magnitude and severity of the disparities in the South African HE system pre-1994, changes were required to ensure equity in the HE sphere. Racial equity is achieved through three strategies, namely equal treatment, equal educational opportunity, and educational adequacy.<sup>332</sup> Significant progress has been made in South African HE with regard to the first two strategies. However, educational adequacy remains elusive. Coughlan states that the legacy of apartheid is still deeply

---

<sup>328</sup> Bitzer 2010:301.

<sup>329</sup> James 2007:1; Bitzer 2010:301.

<sup>330</sup> Marginson 2011:24.

<sup>331</sup> Wilson-Strydom 2015:144.

<sup>332</sup> Fiske & Ladd 2004:5.

embedded in South Africa long after the formal end to the system.<sup>333</sup> It continues to shape who has easier access to economic resources, how people live and relate socially, and whose knowledge counts in South African education and society today.

Seen from a different angle, equity in the context of HE may be defined as “equity in education” or “educational equity”. Equity in education means the equal treatment of persons of all races in HE, while educational equity refers to equal educational opportunity for students of all races, or educational adequacy.<sup>334</sup>

#### *a) Equal educational opportunity*

In a post-apartheid context, equal educational opportunity goes beyond refraining from treating anyone differently based on their race, and includes acknowledging the potential for success.<sup>335</sup> This means not only that the possibility for success exists, but that all persons ought to be afforded a fair chance to achieve it.<sup>336</sup> At a minimum, this standard requires educational policies to be “race-aware”. However, when interpreted more broadly, such as in terms of ensuring equal life chances or success probabilities for all students, the equity standard becomes overly demanding and difficult to achieve. It would then require HE institutions to address and counteract family, personal and social disadvantage that places some students at a greater risk of struggling or failing compared to their peers. This is an impossible burden to bear, and the HE sector alone cannot be expected to address these factors. Other, non-educational policies would also be required to bring change.<sup>337</sup>

In their definition of the test for equal educational opportunity, Fiske and Ladd<sup>338</sup> note that the main concern is not whether the education system achieves equal outcomes across racial groups, but rather whether it effectively eliminates disparities in educational opportunity, where opportunity is defined in terms of the quality of schooling provided to students from different racial backgrounds. As early as 1992 already, it was anticipated that the shortage of qualified teachers and issues of

---

<sup>333</sup> Coughlan 2006:214.

<sup>334</sup> Fiske & Ladd 2004:x.

<sup>335</sup> Fiske & Ladd 2004:7. See par. 2.1. This concept of equity is consistent with Rawls’s principle of “equality of opportunity”.

<sup>336</sup> Fiske & Ladd 2004:7.

<sup>337</sup> Fiske & Ladd 2004:8.

<sup>338</sup> 2004:8.

language and culture would emerge as barriers to basic educational access in a post-apartheid system.<sup>339</sup> While a broad interpretation of equity may promote deeper justice, it also challenges institutions to fundamentally rethink their roles and capacities in redressing societal inequity and provide opportunities to these students to help them succeed.

#### *b) Educational adequacy*

Educational adequacy refers to the minimum acceptable standard of education.<sup>340</sup> In a South African context, this can be defined as the level of education required for a person to engage meaningfully in both the political and economic spheres of society. Although this is difficult to measure in practice, trends in the outcomes for historically disadvantaged racial groups could shed light on South Africa's progress in this regard.<sup>341</sup> In the HE context, educational adequacy could be measured in terms of graduation and throughput rates.<sup>342</sup> The adequacy of educational outcomes is not only influenced by the quantity, nature and quality of resources, but also by how efficiently those resources are used, as well as a range of organisational and other factors, such as the effectiveness of institutional leadership and governance structures, the quality of teaching, and the institutional culture.<sup>343</sup>

Therefore, the objective of equity in HE is for all groups in society to have the opportunity to participate successfully in HE so as to acquire an adequate education.<sup>344</sup> Universities often focus their recruitment efforts on a relatively small target group of prospective students, namely those learners who have performed well and have confidence in their ability to succeed at university. These students represent a tiny proportion of school leavers, which leads to participation imbalances. Yet success in HE for students from inadequate schooling backgrounds does not depend on greater social and educational equity alone. . While social and educational equity

---

<sup>339</sup> Christie 1992:38.

<sup>340</sup> Fiske & Ladd 2004:9.

<sup>341</sup> Trends in outcomes are patterns or changes in certain indicators over time that reflect how well historically disadvantaged racial groups are doing in HE, such as looking at the graduation and throughput rates to evaluate whether South Africa is making progress towards educational equity.

<sup>342</sup> This is done in chapter 5 of this study.

<sup>343</sup> Fiske & Ladd 2004:10.

<sup>344</sup> National Board of Education, Employment and Training – Australia 1990:2.

is necessary for success, it is no guarantee.<sup>345</sup> Better schooling will lead to better participation in academic practice, but this is not absolute, as entry scores are only a partial indication of intrinsic intellectual ability.<sup>346</sup> There will always be those students who excel in HE without support, despite a poor social and economic background, just as there will always be students who do not succeed in HE, no matter how economically and socially “sound” their background.<sup>347</sup> Put differently, while better schooling improves a student’s chances of success, it does not guarantee success, just as a disadvantaged background does not necessarily prevent success.

This exposition enhances our understanding of equity in HE by emphasising that equity goes beyond mere HE access or socioeconomic factors; it also involves ensuring that students who enter HE have the opportunity to succeed.

Building on this understanding, it then becomes clear that true equity also demands attention to subtle internal barriers that continue to exclude students, even after physical access has been granted. In addressing equity at an HE institution, the mere removal of formal barriers is insufficient to ensure fairness, justice and redress.<sup>348</sup> While external exclusion may be removed, internal exclusion may continue, such as through interaction privileges, language, and dismissing others’ input as irrelevant.<sup>349</sup> Therefore, the strategic objectives to transform the HE system include “[t]o promote equity of access and outcomes and to redress past inequalities through ensuring that student and staff profiles reflect the demographic composition of South African society”.<sup>350</sup> Subsequently, merit is no longer the only criterion for university admission, as transformation goals require a broader, more inclusive approach to access and success in higher education.<sup>351</sup>

It is important to distinguish between equity and equality. Equity considers the effects of discrimination, and aims for an equal outcome. The right to equality, on the other

---

<sup>345</sup> Coughlan 2006:214.

<sup>346</sup> Bitzer 2010:306.

<sup>347</sup> Coughlan 2006:215.

<sup>348</sup> Beckman 2008:774; CHE 2000:10.

<sup>349</sup> Interaction privileges are often invisible to those who benefit from them, but can significantly affect a student’s ability to succeed and feel a sense of belonging at the institution, such as familiarity with the academic discourse. Most first-generation students do not have this and may not be comfortable with the language, tone and expectations of academic discussions, giving them a disadvantage in classroom participation and engagement. Mncube 2007:131. The social theorist Young also mentions this type of exclusion. See also par. 2.2.2.

<sup>350</sup> DHET 2002:1.

<sup>351</sup> James 2007:12.

hand, is contained in section 9<sup>352</sup> of the *Constitution*. Equality in HE is covered by subsections 2 through 4, with subsection 2 being the affirmative action clause and subsections 3 and 4 dealing with non-discrimination.<sup>353</sup> All seventeen prohibited grounds of discrimination listed in section 9(3) are relevant to HE policy and practice. Race, colour and ethnic origin are particularly significant due to South Africa's history of racial inequality and ethnic division in HE.<sup>354</sup>

Equity manifests in various ways in HE, including in an individual's ability to attend university. Barriers to accessing a university should be minimised. University selection should be based on demonstrated academic potential, and individuals should have a fair opportunity to develop their skills.<sup>355</sup> Merit, therefore, should not be understood as a narrow or purely quantitative measure of prior achievement, but as one criterion of several that must be considered within a broader, context-sensitive framework for admission. This again underscores that merit alone is insufficient and must be assessed alongside considerations of equity, redress and structural disadvantage. Also, removing barriers to access will not necessarily improve equity in the short term; improving equity and removing barriers requires a long-term commitment in all educational spheres.<sup>356</sup>

Within these broader educational spheres, new challenges that affect access and equity continue to emerge. One such barrier, particularly to epistemological access, was the Covid-19 pandemic in 2020 and 2021, which significantly affected access and equity in HE. The pandemic deepened existing equity gaps and further restricted epistemological access to HE, forcing many students to abandon their studies. Students from disadvantaged backgrounds were disproportionately affected due to

---

<sup>352</sup> "(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination. (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."

<sup>353</sup> Mubangizi 2004:195.

<sup>354</sup> Mubangizi 2004:195.

<sup>355</sup> Bitzer 2010:301; James 2007:1; McCowan 2007:584.

<sup>356</sup> Bitzer 2010:305.



limited access to digital devices, reliable internet and conducive learning environments, which widened the gap between them and their more privileged peers.<sup>357</sup> However, while the pandemic deepened existing inequalities, it also spurred innovations that have the potential to create a more just and inclusive HE system in the future.

Equity means different things for different people in different contexts.<sup>358</sup> In the context of this thesis, it means ensuring that every student has the necessary support to succeed in HE.<sup>359</sup> School and post-school education has a profound influence on a person's identity and the way people perceive one another. It also helps us develop the necessary capabilities to function in society, shaping and influencing people's lives for life. Therefore, these educational institutions need to equip students with the capabilities to pursue the opportunities they value.<sup>360</sup> In other words, rather than merely being provided with access, students must be empowered with the skills and support needed to pursue meaningful opportunities that align with their values.

Many prospective students arrive at university having already been shaped by unequal schooling, limited resources, and social or economic disadvantage. Universities have the opportunity to address these gaps by providing support and interventions that can significantly influence students' academic development. However, most universities necessarily focus their recruitment efforts on school leavers who have done well and feel confident about succeeding in higher education.<sup>361</sup> Nussbaum emphasises this by stating:

The desire for a college education is not a brute fact of nature, but is shaped by what you think about yourself, what amount of self-esteem you are led to have by your society, what your society tells you about the opportunities that are likely to be open to you, and so on.<sup>362</sup>

Various authors argue that inadequate school infrastructure, materials, teachers, school management and support for learners are the reason why many learners at secondary school level perform poorly, not only in the national examination, but also compared to their peers in other sub-Saharan countries.<sup>363</sup> As a result, many students

---

<sup>357</sup> NEON 2021.

<sup>358</sup> Beckman 2008:775.

<sup>359</sup> Pillay 2019:146.

<sup>360</sup> Walker 2005:109.

<sup>361</sup> Bitzer 2010:305.

<sup>362</sup> Nussbaum, interviewed by Pyle 1999:244.

<sup>363</sup> Calderhead 2011:3; Bitzer 2010:303; Walker 2018:558.

enter university without having received a proper basic education. Success in HE depends on having certain basic capabilities<sup>364</sup> and knowledge from the start.<sup>365</sup> Importantly, these capabilities are real opportunities to excel and become who one wants to be, and not just the resources or services at one's disposal.<sup>366</sup> This is where the capability approach in HE becomes relevant.

### 2.6.1 Capability approach in higher education

Sen developed the capability approach<sup>367</sup> in the 1980s and 1990s, with further concept development by Nussbaum.<sup>368</sup> According to Sen,<sup>369</sup> a capability is “a person's ability to do valuable acts or reach valuable states of being, [it] represents the alternative combinations of things a person is able to do or be”. Nussbaum agrees, stating that the capability approach refers to what people are actually able to do and to be.<sup>370</sup> The capability approach is not a theory of social justice, but rather a normative framework that can be used to guide understandings of individual wellbeing and social arrangements.<sup>371</sup> It explicitly supports the pursuit of just outcomes. The main object of Sen's theoretical proposal is to eliminate evident injustices.<sup>372</sup> People's capabilities include access to basic necessities for survival, such as socioeconomic rights, and particularly also the right to adequate basic education.<sup>373</sup> Human capabilities link development, quality of life, and freedom. The capability approach is about developing an environment where humans can flourish; offering a real opportunity to accomplish what a person values.<sup>374</sup> In other words, it focuses on people's freedom to make meaningful choices, and the level of wellbeing they can achieve through those choices. The capability approach argues not only for income generation, but also for

---

<sup>364</sup> Since 1993, the Human Development Reports of the United Nations Development Programme (UNDP) have been assessing quality of life in nations globally based on people's capabilities, or their abilities to do and be the things they deem valuable.

<sup>365</sup> Walker & Mkwananzi 2015:14.

<sup>366</sup> Walker 2005:104.

<sup>367</sup> See par. 2.2.2 and 2.3.1.

<sup>368</sup> Wilson-Strydom 2011:409; Spreen & Vally 2006:355.

<sup>369</sup> Sen 1993:30.

<sup>370</sup> Nussbaum 2000:5.

<sup>371</sup> Wilson-Strydom 2011:408.

<sup>372</sup> De Lucca-Silveira 2016:2.

<sup>373</sup> Walker & Mkwananzi 2015:14; Kioko in Hutchings & Garraway 2010:45.

<sup>374</sup> Walker 2005:103; Robeyns 2017: 7. Nussbaum 2000:78-80 lists ten capabilities that are essential for an individual to flourish in life, namely life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment.

wellbeing and quality of life. Instead of focusing solely on income as an end in itself, it argues that resources create opportunities.<sup>375</sup> The approach is based on two key concepts, namely functioning and capabilities.<sup>376</sup> Functioning refers to people's actual achievements and what they are able to be or do, such as being educated or participating in society. Capabilities represent people's real opportunities to achieve their functioning.

Functioning is about achieving things that a person finds meaningful. If a person does not see the value in a certain outcome, it is not considered a true function for them.<sup>377</sup> In this regard, Walker states: "A functioning is an achievement (outcome), whereas a capability is the ability to achieve (potential)."<sup>378</sup> The distinction between capabilities and functioning in an HE context is critical, as considering only educational outcomes can often mask the areas of injustice and inequality that need to be addressed.<sup>379</sup> Functioning in the HE context would include being able to read and write, take part in university life, pass an examination and be awarded a qualification.<sup>380</sup> The core issue, however, is not merely gaining access to the resources of HE, but whether a student is truly able to use those resources for learning. In the context of the LLB extended curriculum programme, the capability approach is particularly relevant, as it ensures that students not only gain access to legal education and the LLB programme, but also have a real opportunity, support and the potential to engage meaningfully with the curriculum and study successfully.

Many students enter HE without these basic capabilities in place due to the quality of their schooling. Without addressing the quality of schooling, a mere increase in the number of learners enrolled in basic education simply serves to reinforce the patterns of inequality that existed during apartheid.<sup>381</sup> When these students apply for university studies, this creates tension between equity and merit. While merit emphasises selection based on prior academic achievement, equity calls for the recognition and redress of the disadvantage that prevents some students from demonstrating and fulfilling their full potential. The LLB extended curriculum programme can be seen as

---

<sup>375</sup> Walker 2005:104; Robeyns 2017:7.

<sup>376</sup> Wilson-Strydom 2011:409; Spreen & Vally 2006:355..

<sup>377</sup> Wilson-Strydom 2011:409.

<sup>378</sup> Walker & Unterhalter 2007:4.

<sup>379</sup> Wilson-Strydom 2011:410.

<sup>380</sup> Wilson-Strydom 2011:409.

<sup>381</sup> Fataar 1997:333.

a practical response to this tension, providing students from disadvantaged backgrounds with the support and resources they need to develop the foundational capabilities necessary to succeed in HE.

Robeyns<sup>382</sup> developed Sen's capability approach further by elaborating on the concept of conversion factors. Conversion factors are the circumstances that determine how effectively a person can transform a resource into functioning/a valuable action.<sup>383</sup> These factors may be personal, social or environmental, and are often shaped by context. Robeyns's take on conversion factors is important, as it highlights that access to resources alone is not enough to ensure equal opportunities. People differ in their ability to use those resources effectively, depending on various personal, social and environmental factors. This shifts the focus from simply providing resources, to understanding whether individuals can benefit from them. Conversion factors, therefore, are important to turn abstract ideas of equality into practical, targeted actions that truly expand students' capabilities.

This highlights the urgent need for a holistic approach to educational transformation that not only increases access, but also strengthens the foundational quality of schooling. If these systemic gaps are not addressed, efforts to achieve equity in HE will be ineffectual and fail to truly empower students who have been marginalised. Sen's capability approach suggests that we need to examine the concept of access in a broad and holistic manner. To ensure real access for students, they must have certain basic capabilities in place.

From a capabilities perspective, quality and wellbeing in education are measured by a person's ability to achieve valuable outcomes, such as good health, adequate housing, literacy, numeracy, and participating in critical discussions.<sup>384</sup> However, to grant students access to HE based on equity values, without offering them a reasonable chance to succeed, is pointless. Ultimately, the desire to succeed academically is not a function of any social construct (including race, gender, socioeconomic status or background, religion or political belief).<sup>385</sup> The desire to succeed academically depends on individual factors, such as personal motivation,

---

<sup>382</sup> 2017:45.

<sup>383</sup> Robeyns 2017:45.

<sup>384</sup> Walker 2005:105; Fiske & Ladd 2004:11.

<sup>385</sup> Coughlan 2006:209.

interests, goals, self-confidence, resilience and the support systems a student enjoys. Therefore, to address unequal participation in HE and achieve fairness, we need to change our perspective of what constitutes success. Simply allowing more students into the system is not enough. We must actively correct past inequalities in a way that creates a fair and inclusive university community. The extended LLB programme at South African universities is an example of a practical step to achieve this goal of redress.

### **2.6.2 Equity and the cost of higher education**

The government, led by the African National Congress (ANC), has sought to address inequality and poverty by introducing state welfare, mainly through the social grant system.<sup>386</sup> At the HE level, financial support is provided through NSFAS, which helps cover students' university fees. However, NSFAS does not reach all students, leaving many with significant debt, and unable to pay their fees. This financial strain contributed to the rise of the #FeesMustFall movement in 2015/16.<sup>387</sup>

#FeesMustFall, prompted by the government's failure to address access to HE for disadvantaged students,<sup>388</sup> led to a radical increase in HE access in South Africa. Thousands of students from different institutions united in protest against their financial exclusion and demanded free and accessible education, and many HE institutions had to close temporarily in the face of the unrest.<sup>389</sup> #FeesMustFall is relevant to this thesis in a number of ways. While both #RhodesMustFall and its spinoff, #FeesMustFall, had a strong emphasis on decolonisation, this thesis primarily approaches the latter movement from the perspective of free education and its contribution to expanding access to HE. The validity of the idea that free education promotes equity among aspiring students will be examined, focusing on the movement's actual impact on equity and access among students. The idea that free education necessarily improves equity is based on the assumption that cost is the only barrier to HE access and success.

---

<sup>386</sup> Tirivangasi *et al.* 2021:10.

<sup>387</sup> Tirivangasi *et al.* 2021:10; Walker 2018:557.

<sup>388</sup> Mdepa 2022:110.

<sup>389</sup> Walton *et al.* 2015:263.

In March 2003, the then Department of Education produced the document “A review of the financing, resourcing and costs of education in public schools” after the 51st ANC conference in Stellenbosch, which led to Cabinet’s adoption of the “Plan of Action: Improving access to free and quality basic education for all” three months later.<sup>390</sup> The idea of free education in the HE sector gained momentum in 2016 when outgoing South African president Jacob Zuma announced that free HE would be made available to all deserving students.<sup>391</sup> This saw the politicised climate of HE taking precedence over its educational goals.<sup>392</sup>

For the purposes of this study, equity will be regarded as a) equity in the distribution of opportunities and the promotion of achievement among South African citizens; and b) equity of access and success in HE in post-apartheid South Africa. It is incorrect to assume that providing equal resources, such as access and funding, means that all students would be able to translate these resources into capabilities and functioning.<sup>393</sup> Put differently, equal resources do not automatically lead to equal outcomes.

Securing the financial means to study at an HE institution is a major challenge for many students who are accepted into university. Therefore, finance is a crucial determinant of whether acceptance translates into access.<sup>394</sup> Bitzer<sup>395</sup> argues that it is a myth that free or low-cost HE will improve equity, pointing to a lack of evidence internationally that would suggest that free or low-cost HE widens participation at any significant scale.<sup>396</sup>

This highlights the need to move beyond financial considerations alone and to interrogate more closely what access to HE truly entails.

## 2.7 CONCLUSION

---

<sup>390</sup> Monyae 2010:21.

<sup>391</sup> Pillay 2019:142.

<sup>392</sup> Pillay 2019:142.

<sup>393</sup> See par. 2.4.2.1; Wilson-Strydom 2011:416.

<sup>394</sup> Walton *et al.* 2015:263

<sup>395</sup> 2010:304.

<sup>396</sup> Bitzer 2010:304.

This chapter delineated what the social justice concepts of equity, redress and access mean in the context of HE, and indicated how they have been applied in HE.

While South Africa has made notable progress in expanding physical access to HE, real transformation demands a more critical examination of what access truly means. Gaining formal admission is the first step, but does not guarantee success, especially for students coming from historically disadvantaged and underresourced schools. The lingering effects of apartheid continue to shape the quality of basic education, often leaving students underprepared for the intellectual and social demands of university life. This reality calls for a shift from simply opening the doors of institutions, to ensuring that all students can genuinely participate and thrive. Achieving this requires a strong commitment to epistemological access, which entails the ability to meaningfully engage with HE knowledge and practices.

Therefore, universities must move beyond superficial inclusion and adopt a more holistic, justice-driven approach. This means aligning teaching methods, support systems and institutional resources to create an environment where all students have a real chance at success. The quest for equitable access is complex and cannot be addressed through a uniform solution.

Collectively, the theoretical contributions of Young, Rawls and Sen offer a valuable lens through which to understand justice in the HE context and specifically in the LLB extended curriculum programme. Rawls's theory of justice as fairness argues for the equal distribution of opportunities, allowing inequalities only if they benefit the least advantaged. His framework supports systemic reforms in university admissions and resource allocation aimed at levelling the playing field. Young, in turn, critiques such a distributive approach for overlooking the structural and group-based forms of oppression. Her politics of difference calls for justice to address institutionalised patterns of exclusion – something that is profoundly relevant in post-apartheid South Africa, where inequalities persist not only in material terms, but also culturally, linguistically and epistemologically. Sen's capability approach adds yet another layer, shifting the focus from access, to what people can do with access. In education, this means recognising that providing physical access or financial support is not enough, unless students are also empowered to translate those opportunities into meaningful outcomes.

All of these theories emphasise that a just HE system must redistribute resources fairly, honour diversity, and focus on expanding real freedoms. In the South African context, this means designing university systems that not only open physical access more widely, but also dismantle the barriers within HE, thus ensuring that all students are supported to achieve their full potential. It is also important to recognise that, given the deep-rooted challenges in both the education system and the country, effective solutions cannot be developed or implemented by universities alone.

While the preceding discussion has engaged with a range of theoretical perspectives, most notably transformative constitutionalism, substantive equality and social justice in education, these frameworks do not operate in isolation in this study. Rather, they intersect in ways that illuminate both the possibilities and limits of legal education as a site of transformation. One could argue that the value of these theories lies not in their abstract coherence, but in their capacity to expose the gap between formal commitments to transformation and students' lived realities.

Transformative constitutionalism, as conceptualised in South African scholarship, provides a normative vision of social change grounded in dignity, equality and freedom. However, its transformative promise is inherently fragile. As the literature demonstrates, constitutional values are not automatically realised through legal texts, judicial pronouncements or policy frameworks. Their realisation is mediated through institutional cultures, professional practices and educational processes. Legal education, especially LLB extended curriculum programmes, possibly constitutes one of the most critical yet under-theorised sites where the transformative aspirations of the Constitution can be either enabled or constrained.

Substantive equality offers an essential corrective to formalist understandings of access and fairness in HE. It shifts the analytical focus from sameness of treatment to the material and epistemic conditions required for students to succeed. In this study, substantive equality is not understood merely as an outcome to be achieved, but as a methodological lens through which curriculum design, pedagogical practices and institutional support structures must be evaluated. This perspective foregrounds the reality that underprepared students do not fail because of individual deficits, but because education systems are often structured around implicit assumptions of privilege, preparedness and cultural capital.



Drawing this together, it seems clear that social justice in legal education cannot be reduced to numerical access or symbolic inclusion. Instead, it requires a sustained interrogation of how knowledge is structured, taught and assessed in the legal curriculum. Thus, LLB extended curriculum programmes occupy a paradoxical position in the transformative project. They hold the potential to disrupt inherited hierarchies of merit and exclusion, yet also risk reproducing inequality if conceived as remedial, peripheral or temporary interventions rather than as integral components of an equity-driven institutional framework.

This theoretical synthesis informs the central premise of this study, namely that the incorporation of social justice imperatives into curriculum design and policy is insufficient, unless these imperatives are also realised through pedagogical practices and institutional cultures that actively promote equity of success. Therefore, the distinction between incorporation and realisation, as developed in this chapter, serves as a critical analytical tool for the empirical chapters that follow. It enables an assessment of not only what universities claim to value, but how those values are operationalised in practice, particularly in relation to underprepared students in LLB extended curriculum programmes. It is within this tension between constitutional promise and educational practice that the study locates its theoretical and empirical contribution, while recognising that legal education alone naturally cannot carry the burden of societal transformation.

Having explored the different theoretical perspectives and their relevance to HE, the next chapter turns to the historical context that gave rise to the current challenges of access, redress and equity. By examining the legacy of apartheid and institutionalised inequality, it becomes clear why broadening access became a national imperative, and how initiatives such as the extended LLB programme emerged as part of the response.

## **CHAPTER 3: APARTHEID AND POST-INSTITUTIONAL APARTHEID HISTORY OF HIGHER EDUCATION**

### **3.1 INTRODUCTION**

Building on the previous chapter, which explored the social justice concepts of access, redress and equity, this chapter examines the historical context that shaped the current HE landscape, underscoring the need for transformation. It further considers the manner in which the social justice concepts of access, redress and equity should be advanced to address the demand for broader participation in HE and to underscore the rationale for implementing extended programmes, specifically LLB extended curriculum programmes.

A consideration of HE in South Africa would be remiss if it does not also consider the complex historical legacy and the fact that the country emerged from a deeply discriminatory, repressive and socially unjust past. Even decades since the advance of democracy, apartheid continues to affect HE. The HE system prior to 1994 mirrored the overall state of South Africa, which was profoundly unjust. HE in the country was shaped by apartheid ideologies, which promoted a division of the education system along various lines, including race, ethnicity, type of institution, language, and location.<sup>397</sup> These disparities had far-reaching consequences for the quality of education accessible to the different population groups. Throughout the apartheid era, the most privileged segment of South African society, comprising affluent, white young men, enjoyed significantly easier access to university education.<sup>398</sup>

On the other hand, enrolment rates for black and female students were considerably lower, and even when they did manage to enter institutions, they faced ongoing disadvantage.<sup>399</sup> Additionally, black and female students were disproportionately distributed across faculties, further exacerbating the disparities. Social progress is closely tied to HE transformation. However, the historical inequalities stemming from the apartheid-era segregation policies have created challenges for access and

---

<sup>397</sup> Beale 1998:ii.

<sup>398</sup> Beale 1998:51.

<sup>399</sup> Beale 1998:57.

broader participation, which are particularly evident among students from poor and underrepresented social backgrounds.<sup>400</sup>

Looking at policy development in HE since 1994 is important to shed light on the tension between institutional autonomy<sup>401</sup> and the government's policy objectives, to try to respond to, define and alleviate this tension, and to ensure that the social justice objectives set at the beginning of democracy are realised. The transformation of the South African society necessitated a significant overhaul of education, and a prominent goal was to achieve equity in the education sector post-1994.

## **3.2 ORIGINS OF UNIVERSITY EDUCATION IN SOUTH AFRICA**

### **3.2.1 Origins of university education in South Africa (1829–1873)**

University education in South Africa originated at the South African College (SAC), which opened in 1829 in Cape Town.<sup>402</sup> The SAC originally focused on secondary schooling, but students were also prepared for the University of London exams, which had been examining external students since being granted a Royal Charter in 1836.<sup>403</sup>

In 1873, an examining university, the University of the Cape of Good Hope, was created, incorporating the SAC and the other colleges that offered university-level courses.<sup>404</sup> Functioning primarily as administrative examining boards for the Cape's colleges, these institutions could be considered similar to preparatory high schools, given that the colonial elite pursued their university education in Europe.<sup>405</sup>

### **3.2.2 Expansion and institutional foundations (1820–1922), including the reorganisation of higher education under the Union Government (1910–1918)**

Rhodes University in Grahamstown, Eastern Cape, was founded with the arrival of English immigrants in 1820.<sup>406</sup> The School of Mines University in Johannesburg was

---

<sup>400</sup> Mzangwa 2019:1; Spreen & Vally 2006:353.

<sup>401</sup> This includes participation, knowledge production, convergence with international trends as well as public accountability by institutions.

<sup>402</sup> Reddy 2004:9; Beale 1998:36.

<sup>403</sup> Beale 1998:36.

<sup>404</sup> Beale 1998:36.

<sup>405</sup> Reddy 2004:9.

<sup>406</sup> Reddy 2004:9.

inaugurated in 1895 and transformed into the University of the Witwatersrand (Wits) in 1922.<sup>407</sup>

According to the *South Africa Act* 1909, the responsibility for HE was assigned to the Union Government, leading to a reorganisation of university education through a series of acts passed by Parliament in 1916. As a result, the SAC and Victoria College were granted autonomy in 1918 and became the University of Cape Town (UCT) and Stellenbosch University (SU) respectively. The University of the Cape of Good Hope transformed into the University of South Africa (Unisa), with Grey University College in Bloemfontein, Huguenot University College in Wellington, Natal University College in Pietermaritzburg, Transvaal University College in Pretoria as well as the South African School of Mines and Technology also incorporated as constituent members.<sup>408</sup> As a federally organised university, Unisa had branch colleges across the country. In 1916, the first university for black students was established, namely the University of Fort Hare.<sup>409</sup> In 1921, the Potchefstroom University College for Christian Higher Education also joined Unisa. From 1930 onwards, the constituent members of Unisa became independent institutions.<sup>410</sup> The Transvaal University College, for instance, became the University of Pretoria.<sup>411</sup>

### **3.2.3 Government oversight and the legislative framework (1923–1948)**

In the late 1940s, Unisa had to reassess its purpose and role. Previously, the institution was primarily responsible for conducting examinations and granting degrees on behalf of the colleges. However, in 1945, driven by its Council and Senate, Unisa began considering the possibility of broadening its scope of responsibilities concerning its external students.<sup>412</sup>

During the Union, the government assumed the responsibility of overseeing education at universities and university colleges in South Africa.<sup>413</sup> The specific scope of this

---

<sup>407</sup> Reddy 2004:10. In 1922, when the university college in Johannesburg became Wits, it ceased to be a member of Unisa.

<sup>408</sup> Beale 1998:36.

<sup>409</sup> Reddy 2004:9.

<sup>410</sup> Reddy 2004:10.

<sup>411</sup> Beale 1998:36.

<sup>412</sup> Beale 1998:37.

<sup>413</sup> Dreijmanis 1988:28.

responsibility was outlined through the enactment of two types of acts by Parliament, with one type establishing individual universities,<sup>414</sup> while the other dealt with university education in general. The relationship between the government and HE institutions was delineated by the *Higher Education Act* of 1923,<sup>415</sup> which established a framework that allowed institutions to possess a certain degree of autonomy in managing their affairs while operating within the government's set guidelines. This relationship was often politicised and contested, but generally respected.<sup>416</sup>

The principles outlining accountability and autonomy in the legal relationship between institutions and the government remained intact, despite minor amendments made to the Act over time.<sup>417</sup> These principles underwent significant changes only after the National Party emerged and came into power in 1948.

### **3.3 HIGHER EDUCATION UNDER INSTITUTIONAL APARTHEID (1948–1994)**

Before 1948, HE in South Africa was already segregated and discriminatory.<sup>418</sup> Although not officially differentiated, considerable disparities in the structure and practices of university education had developed by the time the National Party (NP) assumed power.<sup>419</sup> The apartheid<sup>420</sup> ideologies ensured that generations of black people were denied everything except the most elementary education.<sup>421</sup>

The apartheid government decided about student participation, resource allocation and research funding.<sup>422</sup> Very few black students enrolled for university studies. A mere 4,8 per cent of students who enrolled at universities were black.<sup>423</sup> At UCT in 1937, there were only 40 black, coloured and Indian students, of whom 10 were

---

<sup>414</sup> These are Act 12, 13 and 14 of 1916 (Unisa, SU and UCT); Act 15 of 1921 (Wits); Act 25 of 1921 (Potchefstroom University College for Christian Higher Education); Act 13 of 1930 (Pretoria University); Act 4 of 1948 (University of Natal); Act 15 of 1949 (Rhodes University); Act 21 of 1949 (University of the Orange Free State); Act 30 of 1951 (Unisa).

<sup>415</sup> 30 of 1923.

<sup>416</sup> Beale 1998:40.

<sup>417</sup> Beale 1998:41.

<sup>418</sup> Beale 1998:ii.

<sup>419</sup> Beale 1998:59; Bozalek & Boughey 2012:692.

<sup>420</sup> Apartheid was fundamentally about white control of space and land, which drove ideology and secured white privilege in HE. Fiske & Ladd 2004:25.

<sup>421</sup> Boughey 2012:142; Fiske & Ladd 2004:24.

<sup>422</sup> Barnes 2006:150.

<sup>423</sup> Badat 2009:48.

enrolled in the pre-clinical years of medicine.<sup>424</sup> At Wits, the admission of black students was first formally endorsed by Council in 1934, and by 1939, there were still only a few dozen black students at the institution, including four Indian students at the medical faculty.<sup>425</sup> The low numbers of black matriculants eligible to enter university deepened the segregation.<sup>426</sup>

By 1952, black enrolments totalled only 0,1 students per 1 000 of the black population; white enrolments, on the other hand, stood at 6,8 students per 1 000 of the white population.<sup>427</sup> This was due to the government's lack of commitment to African schooling, the problems faced by Africans wanting to proceed to university once they qualified to do so, and the limited career opportunities open to African graduates, which compounded the inequality.<sup>428</sup>

This segregation was based on the notion that HE was limited to a specific ethnic group. This stemmed from the NP's governance of university education. During the initial years of the NP government, a series of acts enacted by Parliament brought significant changes to the framework of university education.<sup>429</sup> These changes culminated in the reorganisation of Unisa in 1951.<sup>430</sup> However, it is worth noting that this initiative had initially been proposed by the Smuts government<sup>431</sup> and was recommended by the commission headed by Edgar Brookes, whose report was issued in 1947.<sup>432</sup>

In 1950, the Nationalist government planned to expand African university education, and the Native Affairs Department (NAD) was tasked with this responsibility.<sup>433</sup> The *Bantu Education Act* of 1953, enacted through the implementation of recommendations by the Native Education Commission in 1949, brought about significant changes to African schooling.<sup>434</sup> These included compiling a curriculum

---

<sup>424</sup> Beale 1998:46.

<sup>425</sup> Beale 1998:46.

<sup>426</sup> Beale 1998:51.

<sup>427</sup> Beale 1998:57.

<sup>428</sup> Beale 1998:57.

<sup>429</sup> Beale 1998:34.

<sup>430</sup> Beale 1998:34.

<sup>431</sup> Jan Smuts was not a member of the NP, but established the South African Party and was also associated with the United Party.

<sup>432</sup> Beale 1998:34.

<sup>433</sup> Beale 1998:1

<sup>434</sup> Beale 1998:2; Sarkin 1998:193.

suited to the “nature and requirements of the black people”.<sup>435</sup> This curriculum was aimed at providing black people with an education that would equip them with skills to serve their people in the homelands or to work as labourers under white people.<sup>436</sup> The *Bantu Education Act*<sup>437</sup> also enacted separate (preschool through to higher) education systems for white and black people.<sup>438</sup>

The NAD resulted in major changes in government funding for HE by the late 1950s, transforming the funding system.<sup>439</sup> Consequently, attending white universities became highly restricted for black students, with only a few exceptions granted through ministerial approval.<sup>440</sup> Additionally, the NAD established a distinct and segregated system of government-controlled black university colleges, effectively creating a separate sector.<sup>441</sup> This classification based on race was accompanied by a differentiation in governance and funding arrangements.<sup>442</sup> The *Extension of University Education Act*<sup>443</sup> prohibited black students from attending white universities and created separate tertiary institutions for different ethnic groups.<sup>444</sup> The NP government also implemented legal restrictions to prohibit institutions meant for the exclusive use of one racial group from admitting students from other groups.<sup>445</sup>

The South African education system was characterised by fragmentation, inefficiency and ineffectiveness.<sup>446</sup> Three types of universities were identified during the apartheid era.<sup>447</sup> The first type was historically white, English-medium universities, originally established during the colonial era to serve the British community. In 1959, under apartheid laws, these institutions were officially reserved for white students.<sup>448</sup> The second type was historically white, Afrikaans-medium universities, established by the Afrikaans community during the Anglo-Boer War.<sup>449</sup> The last type was historically

---

<sup>435</sup> Sarkin 1998:193.

<sup>436</sup> Sarkin 1998:193.

<sup>437</sup> 47 of 1953.

<sup>438</sup> De Wet & Wolhuter 2009:365.

<sup>439</sup> Beale 1998:2.

<sup>440</sup> Beale 1998:2.

<sup>441</sup> Beale 1998:2; CHE 2004:60.

<sup>442</sup> CHE 2004:23; Mzangwa 2019:10.

<sup>443</sup> 45 of 1959.

<sup>444</sup> Sarkin 1998:193.

<sup>445</sup> Cloete *et al.* 2006:37.

<sup>446</sup> Hay & Monnapula-Mapesela 2009:12.

<sup>447</sup> Naidoo 2004:461; Bunting 2006:39; Mzangwa 2019:10; Barnes 2006:150.

<sup>448</sup> Naidoo 2004:461; Bunting 2006:39-40.

<sup>449</sup> Naidoo 2004:461; Bunting 2006:44-45.

black universities.<sup>450</sup> The historically white universities were relatively free from direct state control, whereas the historically black universities were subjected to direct state control and repression. The fragmentation of institutional types was reflected in the unevenness of governance arrangements, and considerable variances in the relationship between individual public institutions and the state.<sup>451</sup> The universities<sup>452</sup> reserved for white students enjoyed considerable autonomy and were funded with block grants allocated on a formula basis according to retrospective student enrolments, research outputs and several other factors.<sup>453</sup> The segregation aimed to ensure that various ethnic groups were categorised according to their “tribal” identities, with the social construction of the subordinate population serving the interests of both the homelands (also known as “Bantustans”) and the broader state objectives of the regime.<sup>454</sup> By the early 1980s, the apartheid government had partitioned South Africa into five separate entities,<sup>455</sup> namely the Republic of Transkei, the Republic of Bophuthatswana, the Republic of Venda, the Republic of Ciskei, and the Republic of South Africa (RSA).

Transkei, Bophuthatswana, Venda and Ciskei became known as the “TBVC states” or, more commonly, the independent homelands.<sup>456</sup> These homelands were situated in deep rural areas or at the edge of urban areas, bordering more prosperous ones, and were given a degree of self-rule, though not full independence.<sup>457</sup> The TBVC states formed part of the ten Bantustans/homelands. However, while the four TBVC countries were recognised as independent republics, the remaining six Bantustans were considered self-governing only.<sup>458</sup> The six – KwaZulu, Lebowa, QwaQwa, KaNgwane, Gazankulu and KwaNdebele – each had their own education

---

<sup>450</sup> Naidoo 2004:461; Bunting 2016:44.

<sup>451</sup> CHE 2004:174; Beale 1998:5.

<sup>452</sup> There were ten universities in South Africa: The universities of Stellenbosch, Pretoria, the Orange Free State and Potchefstroom catered to white, Afrikaans-speaking students. Rhodes University admitted white, predominantly English-speaking students. The University of Natal, with campuses at Durban and Pietermaritzburg, admitted both black and white students, but conducted segregated classes. The English-medium “open” universities included UCT and Wits, which admitted students from all population groups to most faculties. The University College of Fort Hare was also open to students from all population groups, but generally, only black students attended. Unisa conducted tuition via correspondence, and students from all population groups were enrolled.

<sup>453</sup> CHE 2004:174; Bozalek & Boughey 2012:691; Ntombana *et al.* 2023:9.

<sup>454</sup> Hlatshwayo & Fomunya 2019:65.

<sup>455</sup> Bunting 2006:35.

<sup>456</sup> NCHE 1996:28.

<sup>457</sup> Bozalek & Boughey 2012:692.

<sup>458</sup> Bunting 2006:35.



departments.<sup>459</sup> Several universities were established in the TBVC states during the early 1980s, specifically to serve the needs of separate development.<sup>460</sup> These universities formed part of the model that officially divided South African education along racial and ethnic lines to reinforce white dominance and exclude black people from quality academic and technical training.<sup>461</sup> The universities in the homelands were less likely to attract top staff or the best-qualified school leavers due to their location, which contributed to social segregation.<sup>462</sup> These former black institutions were also funded differently from the former white universities.<sup>463</sup> Budgeting involved gaining approval for expenditure; budgets were extensions of administrative budgets; and any unspent funds had to be returned to the controlling department.<sup>464</sup> This hampered their ability to manage, plan and handle their own financial resources, even after the end of apartheid.<sup>465</sup> The historically black universities in the Bantustans and self-governing territories were also constrained in terms of their decision-making on matters such as the appointment of teaching staff and curriculum design.<sup>466</sup> The government treated the TBVC universities as an extension of the civil service and kept them under tight control.<sup>467</sup>

The historically black universities in the RSA were a heterogeneous group, which, after 1984, consisted of two subgroups. One was specifically for African students and fell under the RSA's Department of Education and Training. Universities in this group included the University of the North, Medunsa University, Vista University, and the University of Zululand.<sup>468</sup> The apartheid reasoning was that the universities controlled by the Department of Education and Training had to be for African students only. The second subgroup was for Indian and coloured students, which included the University of Durban-Westville and the University of the Western Cape.<sup>469</sup>

---

<sup>459</sup> Christie 1992:39. These departments included the departments of Coloured Relations, Indian Affairs, and Bantu Administration and Development.

<sup>460</sup> NCHE 1996:29.

<sup>461</sup> NCHE 1996:29.

<sup>462</sup> Christie 1992:39.

<sup>463</sup> NCHE 1996:44.

<sup>464</sup> CHE 2004:174.

<sup>465</sup> Bozalek & Boughey 2012:690.

<sup>466</sup> CHE 2004:174.

<sup>467</sup> Bunting 2006:46.

<sup>468</sup> Bunting 2006:44.

<sup>469</sup> Bunting 2006:44.

These universities were deliberately political and utilitarian, established not in response to an academic need, but to serve the apartheid state's objectives.<sup>470</sup> The utilitarian function was founded in producing black graduates equipped to fulfil roles deemed useful to the apartheid government (such as black teachers required by the black school system), while their political function was to reinforce and sustain the broader apartheid sociopolitical agenda.<sup>471</sup> The apartheid government ensured that these institutions upheld its ideologies by appointing white Afrikaner leadership and academic staff who were trained at the historically white Afrikaans universities.<sup>472</sup>

Although, in terms of policy, universities were regarded as autonomous entities within the realm of societal connections, from a legal standpoint, each university was established as a "corporation" through an act of Parliament. This meant that universities' roles and responsibilities were defined by the state, and could also be revoked by the state.<sup>473</sup> For this reason, the government thought it justifiable to restrict institutions to serving the interests of only one specific racial group.<sup>474</sup> In line with their view that HE institutions were creations of the state, the government further fragmented the racially segregated HE system by categorising institutions into distinct groups based on the functions they were permitted or prohibited to perform.

Under the apartheid government, English and Afrikaans were the two official languages of learning and teaching at historically white universities,<sup>475</sup> which were themselves divided along these linguistic lines.<sup>476</sup> As a result, South Africa's universities were segregated by both race and language, which ensured that HE remained an instrument of the apartheid ideology.

---

<sup>470</sup> Bunting 2006:45.

<sup>471</sup> Bunting 2006:45.

<sup>472</sup> Bunting 2006:45.

<sup>473</sup> CHE 2004:23.

<sup>474</sup> Cloete *et al.* 2006:37.

<sup>475</sup> Boughey 2012:133.

<sup>476</sup> English-medium universities included UCT, the University of Natal, Rhodes University and Wits. Afrikaans-medium universities included the Universiteit van die Oranje Vrystaat (now known as the UFS), Potchefstroom Universiteit vir Christelike Hoër Onderwys (now known as NWU), Randse Afrikaanse Universiteit (now known as UJ), Universiteit van Pretoria (now known as the University of Pretoria) and the Universiteit Stellenbosch (now known as SU).

A parallel form of control operated in the basic education system, which led to the Soweto uprisings of 1976<sup>477</sup> and the teacher and learner protests of the late 1980s.<sup>478</sup>

Unlike basic education, where access was restricted through inferior curricula and resources, HE enforced inequality through structural differentiation, with well-funded white institutions on the one hand and underresourced black institutions on the other.

By the early 1980s, the NP government had established a rigid differentiation between so-called traditional universities<sup>479</sup> and a new category of institutions uniquely labelled as “technikons”.<sup>480</sup> Traditional universities provided academic education, whereas technikons provided vocational and technical training.<sup>481</sup> Each of these institutions had a distinct culture, identity, tradition and set of values.<sup>482</sup> The boundaries between the university, technikon and college sector were defined according to their different functions.<sup>483</sup>

Clearly, therefore, South African HE under apartheid was skewed in ways designed to entrench the power and privilege of the ruling white minority.<sup>484</sup> While the primary purpose of the establishment of black universities was to offer segregated education for black teachers and homeland bureaucrats, segregation also had an unintended consequence: These institutions evolved into significant hubs of resistance against the government.<sup>485</sup> The most prominent anti-apartheid education organisations at the time included the National Education Crisis Committee (NECC), the Union of Democratic University Staff Associations (UDUSA) and the National Education, Health and Allied Workers’ Union (Nehawu).<sup>486</sup> Between 1980 and 1990, HE became a central site of conflict and resistance to the apartheid state, characterised by intensified student

---

<sup>477</sup> The spark for the Soweto uprising of 1976 was when the Department of Bantu Education in 1974 issued a circular instructing African schools that Afrikaans would be the official language of instruction from 1975. The South African Students Movement (SASM) mobilised school-going youth and called for students to boycott classes. The mass rally organised by SASM on 16 June 1976 resulted in the police firing shots into the crowd, killing Hector Peterson along with more than 600 other students, youth and adults. Reddy 2004:24.

<sup>478</sup> Christie 1992:38.

<sup>479</sup> These were then subdivided into universities designated for white students, and those reserved for black students.

<sup>480</sup> Cloete *et al.* 2006:37.

<sup>481</sup> Ntshoe 2010:28.

<sup>482</sup> Ntshoe 2010:28.

<sup>483</sup> Universities train students in scholarly disciplines, technikons train students in the application of knowledge, and colleges train students for specific vocations.

<sup>484</sup> Cloete *et al.* 2006:52.

<sup>485</sup> Cloete *et al.* 2006:57; Habib 2001.

<sup>486</sup> Cloete *et al.* 2006:57.

activism and concurrent state-led reform efforts.<sup>487</sup> This period marked a turning point in the escalating crisis of apartheid, with black students playing a pivotal role in the broader struggle for internal resistance. The student boycott, which featured prominently in the 1970s, became a regular aspect of black community life in the 1980s.<sup>488</sup>

### **3.4 DEVELOPMENTS IN HIGHER EDUCATION IN THE PERIOD 1990–1994**

In February 1990, the apartheid government's ban on the ANC and the Pan-Africanist Congress (PAC), imposed after the Sharpeville massacre in 1960,<sup>489</sup> was lifted, which eventually led to the release of political prisoners, including Nelson Mandela. These developments initiated a series of negotiations and pivotal discussions that commenced towards the end of 1990.<sup>490</sup>

The NECC initiated HE policy proposals after the unbanning of the ANC. Established in 1985, the NECC consisted of teachers, parents and students from disadvantaged groups,<sup>491</sup> and advocated for a non-racist, non-sexist, democratic, unitary system of education. Post-1990, three initiatives began to develop the basis for post-apartheid HE policy, namely the National Education Policy Investigation (NEPI), the UDUSA policy forum, and the Centre for Education Policy Development (CEPD) linked to the ANC.<sup>492</sup> In the early 1990s, legal restrictions on HE were finally removed, which enabled access for all South African citizens.<sup>493</sup>

From 1990 to 1993, the NEPI facilitated discussions between the NECC and the NP, igniting the transformation discourse by presenting a range of policies that affected nearly all levels and facets of HE.<sup>494</sup> The NEPI's primary objective was to critically examine policy choices across the education spectrum, guided by the principles of the broad democratic movement.<sup>495</sup> The first major, formal policy document, which went

---

<sup>487</sup> Reddy 2004:6.

<sup>488</sup> Reddy 2004:22.

<sup>489</sup> Anti-Apartheid Movement Committee "The Anti-Apartheid Movement in the 1960s", <https://www.aamarchives.org/history/1960s.html#click-here-to-read-more-about-the-aam-in-the-1960s> (accessed 14 February 2026).

<sup>490</sup> Hall & Symes 2005:202; Weber 2002:261.

<sup>491</sup> Carrim & Sayed 1993:26.

<sup>492</sup> CHE 2004:24; Christie 2006:373.

<sup>493</sup> Moja & Hayward 2000:335.

<sup>494</sup> Mapesela & Hay 2005:113.

<sup>495</sup> CHE 2004:24; Lomofsky & Lazarus 2001:307; Barnes 2006:155.

on to inform the development of many HE policies in the 1990s, was the NEPI's 1992 Post-Secondary Education Report.<sup>496</sup>

The NEPI's efforts were supported through the establishment of the National Commission on Higher Education (NCHE), which established a framework for HE transformation post-1994.<sup>497</sup> Concerned with HE policy review and development, as well as the consultative process,<sup>498</sup> the NCHE defined the benchmark of a transformed HE system as increased participation, greater responsiveness, and increased cooperation and partnerships.<sup>499</sup>

In anticipation of winning South Africa's first democratic elections in 1994, the ANC's education department, located at the then newly established CEPD, drafted the Policy Framework for Education and Training.<sup>500</sup> The framework pledged to implement the recommendations put forth during the pre-election policy discussions. However, it did not include any cautionary notes about potential trade-offs between equity and development, or about the need to balance individual and institutional redress.<sup>501</sup>

Because of the lack of equity in resource distribution to HE institutions prior to 1994, the system was left skewed and deformed. Under apartheid ideology, institutions designed for white students received significantly more resources than those intended for black students.<sup>502</sup> The disparities between historically black and white institutions spanned all areas, including facilities, capacity, as well as the distribution of the student population in certain disciplines, such as the sciences, engineering and technology.<sup>503</sup>

It is evident that, prior to 1994, universities or HE institutions did not effectively fulfil their responsibilities of contributing to social, political and economic development. They did not serve as institutions where leaders were nurtured, minds were shaped, and ideas were cultivated.

---

<sup>496</sup> Cloete *et al.* 2006:57; Hall & Symes 2005:202.

<sup>497</sup> Mapesela & Hay 2005:113; Soudien 2010:5.

<sup>498</sup> Moja & Hayward 2000:338.

<sup>499</sup> CHE 2004:174.

<sup>500</sup> Cloete *et al.* 2006:58.

<sup>501</sup> Cloete *et al.* 2006:58.

<sup>502</sup> Boughey 2012:133.

<sup>503</sup> Hay & Monnapula-Mapesela 2009:12.

The 1990–1994 period may be characterised as a symbolic phase during which the focus was on conceptualising and establishing principles for a transformed HE system. The post-1994 era, on the other hand, may be seen as a practical phase, with a strong emphasis on the implementation and realisation of those principles. The objective of redressing past divisions and achieving a unified education system has been pursued through implementing various policies, frameworks and acts.<sup>504</sup> This is not a once-off process, but a continuous one that changes over time. However, the introduction of policies and legislation has not translated into the HE system envisioned at the advent of democracy. Many previously disadvantaged black people still do not experience the material benefits of access, equity and participation in HE,<sup>505</sup> for various reasons, which include weak policy implementation and poor monitoring of compliance with current policies.<sup>506</sup>

The inequality between black and white institutions and students in HE during apartheid is indisputable. The apartheid era left the nation with a highly contested and racially segregated HE system.<sup>507</sup> Addressing this disparity and aligning HE with the new constitutional values was an urgent priority after 1994.

The previous dispensation entrenched systemic injustices by deliberately restricting access to quality HE for the majority of South Africans. These injustices were not merely the result of unequal resource allocation, but of a deliberate policy of exclusion that denied generations of students the opportunity to fully realise their academic and professional potential. The HE system of that era directly opposed the imperatives of social justice: It violated the principles of equity by privileging white students; it undermined access by structurally excluding black students; and it ignored the need for redress by reinforcing, rather than eliminating, historical disadvantage. This historical reality underscores the relevance of this thesis in critically examining whether current interventions, such as the extended LLB programme, are successfully addressing past inequalities and advancing the constitutional imperatives of access, redress and equity in HE.

---

<sup>504</sup> Hay & Monnapula-Mapesela 2009:11; Bozalek & Boughey 2012:692; Christie 1992:39.

<sup>505</sup> Mzangwa 2019:2; Barnes 2006:155.

<sup>506</sup> Mzangwa 2019:2.

<sup>507</sup> Hay & Monnapula-Mapesela 2009:11.

### **3.5 HIGHER EDUCATION DEVELOPMENTS SINCE 1994**

After more than three decades of democracy, the pace of transformation in the deeply unequal, fractured, segregated and dysfunctional education sphere left by the apartheid regime has been slow.

Developments since the change in South Africa's political dispensation in 1994 have not been driven exclusively by state and national policies, but have also been propelled from within the HE sector (i.e. the internal dynamics of universities), as well as by the economy and society.<sup>508</sup> As a result, the transformation of HE since 1994 has been multifaceted. The extended LLB programme, therefore, should not be viewed as an isolated academic intervention, but as part of this broader transformation of HE post-1994.

#### **3.5.1 The National Commission on Higher Education (NCHE) and the policy reform process**

It was initially believed that the primary catalyst for change would be government policies, shaped by an inclusive process of policy formulation, executed by a fresh and forward-thinking bureaucracy, and focused on eliminating the legacies of apartheid.<sup>509</sup> However, the trajectory of transformation at different HE institutions was far from uniform, amplifying both existing apartheid-related disparities and new emerging distinctions in the institutional framework.<sup>510</sup>

Policy developments since 1994 have been directed towards creating a unified, cohesive system that can provide quality education to every individual in South Africa who wishes to pursue HE, thereby helping to meet the economic and social needs of the new dispensation. The government has enacted legislation to address inequality and facilitate HE transformation.

The years immediately following the advent of democracy saw remarkable transformation in South African HE. Six months after the country's first democratic elections, newly elected president Nelson Mandela issued a proclamation appointing

---

<sup>508</sup> CHE 2004:37.

<sup>509</sup> Moja & Hayward 2000:335.

<sup>510</sup> Cloete *et al.* 2006:1.

the NCHE, whose brief was to “preserve what is valuable and to address what is defective and requires transformation”.<sup>511</sup> Accordingly, the NCHE had two central tasks: to rid HE of the aberrations of apartheid, and to achieve modernisation by infusing it with international experiences and best practice.<sup>512</sup> The NCHE’s appointment was not surprising; rather, it represented a continuation of the ongoing policy formulation process that begun in the late 1980s.<sup>513</sup> Among others, the commission proposed doing away with the historical division between universities and technikons, and replacing it with a unified, coordinated system to be funded and governed as a complete entity.<sup>514</sup> The rationale behind this single, coordinated system was to ensure that funding no longer favoured universities at the expense of technikons. While the NCHE advocated for a stakeholder-driven, cooperative governance approach, the state ultimately assumed a strong directive role,<sup>515</sup> utilising legislative measures to assert its primary role in guiding the HE system.<sup>516</sup>

The NCHE’s investigations into the development of a strategy for transforming HE culminated in a report that led to the introduction of the National Qualifications Framework (NQF) in 1995. The NQF, which structures all HE qualifications, was enacted through the *South African Qualifications Authority (SAQA) Act*,<sup>517</sup> which outlined the objectives of the NQF in law.

The establishment of the NCHE marked the start of a fiercely debated yet collaborative process in formulating HE policies.<sup>518</sup> The commission consisted of stakeholders responsible for the apartheid education structures as well as some of the most active opponents of apartheid. As a result, the process of creating a framework for HE transformation was characterised by interaction and active participation. In 1996, the

---

<sup>511</sup> NCHE 1996:1.

<sup>512</sup> Cloete *et al.* 2006:8

<sup>513</sup> Cloete *et al.* 2006:8

<sup>514</sup> Ntshoe 2010:29; Mzangwa 2019:9.

<sup>515</sup> Hall & Symes 2005:199.

<sup>516</sup> In a stakeholder and cooperative governance model, decision-making often involves input from various stakeholders, including faculties, lecturers, students, administrators, and sometimes even industry representatives. This approach aims to foster collaboration and shared decision-making among these groups. On the other hand, a structured and legislative approach typically means that the government exerts greater control and authority over HE institutions through legislation or policy changes. This may involve setting specific regulations, funding criteria and performance metrics for universities and colleges. Such an approach can lead to a more centralised, top-down education management system.

<sup>517</sup> 58 of 1995.

<sup>518</sup> Waghid 2003:91; Barnes 2006:156.



NCHE's framework for HE transformation was published,<sup>519</sup> identifying key guiding principles, including equity, redress, access, diversity, quality, institutional autonomy and public accountability.<sup>520</sup>

In 1997, the then newly formed higher education division in the unified Department of Education initiated the process of implementing the changes proposed by the NCHE framework.

The concept of “massification” emerged as the NCHE's initial policy proposal aimed at addressing the tension between equity and development.<sup>521</sup> The idea behind massification was to increase HE participation, which was expected to enhance access and promote equity, while also generating a larger pool of highly skilled individuals essential for the country's economic growth.<sup>522</sup> To safeguard against a significant decline in standards resulting from an increased number of students, a proposal was put forth to establish a national Higher Education Quality Committee (HEQC).<sup>523</sup> The SAQA Act,<sup>524</sup> which was promulgated before the publication of the NCHE framework, provided for the establishment of bodies responsible for registering and monitoring the performance of education providers in offering programmes that met the standards and qualifications of the NQF.<sup>525</sup> SAQA was established to oversee NQF implementation, with the aim of creating an integrated education and training system designed to address the fragmentation and inequalities of the past.<sup>526</sup>

The NCHE's “A Framework for Transformation” was an all-encompassing examination, assessment and reorientation of the entire South African HE system. It transformed into the Green Paper on Higher Education Transformation,<sup>527</sup> which identified several inequalities in HE, including stark racial disparities in access across all disciplines.<sup>528</sup> The Green Paper also recognised that the nation boasted Africa's most advanced and well-endowed education and training system, with certain HE

---

<sup>519</sup> NCHE 1996.

<sup>520</sup> Hay & Monnapula-Mapesela 2009:13; Akoojee & Nkomo 2007:386.

<sup>521</sup> Cloete *et al.* 2006:59; Barnes 2006:156.

<sup>522</sup> Cloete *et al.* 2006:59; Lange 2017:38.

<sup>523</sup> Cloete *et al.* 2006:60.

<sup>524</sup> 58 of 1995.

<sup>525</sup> Van der Westhuizen 2006:2; Bozalek & Boughey 2012:693.

<sup>526</sup> Buchler *et al.* 2007:126.

<sup>527</sup> DHET 1996. The Green Paper endorsed the NCHE's recommendation to establish a single, coordinated HE system and contained provisions with regard to the NCHE's highly contested recommendations relating to the new governance structure of HE.

<sup>528</sup> DHET 1996:10.

institutions having cultivated internationally renowned research and teaching capabilities, and that this academic expertise and infrastructure should be regarded as assets.<sup>529</sup> Having received comments and suggestions<sup>530</sup> on the Green Paper, lawmakers drafted Education White Paper 3 and a new *Higher Education Act*.<sup>531</sup> The draft White Paper<sup>532</sup> showed notable departures from key recommendations presented in both the Green Paper and the NCHE framework. These discrepancies prompted fierce public debate and a major revision of the document,<sup>533</sup> which was finally issued as Education White Paper 3<sup>534</sup> with the aim of aligning HE with constitutional principles.

The primary objective of White Paper 3 was to identify various intervention strategies required for HE transformation. It outlined the challenges, requirements, objectives and goals of a prospective HE system<sup>535</sup> and also sought to restructure the HE landscape to benefit all stakeholders equally.<sup>536</sup> It advocated for an increase in postgraduate enrolments at master's and doctoral level to address the shortage of high-level skills essential for social and economic development and meeting the demands of the academic labour market. To accommodate the anticipated surge in student numbers, the White Paper also emphasised the importance of developing capacity in academic management, governance and infrastructure.<sup>537</sup> The White Paper clearly distinguished between social and institutional redress,<sup>538</sup> and made redress a specific remedy.

From 1994 until 1999, the main emphasis was on establishing a new policy and legislative framework. After 1999, however, the focus shifted to implementing these policies and entering a phase of active execution.<sup>539</sup>

These policy developments established the structural foundations that enabled interventions such as the extended LLB programme by explicitly linking social and

---

<sup>529</sup> DHET 1996:9.

<sup>530</sup> Comments, suggestions and critique were received from various stakeholders, including the public, educators and politicians.

<sup>531</sup> Officially promulgated in 1997. See also Moja & Hayward 2000:346.

<sup>532</sup> GN 712, Government Gazette 17944.

<sup>533</sup> Moja & Hayward 2000:346.

<sup>534</sup> DHET 1997.

<sup>535</sup> DHET 1997:5.

<sup>536</sup> DHET 1997:6; Hall & Symes 2005:203.

<sup>537</sup> DHET 1997:8; Soudien 2010:6.

<sup>538</sup> Redress in HE is discussed in full in chapter 2 of this thesis; Weber 2002:276.

<sup>539</sup> Cloete *et al.* 2006:53.

institutional redress to equity and access. The White Paper provided the justification for targeted programmes designed to support students from historically disadvantaged backgrounds.

### **3.5.2 The implementation of the *Higher Education Act*, the Council on Higher Education, and the National Plan for Higher Education**

The *Higher Education Act*,<sup>540</sup> an important outcome of Education White Paper 3, serves as the regulatory framework for the South African HE system. The Act was the first official HE legislation developed after 1994. Its aim is to regulate HE through the Council on Higher Education (CHE) and to ensure quality assurance.<sup>541</sup> The Act also regulates the establishment and merging of HE institutions and sets out governance structures. It guides the funding of institutions and regulates general matters such as name changes.

Additionally, the *Higher Education Act* led to the establishment of the Higher Education Quality Committee (HEQC), as recommended by the NCHE. The prescribed functions of the HEQC include programme accreditation, institutional auditing, and quality promotion. The aim of the HEQC was to achieve one of the government's main objectives by gradually raising the standard of education in South Africa. To this end, a quality assurance system was implemented.

In proposing the establishment of the HEQC, the NCHE made provision for the HEQC to serve as an independent statutory umbrella body to coordinate quality assurance in HE.<sup>542</sup> The focus was on quality assurance at the institutional and programme level, recognising that separate structures and procedures were necessary to assess research quality and productivity.<sup>543</sup> The HEQC went on to play a crucial role in shaping subsequent policies in the HE sector.<sup>544</sup>

---

<sup>540</sup> 101 of 1997.

<sup>541</sup> Mapesela & Hay 2005:118; Mubangizi 2004:198.

<sup>542</sup> Van der Westhuizen 2006:2.

<sup>543</sup> Van der Westhuizen 2006:2.

<sup>544</sup> These policies include the Language Policy Framework for Higher Education (November 2002), the Redress Policy (November 2003) and the National Higher Education Information and Applications Service (March 2004).

In June 2000, three years after the publication of Education White Paper 3, the CHE published the report “Towards a new higher education landscape”, which identified the following three challenges:<sup>545</sup>

- a) Effectiveness, which pertained to the alignment of HE with the needs and demands of the labour market
- b) Efficiency, which focused on ensuring quality and improving HE success rates and outcomes
- c) Equity, which revolved around establishing equity targets for the distribution of students and staff across various fields of learning and teaching, considering factors such as race, gender and social class

In contrast to the HE community’s general agreement with the principles outlined in the NCHE framework and White Paper 3, there was considerable controversy surrounding the proposals regarding the shape and size of the HE system put forth by the CHE. This resulted in heated debate, with opposition from both university principals and the government with regard to specific details and implications of the CHE’s recommendations.<sup>546</sup> Consensus was reached on certain aspects.<sup>547</sup> In July 2000, the CHE, as an accredited education and training quality assurance body for higher education, took over accreditation activities for HE institutions from SAQA.<sup>548</sup>

On 5 March 2001, the National Plan for Higher Education (NPHE) was published, providing a framework and mechanisms for implementing and achieving the policy objectives in Education White Paper 3.<sup>549</sup> Among the strategic objectives in transforming the HE system, the NPHE<sup>550</sup> listed the promotion of “equity of access” and the redress of past inequalities “through ensuring that the staff and student profiles in higher education progressively reflect the demographic realities of South African society”. This was later mirrored in a 2002 DHET document on the transformation and reconstruction of the HE system, in which the Department outlined two core objectives, namely the promotion of equity of access and outcomes, and redressing past

---

<sup>545</sup> CHE 2000:21.

<sup>546</sup> Cloete *et al.* 2006:63.

<sup>547</sup> Cloete *et al.* 2006:63.

<sup>548</sup> Van der Westhuizen 2006:5.

<sup>549</sup> DHET 2001:4; Mzangwa 2019:9.

<sup>550</sup> DHET 2001:12.

inequalities by aligning student and staff profiles with the country's demographic composition.<sup>551</sup>

Based on the NPHE, a major policy decision to drive HE transformation was taken by then Minister of Higher Education Kader Asmal when he initiated a series of institutional mergers and closures,<sup>552</sup> reducing the total number of universities and technikons from 36 to just 23 institutions.<sup>553</sup> In retrospect, this was not ideal, as the reduction in the number of HE institutions, although framed as a transformation strategy, did not fully address the broader challenges of access, participation and equity. Instead, it reflected a political move aimed at redressing racial imbalances in the sector, while overlooking other important factors, such as the role of language in either enabling or hindering meaningful access to HE.

The NPHE was also produced in response to the CHE "Towards a new higher education landscape" report,<sup>554</sup> although it did not reflect the measure of stakeholder participation envisioned in that report. The NPHE primarily focused on addressing issues of race and gender equity in relation to South African HE. It recognised the substantial transformation in the racial composition of the student population that had already been brought about by an increase in black student enrolments, as well as the improvement in gender equity.<sup>555</sup> The NPHE contained clear targets that HE institutions should strive for in terms of student and staff participation rates, as well as enrolment figures for science and technology programmes.

It further stated that to achieve policy objectives, a combination of planning and funding mechanisms were required. This entailed implementing a model where the Minister would set overarching goals for the HE system and introduce incentives and sanctions to guide the system towards those goals.<sup>556</sup> The NPHE<sup>557</sup> also noted the intensified competition among institutions to enrol students, which had resulted in the development of distance education programmes.<sup>558</sup>

---

<sup>551</sup> DHET 2002:1.

<sup>552</sup> Mzangwa 2019:11; Soudien 2010:8.

<sup>553</sup> Hall & Symes 2005:201, Mzangwa 2019:11.

<sup>554</sup> Barnes 2006:164.

<sup>555</sup> Mubangizi 2004:199.

<sup>556</sup> Mapesela & Hay 2005:126; Waghid 2003:92.

<sup>557</sup> DHET 2001:5.

<sup>558</sup> These distance education programmes enrolled more black students and, therefore, became their main access route to HE. Boughey 2012:136.

Following the NPHE, the CHE identified the following five objectives for further policy development and implementation:<sup>559</sup> a) HE restructuring focused on programme rationalisation, programme and infrastructural cooperation, and developing new institutional and organisational forms through mergers and incorporations; b) a new HE funding framework, with a focus on developing a funding policy that is linked to national policy goals; c) national frameworks and criteria for quality promotion and assurance; d) academic policy to create a single, coordinated HE system, which required the development of a single academic planning framework and qualification structure for HE; and e) improving the quality of leadership and management of public HE institutions to improve the efficiency, effectiveness and accountability of HE governance.

Even though many of these five objectives may appear to have been attained, real impact remains largely elusive. This creates a near paradox in which government policy frameworks aim to enhance student access and engagement, yet simultaneously endorse disinvestment in the sector by restricting financial assistance and opposing the concept of tuition-free HE. HE institutions are underfunded despite the massification of the system.<sup>560</sup> The potential of HE to serve as a catalyst for social mobility and job opportunities is on the brink of decline. This is primarily due to numerous students facing barriers to access that stem from financial constraints, inadequate schooling, and a lack of other essential capabilities in terms of physical and intellectual readiness.

At the same time, the changes in HE implemented post-apartheid have led to greater HE access, as envisioned in the CHE report “A Framework for Improving Teaching and Learning Project”.<sup>561</sup> An example of this broader access is found in the implementation of the LLB extended curriculum programme at the UFS in 2005.<sup>562</sup>

It is based on an understanding of all these policy developments and the intentions behind them that this thesis assesses whether the extended LLB programme has successfully translated the broad objectives of post-apartheid HE reform into tangible outcomes for student equity and social justice.

---

<sup>559</sup> CHE 2004:34-35.

<sup>560</sup> Walker 2018:557.

<sup>561</sup> 2005:81.

<sup>562</sup> This programme is discussed in detail in chapter 5.

Of course, all policies discussed above operate within the broader constitutional framework, as the *Constitution* underpins all post-apartheid HE reforms and provides the legal foundation for promoting access, redress and equity in the HE sphere.

### 3.6 THE IMPACT OF THE 1996 *CONSTITUTION* ON HIGHER EDUCATION

One of the most significant changes in HE brought about by the *Constitution* was the creation of a single education system and the abolishment of racially defined departments of education. The *Constitution* is the supreme law of South Africa; therefore, any law in conflict with the *Constitution* and its underlying values should be declared invalid. The transformative nature of the *Constitution* means that it aims to improve South Africa rather than maintaining the status quo. This transformation also extends to our education system. As a social and economic revolution, transformation should, among others, provide greater access to education.<sup>563</sup> Transformation should also not be viewed as a destination, but rather as an ongoing, sustained journey.<sup>564</sup> The preamble to the *Constitution* declares the intention to heal past divisions, establish a society built on democratic principles, social justice and fundamental human rights, enhance all citizens' quality of life, and unlock everyone's potential. The *Constitution* then goes on to identify human dignity, equality and freedom as the three fundamental, indispensable and comprehensive elements essential for a democracy.<sup>565</sup>

One avenue for achieving these goals is through education and promoting broader access, affording more people the opportunity to pursue HE. Liebenberg<sup>566</sup> highlights that the enduring impact of apartheid's social and economic policies remains deeply ingrained in South African society. This is particularly evident in basic education, where historically black schools continue to grapple with significant resource and infrastructure deficiencies.<sup>567</sup> The ratio of external<sup>568</sup> and internal<sup>569</sup> benefits derived

---

<sup>563</sup> Langa 2006:352.

<sup>564</sup> Langa 2006:354.

<sup>565</sup> In terms of sections 1, 7 and 39 of the *Constitution*.

<sup>566</sup> 2010:26.

<sup>567</sup> Liebenberg 2010:245.

<sup>568</sup> External benefits would include economic growth, workforce skills, social cohesion, and innovation and research.

<sup>569</sup> Internal benefits include personal growth, better career opportunities, higher earning potential, wellbeing and self-esteem.

from education increases as one moves from primary to tertiary education,<sup>570</sup> which might be why the post-1994 government prioritised primary and secondary education. Yet, as already stated, schooling in South Africa remains poor, rendering many prospective students unable to access HE due to inadequate admission point (AP) scores.

This led Judge O'Regan in *MEC for Education: Kwazulu-Natal v Pillay*<sup>571</sup> to remark that "[although] things have improved somewhat ... the pattern of disadvantage engraved onto our education system by apartheid has not been erased ... [a]lthough the law no longer compels racially separate institutions, social realities by and large still do".<sup>572</sup> Even though the students who typically enter the HE sphere today did not personally experience the dehumanising racism of institutional apartheid, the historical legacy of a poor and unequal schooling system still poses one of the greatest obstacles to success in tertiary studies.<sup>573</sup> The South African education system continues to exhibit significant and ingrained inequalities, primarily driven by socioeconomic class and racial disparities, which contribute to the underperformance of certain students at school level, resulting in them not attaining high enough marks to secure admission to HE institutions.

Liebenberg<sup>574</sup> asserts that post-apartheid society has not managed to fully transform the education system to align with the constitutional principles of social justice. The *Constitution* imposes a responsibility to advance social justice by enhancing the socioeconomic rights and circumstances of marginalised citizens who were denied access to quality HE during apartheid. Section 29<sup>575</sup> contains the rights to basic as

---

<sup>570</sup> Calitz & Fourie 2016:152.

<sup>571</sup> 2008 (1) SA 474 (CC).

<sup>572</sup> Liebenberg 2010:245; *MEC for Education: Kwazulu-Natal v Pillay*:par. 123, 124.

<sup>573</sup> Greenbaum 2014:11.

<sup>574</sup> Liebenberg 2010:256.

<sup>575</sup> "29(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."



well as further education.<sup>576</sup> The right to basic education is unqualified,<sup>577</sup> while the right to further education is qualified<sup>578</sup> by the statement that the state must take reasonable and progressive measures to make further education progressively available and accessible. However, in the three decades since the advent of the constitutional order, HE has become even more expensive for students and their families.

Ntombana *et al.*,<sup>579</sup> too, raise concerns about the tension between quality and inclusion in HE, questioning how universities can maintain academic standards while admitting academically underprepared students, and how they can meaningfully claim inclusivity if disadvantaged students continue to be excluded. These concerns have important implications for funding frameworks and the shaping of HE policy.

Ultimately, though, the *Constitution* has had more direct implications for basic education than for HE, although the abolishment of racially defined HE institutions and the creation of a single, coherent system were great catalysts for HE transformation in South Africa.

### **3.7 BRIEF HISTORY OF FUNDING MECHANISMS AND THE NATIONAL STUDENT FINANCIAL AID SCHEME (NSFAS) POST-1994**

HE plays a vital role in developing human capital and is regarded by many as a prerequisite for economic development and sustainable growth. However, HE is also an expensive commodity, creating a barrier to access for the majority. High tuition fees are not unique to South Africa: Countries such as Australia, Brazil, Germany, the Netherlands and the United Kingdom have all seen student protests due to tuition fee increases,<sup>580</sup> while nations such as Finland, Thailand, New Zealand and Turkey have also expressed concern about the lack of government support and the resulting

---

<sup>576</sup> Subsection 1(b).

<sup>577</sup> Unqualified means that the state's obligation to provide basic education is positive and immediately realisable, meaning that learners must receive a basic education here and now. Failure to realise the right will constitute a limitation of that right.

<sup>578</sup> This implies that the absence of a university education does not inherently constitute a restriction of one's constitutional right to pursue further education. However, a limitation would arise if the state's efforts to facilitate access to further education over time are deemed unreasonable.

<sup>579</sup> 2023:5.

<sup>580</sup> Calitz & Fourie 2016:149.

increase in student fees.<sup>581</sup> Evidently, the high cost associated with tertiary education is a global issue.

Although South African HE financing after 1994 comprised three <sup>582</sup> key components,<sup>583</sup> the focus here is solely on student funding through NSFAS. Public HE institutions receive a large portion of their total income from the state. Prior to 1994, the funding models and mechanisms for South African public HE were fragmented, reflecting the fragmented institutional landscape of the HE system as well as unequal government arrangements.<sup>584</sup> Yet even post-1994, finance remains one of the major barriers to HE access.

Many initiatives have been developed to overcome this barrier.<sup>585</sup> These include student loan schemes, grants, and public and private bursaries. In 1994, the Minister of Higher Education allocated R20 million to support student financial aid, and initiated a comprehensive effort to secure funds from international donors.<sup>586</sup> The next key financial development in HE came in 1999, when NSFAS was formally established.

NSFAS had its origins in the Tertiary Education Fund of South Africa (TEFSA), which was established as a non-profit company in 1991 to administer a national student bursary and loan scheme.<sup>587</sup> In 1999, TEFSA was reconstituted as NSFAS, a statutory agency with a board appointed by the Minister of Higher Education. An income-contingent<sup>588</sup> bursary and loan scheme funded by the DHET and operating in terms of the *National Student Financial Aid Scheme Act*,<sup>589</sup> NSFAS's primary objective is to support students who demonstrate academic merit and financial need in pursuing their educational goals at tertiary institutions in South Africa.<sup>590</sup> In this way, NSFAS aims to alleviate the obstacles posed by poverty and the apartheid legacy, enabling deserving individuals to overcome these barriers and achieve their goals.<sup>591</sup> Bursary

---

<sup>581</sup> Calitz & Fourie 2016:149.

<sup>582</sup> The other two components are the allocation of public funds to HE institutions, and the generation of private income by HE institutions through various means, including tuition fees, investments, fundraising through grants and donations, and other entrepreneurial activities.

<sup>583</sup> CHE 2004:187.

<sup>584</sup> NCHE 1996:43.

<sup>585</sup> NCHE 1996:44-45.

<sup>586</sup> Moja & Hayward 2000:338.

<sup>587</sup> CHE 2004:193.

<sup>588</sup> Meaning that loan recipients only start repaying once they are employed and earning above the threshold income level.

<sup>589</sup> 56 of 1999.

<sup>590</sup> *National Student Financial Aid Scheme Act* 56 of 1999:preamble.

<sup>591</sup> Monyae 2010:21; Barnes 2006:156.

beneficiaries are those without the financial means to fund their studies and cannot access bank funding, study loans or bursaries.<sup>592</sup> Students who wish to study at a public university or a TVET college and come from a household with an aggregate income of R350 000 or less qualify for an NSFAS government bursary.<sup>593</sup>

NSFAS financial support used to be provided as loans, which had to be repaid once students secured employment after graduation. Students who had passed all their subjects had 40 per cent of their NSFAS funding for that particular year/semester converted into a bursary, which left only 60 per cent of the loan to repay once they started working. In 2018, NSFAS began its conversion from a loan scheme to a bursary scheme.<sup>594</sup> The bursary scheme was phased in over the five years from 2018 to 2022 to eventually cover all undergraduate years.<sup>595</sup> Loans issued prior to 2018 were not cancelled, but remained repayable.<sup>596</sup>

The demand for student funding has increased considerably, especially after the #FeesMustFall movement in 2015.<sup>597</sup> This increase in demand has created many challenges for NSFAS.<sup>598</sup> The initial qualifying household income amount posed a dilemma, as numerous prospective students fell into a middle category, neither meeting NSFAS criteria, nor able to cover their own study fees.<sup>599</sup> However, since 2024, the comprehensive funding model (CFM) ensures that these missing-middle students can also be financed by NSFAS through a loan. The missing middle are households earning between R350 000 and R600 000 annually who do not qualify for NSFAS bursaries, but cannot afford university or TVET college fees.<sup>600</sup> As a result, NSFAS today offers both bursaries for eligible students from households earning

---

<sup>592</sup> South African Government "Apply for financial assistance from NSFAS", <https://www.gov.za/services/tertiary-education/apply-financial-assistance-national-student-financial-aid-scheme-nsfas> (accessed on 14 February 2026).

<sup>593</sup> NSFAS "The DHET Bursary Scheme", <https://www.nsfas.org.za/content/bursary-scheme.html> (accessed on 14 February 2026).

<sup>594</sup> DHET 2018.

<sup>595</sup> DHET 2018.

<sup>596</sup> DHET 2018.

<sup>597</sup> This movement is discussed in more detail in par. 3.6.1.

<sup>598</sup> Monyae 2010:21.

<sup>599</sup> Ntombana *et al.* 2023:8; Tirivangasi *et al.* 2021:18. This group is also called the missing middle by Gumede 2022:1. The missing middle are those students who are too poor to pay for HE, but not poor enough to qualify for NSFAS assistance. Importantly, although a family might not qualify for NSFAS assistance, middle-class families often do not only have one child, and their income does not only go towards tuition fees. This dilemma, along with the annual rise in tuition fees, often pushes more households into poverty.

<sup>600</sup> NSFAS 2025:4.

R350 000 or less, and loans for eligible students from households earning between R350 000 and R600 000.<sup>601</sup> The loans awarded to missing-middle students can be converted into a bursary if the student achieves an average of at least 70 per cent in all their registered modules and completes their studies within the minimum time prescribed.<sup>602</sup> The student will be eligible for a 50 per cent discount on the total loan amount, although subject to paying 50 per cent of the loan amount first.<sup>603</sup> The term of the NSFAS loan repayment is determined at a maximum period of 60 months from the date of employment, and NSFAS provides students with a repayment schedule indicating minimum repayment amounts applicable to the capital amount borrowed.<sup>604</sup>

A concern relating to NSFAS bursaries and loans is the high dropout rate among NSFAS-funded students, as well as the poor repayment of loans, which can result in students being blacklisted for failure to settle their debts.<sup>605</sup> Additionally, the available NSFAS funding is insufficient to cover the financial requirements of all underprivileged students,<sup>606</sup> creating a funding crisis in HE. The crisis sees annual student protests that disrupt academic programmes and force many campuses to close due to the violent nature of these marches.

In the 2013 White Paper for Post-School Education and Training, the DHET confirmed its ongoing commitment to progressively introduce free education for the poor at South African universities as resources become available.<sup>607</sup> Yet as at March 2022, the cumulative student debt at universities stood at R16,5 billion, preventing more than 120 000 students from completing their studies.<sup>608</sup> In this regard, Gumede contends that the existing student funding model is not sustainable,<sup>609</sup> and the need for an alternative model is urgent. Due to the state's inability to manage its finances effectively, more than R4 trillion in public money was lost over the past 15 years, primarily through government corruption, mismanagement, and ideological

---

<sup>601</sup> NSFAS 2025.

<sup>602</sup> NSFAS 2025:15.

<sup>603</sup> NSFAS 2025:15.

<sup>604</sup> NSFAS 2025:13.

<sup>605</sup> Monyae 2010:21.

<sup>606</sup> Walker 2018:557.

<sup>607</sup> DHET 2013b.

<sup>608</sup> Gumede 2022:1.

<sup>609</sup> NSFAS racked up R5 billion in irregular expenditure for the 2019/20 financial year. Gumede 2022:1.

projects.<sup>610</sup> This squandering of funds makes it challenging for the government to credibly assert that it lacks the financial resources to increase financial support for HE.

### **3.7.1 Impact of #FeesMustFall on access and funding in higher education**

Even though it is acknowledged that the #FeesMustFall movement also sparked decolonisation debates in HE, the focus in this thesis is solely on the transformative impact of the movement on access and equity in HE.

In the wake of the government's efforts to advance the HE sector since 1994, disparities have surfaced, highlighting inconsistencies between policy goals and the resources allocated to institutions of higher learning.<sup>611</sup> The resultant political and financial pressure has forced HE institutions to increase their student fees. Student protests over financial exclusion were relatively frequent following the 1994 elections, mainly on historically black university campuses.<sup>612</sup> However, since 2015, the South African HE sector has faced considerable upheaval in terms of protests relating to student funding, leading to disruptions on campuses across the country, often affecting the academic programme.

In March 2003, the then Department of Education produced the document "A review of the financing, resourcing and costs of education in public schools" following an initial discussion about free education at the 51st ANC conference in Stellenbosch in 2002.<sup>613</sup> This led to Cabinet's adoption of the "Plan of Action: Improving access to free and quality basic education for all" in June 2003. In 2007, free education again received significant attention at the 52nd ANC conference in Polokwane. However, the idea of fee-free HE really gained momentum in 2015, when outgoing South African president Jacob Zuma announced that free HE would be made available to deserving students.<sup>614</sup> Similar to apartheid times, the politicised climate of HE again took precedence over its educational goals.<sup>615</sup> The idea that free education will necessarily improve equity rests on the misguided assumption that cost is the main barrier to HE

---

<sup>610</sup> Gumede 2022:1.

<sup>611</sup> Mdepa 2022:108; Tirivangasi *et al.* 2021:20; Barnes 2006:150.

<sup>612</sup> Cini 2019:946.

<sup>613</sup> Monyae 2010:21.

<sup>614</sup> Pillay 2019:142.

<sup>615</sup> Pillay 2019:142.

access.<sup>616</sup> Nevertheless, the notion of free education was one of the major contributors to the #FeesMustFall<sup>617</sup> movement, which caused major disruptions on campuses across South Africa.

#FeesMustFall was preceded by #RhodesMustFall in March 2015.<sup>618</sup> The latter gained wide media and public attention when black students at UCT tried to remove the statue of Cecil Rhodes<sup>619</sup> to demand the decolonisation of the curriculum and the removal of the colonial structures present in HE.<sup>620</sup> Many other campuses joined in. In October of that same year, #FeesMustFall emerged when students on the campuses of most South African public HE institutions mobilised in opposition to a 10 per cent hike in tuition fees planned for the upcoming year.<sup>621</sup> In the weeks that followed, the movement shut down all 26 public HE institutions, resulted in violent disruptions and riots, and affected not only students, but also HE staff. The students who were part of the movement even marched to Parliament and the government seat in Pretoria, Gauteng. The proposed fee increase was ultimately deferred.

#FeesMustFall highlighted the post-1994 government's inability to address and resolve institutional and cultural issues in HE, as well as its failure to create equity and access for all students in the sector. The primary cause of the surge in tuition fees over the past two decades has been inadequate government funding, underscoring the government's inability to meet its objectives set out in policies since 1994.

Public HE institutions are in a challenging position, experiencing pressure to broaden access, while simultaneously facing a reduction in government funding.<sup>622</sup> The lack of funding remains the reason for the majority of student protests on campuses across the country.<sup>623</sup>

### 3.8 CONCLUSION

---

<sup>616</sup> Although finance is one of the major barriers to access, it is not the only barrier to student success.

<sup>617</sup> While decolonisation was at the heart of #RhodesMustFall, the unaffordability of fees was at the heart of #FeesMustFall.

<sup>618</sup> Tirivangasi *et al.* 2021:8.

<sup>619</sup> According to some students at UCT, Rhodes was a British settler who epitomised institutional racism, which they believe is still present in HE in South Africa.

<sup>620</sup> Cini 2019:949.

<sup>621</sup> Cini 2019:942.

<sup>622</sup> Mdepa 2022:108.

<sup>623</sup> Ntombana *et al.* 2023:2.

This chapter analysed HE in South Africa from a historical perspective, as well as in terms of post-apartheid policy developments and the *Constitution's* impact on HE. The racially informed policies that influenced HE in the apartheid era continue to have an effect, while the post-1994 policy reform processes have been suffering the enormous complexity of large-scale transformative policy change. Current policies and practices need to be re-evaluated to eradicate the legacy of past inequalities in HE and ensure that HE continues to contribute to social justice in South Africa. The state is falling short in fulfilling its obligation to meet citizens' needs regarding HE and advance the cause of democratic redress. A decade since the #FeesMustFall protests, the HE landscape in South Africa has experienced minimal change; students continue to protest, voicing both longstanding and new grievances.

The chapter confirmed the complexity and contentious issues in HE in South Africa post-1994. Since 1994, a single, coherent education system and a non-discriminatory environment have been established, and significant policy and legal development has occurred. These developments aimed to dismantle past inequalities, expand access to education, and foster a more inclusive environment for all students. However, while significant progress has been made in providing greater access to HE, there remains a need for further reforms. Achieving success in South African HE requires addressing the persistent challenges relating to success, funding and equity. Several difficulties still stand in the way of achieving equal and just outcomes in redressing past inequalities. The nation's journey towards a more equitable and prosperous future hinges on its ability to grant students access to HE and ensure their success, thereby promoting socioeconomic growth and development. South African HE must respond not only to its inherited problems, but also to the new demands of HE.

Against this backdrop, the implementation of extended curriculum programmes, specifically the extended LLB programme, illustrates how institutions have sought to address the gap between policy interventions and student realities by broadening access and improving equity of outcomes.

## **CHAPTER 4: INTERNATIONAL PERSPECTIVES ON ACCESS, REDRESS AND EQUITY IN HIGHER EDUCATION**

### **4.1 INTRODUCTION**

While access, redress and equity have unique social justice elements in the South African context, we also stand to learn and benefit from social justice perspectives in other jurisdictions. The history of South African HE, as discussed in the previous chapter, revealed how apartheid's legacy of exclusion and differentiation created deep structural inequalities that continue to shape student participation and success in HE. While South Africa's response to these challenges has been unique to its political and social context, it is important to recognise that broadening access and promoting equity in HE is not exclusively a South African struggle. Many countries worldwide have grappled with similar concerns, although they may take different forms. These other countries have also implemented strategies to redress past injustices, broaden participation and ensure that HE contributes to social and economic development.

By considering international perspectives, this chapter aims to situate South Africa's perspective on access, redress and equity within the broader global conversation on these social justice imperatives. This broader view not only allows for a comparative analysis, but also provides an opportunity to reflect on those approaches that might hold valuable lessons for South Africa. International examples highlight both the diversity of strategies adopted, ranging from targeted financial aid and affirmative action to the establishment of access programmes and structural reforms in HE systems, as well as the common goal of transforming HE from an elite privilege into a public good. Examining these practices reveals that access, redress and equity are dynamic concepts that necessitate ongoing adaptation to shifting social realities.

The rationale for including an international perspective on these social justice imperatives, therefore, is threefold: First, it provides a comparative lens through which the South African experience can be better understood, showing both parallels and divergences. Secondly, it illustrates the range of policy choices available to governments and institutions seeking to address inequities in HE, as well as the consequences, both intended and unintended, of these choices. Lastly, it helps address this thesis's research question as to how these social justice imperatives are



approached in other jurisdictions, and what South Africa can learn from them to strengthen the extended LLB programme.

This chapter discusses international examples of broadened access, its purpose, and how it was implemented in different HE systems. These examples not only provide insight into how different societies have interpreted and operationalised the ideals of social justice imperatives in HE, but also offer a platform for South Africa to critically reflect on its own progress and challenges.

If HE is to move from serving a privileged minority to functioning as a public good that prepares citizens for meaningful participation in society and the economy, access cannot continue to be structured in traditional, exclusionary ways. In other jurisdictions, the shift from elite to mass higher education required a reconsideration of admission policies, funding models and institutional cultures, as well as a reassessment of support structures for students to broaden participation while safeguarding quality. By analysing how other jurisdictions have navigated this transition, this chapter will highlight both the opportunities and limitations, and provide valuable lessons that may assist South Africa's own efforts in promoting access, redress and equity through programmes such as the LLB extended curriculum programme.

The comparative component of this research is not meant as an exhaustive analysis of international approaches to extending or broadening access; rather, the intention is to situate the South African experience within a broader global context. Therefore, the aim in the selection of international jurisdictions was to identify comparable responses to challenges of access, redress and equity in HE.

This chapter also does not aim to provide a comprehensive descriptive account of extended or access-oriented law programmes in the selected jurisdictions. Rather, it adopts a theoretically informed comparative approach, using the social justice framework developed in chapter 2 as its analytical lens. The foreign jurisdictions are assessed on how they address social justice imperatives. The purpose of this comparison is not to identify models for direct transplantation, but to distil context-sensitive lessons that may inform the design, evaluation and reform of LLB extended curriculum programmes in the South African university context.

The primary criterion for the selection of jurisdictions was the existence of documented interventions aimed at broadening access to legal education or supporting students

from historically marginalised or underprepared backgrounds. The HE systems in the selected jurisdictions have all grappled with issues of massification, inequality and differential preparedness, and have all implemented institutional or policy responses comparable in purpose, if not in form, to South Africa's extended curriculum programmes. This ensures that the comparative analysis remains focused on jurisdictions facing similar challenges, rather than on systems characterised by fundamentally different educational or socioeconomic conditions.

A second criterion was the availability of accessible, credible scholarly literature, policy documents and institutional reports relating to HE and access-oriented interventions. In all the selected jurisdictions, debates around equity, academic support and curriculum differentiation in HE have been sufficiently documented to allow for meaningful comparative engagement.

Both developed and developing-country contexts are deliberately included in the comparative analysis. Developed jurisdictions offer insight into how access and equity concerns are addressed in comparatively well-resourced HE systems, where institutional capacity, funding stability and student support infrastructures are more firmly established. Developing-country contexts, by contrast, offer perspectives more closely aligned with the structural constraints faced by South African universities, including resource limitations, systemic inequality and the legacy of exclusion. The inclusion of both contexts allows for a more nuanced understanding of which challenges are context-specific and which are common across HE systems.

The selected jurisdictions reflect a balance between conceptual relevance and contextual comparability. Rather than seeking representivity in a statistical sense, this research prioritises jurisdictions whose experiences could illuminate different approaches to balancing access, redress and equity in HE. Other jurisdictions may also offer valuable insights; however, the selected countries are considered most appropriate for the purposes of this research, given their relevance to the South African context and availability of substantive literature. The comparative analysis, therefore, should be understood as illustrative rather than exhaustive, and aimed at informing and enriching the analysis of South Africa's LLB extended curriculum programmes rather than prescribing particular models for adoption.

## 4.2 CONCEPTUALISATION OF ACCESS, REDRESS AND EQUITY IN INTERNATIONAL HIGHER EDUCATION

Education is one of the most powerful tools for addressing and reducing inequalities. Globally, national governments<sup>624</sup> have pursued the expansion of HE access for mainly two reasons: to foster a more equitable society, and to enhance their competitiveness in the global economy.<sup>625</sup> Furthermore, the increasing relative earnings of higher-educated workers drive the demand for university education, compelling governments to expand their HE systems and increase the number of secondary school graduates prepared for HE.<sup>626</sup>

Transformation at HE institutions is considered a significant indicator of social progress, and achieving redress remains imperative. Recruitment and admission policies ensure equitable access to university education by establishing the procedures and processes necessary to achieve these goals. The social justice concepts of broadening access and equity are not unique to South Africa.<sup>627</sup> The expansion of HE and internationalisation has been welcomed in many other countries. This chapter considers the jurisdictions of the United Kingdom (UK), the United States of America (US), Australia, Brazil, Tanzania and Kenya. The selection of these jurisdictions to evaluate access, redress and equity in HE is rooted in their diverse sociopolitical, economic and historical contexts. These countries include developed and developing economies, offering varied approaches to addressing systemic inequalities. Developed nations such as Australia, the US and the UK highlight challenges and policies in multicultural and class-stratified societies, including affirmative action, funding models and initiatives to broaden participation. Meanwhile, Brazil showcases innovative affirmative action policies that target racial and socioeconomic inequities in a middle-income setting. Tanzania and Kenya, as developing nations, emphasise gender equity, rural access and resource constraints, revealing how lower-income contexts navigate similar goals. Together, these countries provide a comprehensive framework for analysing global strategies to improve access, redress and equity in HE.

---

<sup>624</sup> South Africa is not discussed in this chapter. The country's perspective on access, redress and equity is examined in detail in chapter 5.

<sup>625</sup> Nkomo *et al.* 2007:402.

<sup>626</sup> Carnoy 2005:5.

<sup>627</sup> Van der Wende 2003; Clancy & Goastellec 2007; Bitzer 2010:30.

It is a known fact that a country's competitiveness is determined by the quality of its education and labour force. The pressure to expand access and promote equity in HE affects each country differently due to their varied histories, organisational frameworks, available resources, and capacity to implement policy changes. Issues such as elitism, commercialisation, high study costs, corruption and the challenge of quantity versus quality are common themes in HE worldwide.<sup>628</sup> HE equity and access are essential to achieve social and economic progress.<sup>629</sup>

HE offers universal benefits. The first is an intrinsic benefit, focusing on the value of being educated, such as the ability to perform complex operations.<sup>630</sup> The second is an instrumental benefit, underpinning a broad range of human functions, including work, political participation, and health. The third, a subset of instrumental benefits, is the positional benefit, meaning that one's opportunities increase in the context of scarce goods. These benefits drive the need for access to HE. It is expected that an investment in HE will produce graduates who will contribute to the particular country's economic and social development. However, this becomes problematic when countries, especially in Africa, face significant issues of graduate unemployment and underemployment.<sup>631</sup> Moreover, HE institutions have evolved from social and economic development agents to market agents.<sup>632</sup>

Although social justice issues differ across contexts, ensuring equitable access to HE is an issue that affects countries of all income levels. Ultimately, research has found that the mere expansion of access to HE does not necessarily translate into increased opportunities for disadvantaged populations.<sup>633</sup> The broadening of access is also not implemented in the same manner or for the same reason in all HE systems. Although access, redress and equity in South Africa have a strong social justice element,<sup>634</sup> we still stand to learn and benefit from how other countries have implemented these concepts. For this reason, some international examples of broadened access, its

---

<sup>628</sup> De Wit & Jones 2017:1.

<sup>629</sup> Akoojee & Nkomo 2011:118; Varghese 2013:3.

<sup>630</sup> McCowan 2016:648.

<sup>631</sup> McCowan *et al.* 2018:97. Up to 50% of university graduates may not secure employment in the formal economy after graduation.

<sup>632</sup> The "market agent" focus positions HE in financial terms, characterised by competition, profitability and efficiency; an "agent of development" focus sees HE as a vehicle for social change and public good.

<sup>633</sup> McCowan 2016:645.

<sup>634</sup> Social justice focuses on social change through redress, equity and economic development to eradicate inequalities. Ntshoe 2003:394; Clancy & Goastellec 2007:137.

purpose, and how it was implemented in the respective HE systems,<sup>635</sup> are discussed below.

If HE is to transition from a luxury to a necessity, access cannot be structured in traditional ways.<sup>636</sup> Globally, access to HE institutions is regulated by two primary mechanisms: academic performance and tuition fees.<sup>637</sup> The significant variation<sup>638</sup> in these mechanisms, both between and within countries, is also discussed in this chapter.

Traditionally, access was linked to social standing, meaning that students with the good fortune of being born into the favoured social groups or categories gained entry.<sup>639</sup> In South Africa, the first colleges built in the Cape Province were reserved for the children of British immigrants.<sup>640</sup> In the US, the children of the white Anglo-Saxon Protestant community were the first to gain entry to private colleges.<sup>641</sup> During the 20th century, the concept of equal access created a need for HE to become accessible to more individuals, regardless of their social backgrounds. Internationally, HE systems began to remove formal barriers in relation to gender, race and social groups.

Clancy and Goastellec<sup>642</sup> outline three successive phases in HE access policy. They call the first phase “inherited merit”.<sup>643</sup> This was when universities were only available to a particular group of people.<sup>644</sup> The second phase is termed “equality of rights”,<sup>645</sup> during which no explicit discrimination was allowed. However, mechanisms were adopted that prevented students from disadvantaged backgrounds from obtaining place at HE institutions, specifically elite universities.<sup>646</sup> The last phase, “equity” or “equality of opportunity”, is characterised by various affirmative action policies and

---

<sup>635</sup> The comparative jurisdictions are all democratic states where the rules and policies governing social and public institutions aim to address discriminatory practices and promote equality. However, some are developed countries, and others are developing countries.

<sup>636</sup> Meyer *et al.* 2013:2.

<sup>637</sup> McCowan 2016:652.

<sup>638</sup> For example, open-access HE applies in countries such as Italy and France, while nations such as Japan and Brazil have stringent entry examinations and intense competition for a place at university.

<sup>639</sup> Clancy & Goastellec 2007:138; McCowan 2016:646.

<sup>640</sup> See chapter 3.

<sup>641</sup> Clancy & Goastellec 2007:138.

<sup>642</sup> 2007:137; Leach 2013:268.

<sup>643</sup> This inherited merit also implied that lack of inclusive access could be excused for some reason or that access to higher education is often influenced by social or cultural factors.

<sup>644</sup> See Chapter 3 and Mathekga 2012:20.

<sup>645</sup> Clancy and Goastellec 2007:138; Leach 2013:268.

<sup>646</sup> See par. 4.4.1.1.

practices, giving preferential access to students with specific characteristics. Preferential access in terms of affirmative action policies in the US and South Africa is mainly based on race. However, in other countries, affirmative action policies are also based on other characteristics.<sup>647</sup> Regardless of the basis used, though, affirmative action is aimed at historical redress,<sup>648</sup> as social justice requires an equitable approach to HE access.

De Wit and Jones<sup>649</sup> identify several key issues in international HE, including elitism, commercialisation, high educational costs, corruption, fraud, and balancing quantity versus quality. These, together with the goal of achieving greater equality between the composition of universities and the national population, drive the notion of HE equity.

With educational expansion, opportunities for all racial groups have improved. Still, despite the growth in participation in HE internationally, the representation of certain groups, mainly those with a low socioeconomic status, remains low.<sup>650</sup> While race has been the predominant measure of equity and access, many international institutions now use socioeconomic status as an alternative measure. Ultimately, most students who gain access to HE institutions are from middle-class or elite groups, which supports the argument that access and participation are among the leading causes of educational inequality.<sup>651</sup> Worldwide, socioeconomic status has a significant influence on individuals' participation in HE: Students from low socioeconomic backgrounds are underrepresented in HE due to lower academic achievement levels and lower completion rates.<sup>652</sup> This is true for South Africa as well as other parts of the world.<sup>653</sup> Thus, there has been a shift from racial to social considerations when discussing equality and equity in HE. Nevertheless, although equity policies are implemented to address the issue of unequal participation, most of these policies do not have the desired effect. Individuals from low socioeconomic backgrounds remain highly

---

<sup>647</sup> In Sweden, for instance, affirmative action is based on gender; in India, it is based on caste (social classification system); in Sri Lanka, it is based on district or origin.

<sup>648</sup> See chapter 2.

<sup>649</sup> 2017.

<sup>650</sup> Bitzer 2010:302.

<sup>651</sup> Mzangwa 2019:8; Pillay 2009:20.

<sup>652</sup> Hoare & Johnston 2011; Bitzer 2010; Clancy & Goastellec 2007; Mzangwa 2019:8.

<sup>653</sup> See chapter 2; Pillay 2009:20.

underrepresented in HE,<sup>654</sup> and socioeconomic background remains a strong determining factor of students' HE access and participation.<sup>655</sup>

This overview demonstrates that, while strides have been made to eliminate explicit exclusionary practices, access to HE remains highly stratified worldwide. What is striking is the persistence of structural barriers that continue to reproduce inequality, even in contexts where formal redress measures exist. The shift from race to socioeconomic status as a marker of disadvantage is particularly insightful. It highlights that HE systems, regardless of the country, often privilege those who already possess the social and cultural capital to navigate academic pathways successfully. This correlates strongly with the South African context, where, despite the removal of apartheid-era restrictions, participation still mirrors some patterns of inequality, especially with regard to epistemological access.

The international debate reminds us that access cannot be understood solely in terms of opening doors to HE institutions; it must also take into account the capacity of students from disadvantaged backgrounds to enter, persist and succeed in HE.

This underscores the importance of thinking critically about how access, redress and equity are operationalised, not only in policy, but also in real life. The fact that many equity policies fail to deliver their intended outcomes suggests that interventions need to go beyond symbolic inclusion to provide meaningful and sustained support. This is precisely the tension that the extended LLB programme seeks to address by creating an alternative pathway that truly advances social justice.

Additionally, it is important to recognise the role of international institutions and frameworks, including the UN's SDGs, UNESCO and the World Bank, in shaping the global discourse on equity and access in HE. Their influence emphasises that HE is not only a domestic concern, but also a crucial component of international development agendas.

#### **4.3 VIEWS OF HIGHER EDUCATION AS EXPRESSED IN INTERNATIONAL FRAMEWORKS AND BY GLOBAL INSTITUTIONS**

---

<sup>654</sup> Bitzer 2010:303.

<sup>655</sup> Pillay 2009:20.

### 4.3.1 The Sustainable Development Goals (SDGs)

In 2015, the 2030 Agenda for Sustainable Development, adopted by all 193 United Nations member states, established 17 SDGs aimed at ending poverty and achieving a sustainable future by 2030.<sup>656</sup> The SDGs acknowledge that eradicating poverty and other forms of deprivation must be accompanied by strategies that enhance health and education, reduce inequality and stimulate economic growth. As such, they provide states with an ideal platform to demonstrate their commitment to all human rights. HE institutions' commitment to all 17 SDGs is vitally important, and is manifested through their teaching, research and engagement with the economy and society.<sup>657</sup>

In Africa, most countries' economies recorded growth over the past several years, yet they failed to bring about socioeconomic change and transformation.<sup>658</sup>

The most relevant SDG for purposes of this thesis is SDG 4, "Quality education", which aims to leave no one behind in terms of education access and quality, and more specifically its targets 4.3, 4.5 and 4.7. Target 4.3 aims "to ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university". Target 4.5 deals with the eradication of discrimination in education and aims to "eliminate gender disparities ... and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations". Target 4.7 aims to "ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including ... through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development".<sup>659</sup>

Despite a 40 per cent rise in the worldwide enrolment figure from 1970 to 2022, severe disparities persist in HE, especially in the Global South.<sup>660</sup> UNESCO statistics indicate that a disproportionately high share of HE students still come from the richest groups

---

<sup>656</sup> UN "The 17 goals", <https://sdgs.un.org/goals> (access on 10 September 2024); UNESCO 2022:14.

<sup>657</sup> UNESCO 2022:14; Varghese 2013:2.

<sup>658</sup> Szirmai 2005:473.

<sup>659</sup> The Global Goals "4 Quality Education", <https://www.globalgoals.org/goals/4-quality-education/> (accessed on 10 September 2024).

<sup>660</sup> UNESCO 2022:9.



in society.<sup>661</sup> It is not only an issue of access; data also indicates that students from traditionally underrepresented groups have a lower completion rate.<sup>662</sup>

SDG 4 aims to ensure inclusive and equitable education, promoting lifelong learning opportunities for all. This goal is based on the premise that education empowers the mind, unleashes creativity, and is essential to self-respect. It is the foundation of prosperity, opening up a world of opportunities and enabling individuals to contribute to a thriving and healthy society. Learning enriches every person and should be accessible to everyone.<sup>663</sup>

To align themselves to achieve SDG 4, HE institutions should take their cue from the principles proposed in UNESCO's "Reimagining our Futures Together: A New Social Contract for Education".<sup>664</sup> The first key principle is to enhance inclusion and promote pluralism in HE – a strong social justice imperative that aligns with target 4.3 of SDG 4.<sup>665</sup>

Approximately 254 million students are enrolled at universities worldwide – nearly double the number of 20 years ago.<sup>666</sup> In countries with recent data, around one-sixth of individuals aged 15–64 have participated in education and training. Participation is significantly higher among youth aged 15–24<sup>667</sup> than people aged 24–55, with an average participation rate of nearly 50 per cent across most regions. However, in most regions, less than 3 per cent of older adults aged 25–55 engage in education and training.<sup>668</sup>

One of the key challenges to achieving the SDGs is securing adequate funding. The UN, national organisations and governments are working to support funding efforts. Private investment and a transition towards sustainable financing are crucial for the realisation of the SDGs. Another challenge is the view that HE is elitist, discriminatory and sometimes alienated from its public task. This challenge can be overcome through

---

<sup>661</sup> UNESCO 2022:15.

<sup>662</sup> UNESCO 2022:16.

<sup>663</sup> The Global Goals "4 Quality Education", <https://www.globalgoals.org/goals/4-quality-education/> (accessed on 10 September 2024).

<sup>664</sup> UNESCO 2021.

<sup>665</sup> UNESCO 2021:108.

<sup>666</sup> UNESCO "Higher Education", <https://www.unesco.org/en/higher-education> (accessed on 11 September 2024).

<sup>667</sup> It is important to note that those aged 15 to 18 are school learners and not HE students.

<sup>668</sup> UN "Goal 4 Progress and Info", [https://sdgs.un.org/goals/goal4#progress\\_and\\_info](https://sdgs.un.org/goals/goal4#progress_and_info) (accessed on 12 September 2024).

equitable, well-funded and sustainable access, as well as policies and practices that address access, equity, non-discrimination, financing and governance.<sup>669</sup>

At the SDG Summit held in New York in 2023, the UN Secretary-General emphasised that SDGs carry people's hopes, dreams, rights and expectations. The 2024 progress report on SDG 4 indicated that socioeconomic disparities were still prevalent in education and affected various indicators.<sup>670</sup> Disparities based on location or household wealth are more pronounced, with rural or less-affluent families facing more significant challenges. These gaps widen at HE level, resulting in higher dropout rates and fewer opportunities for individuals from disadvantaged backgrounds.<sup>671</sup> This data reiterates the importance of addressing access, redress and equity in HE.

Africa sits at the bottom of most major development indices: A third of its population is undernourished, and millions lack access to clean water, electricity, education, healthcare and infrastructure.<sup>672</sup> It is essential to leverage the synergies between the right to development, other human rights, sustainable development and the rule of law to address the underlying issues effectively. Achieving greater inclusion and fostering diversity in HE is a critical social justice imperative, as reflected in target 4.3 of SDG 4.

In summary, the SDGs, and particularly SDG 4, highlight that achieving social justice in HE is not only a South African redress issue, but also part of a shared global commitment to equity, inclusion and sustainable development.

#### **4.3.2 United Nations Educational, Scientific and Cultural Organisation (UNESCO)**

The 1998 UNESCO World Conference on Higher Education in Paris recommended that HE institutions globally should internationalise and work towards reducing inequalities between developed and emerging countries.<sup>673</sup> The conference also put women's access to HE firmly on the global political agenda, and since then, gender

---

<sup>669</sup> UNESCO 2022:11.

<sup>670</sup> UN "Goal 4 Progress and Info", [https://sdgs.un.org/goals/goal4#progress\\_and\\_info](https://sdgs.un.org/goals/goal4#progress_and_info) (accessed on 12 September 2024).

<sup>671</sup> UN "Goal 4 Progress and Info", [https://sdgs.un.org/goals/goal4#progress\\_and\\_info](https://sdgs.un.org/goals/goal4#progress_and_info) (accessed on 12 September 2024).

<sup>672</sup> UNDP "Human Development Reports", <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI> (accessed on 8 October 2024).

<sup>673</sup> Amutuhire 2023:22.

equity campaigns have played a crucial role in advancing the recruitment of women as students and staff at HE institutions.<sup>674</sup> UNESCO is the only UN agency with an HE mandate. To them, the aim of HE provision is to promote equity and ensure equal distribution of opportunities.<sup>675</sup> UNESCO collaborates with the entire UN system to foster a clear understanding of a rights-based approach to social issues and their implications. They also collaborate with countries to ensure that all students have equal opportunities to access and complete good-quality HE and obtain internationally recognised qualifications.<sup>676</sup> Countries are also supported with evidence-based information and technical assistance to develop HE systems and policies that promote equal opportunities for all students.<sup>677</sup>

According to UNESCO, HE constitutes a valuable cultural and scientific resource that fosters personal development and drives economic, technological and social transformation.<sup>678</sup> It also equips students with the skills required to navigate evolving labour markets. As such, it can serve as a crucial pathway to economic stability and a secure future for students from vulnerable situations.<sup>679</sup>

A 2022 UNESCO document<sup>680</sup> identified income inequality and the decline in democracies as major challenges for human societies. Income disparities are growing rapidly as people benefit differently from the rise of the global economy. With regard to democracy, full democracies declined from 12,3 per cent in 2010 to 6,4 per cent in 2021. This means less academic freedom, less independent thinking, less institutional autonomy, and less tolerance of research on socially sensitive issues such as gender, race and decolonisation. Equitable access to HE and labour market opportunities is indispensable to address this.<sup>681</sup> The document also highlights that many countries<sup>682</sup> are forced to operate with insufficient public investment, and in the past decade, governments have significantly changed how resources are allocated to HE

---

<sup>674</sup> Onsongo 2007:114.

<sup>675</sup> UNESCO 2022:9.

<sup>676</sup> UNESCO 2022:14; UNESCO “Higher Education”, <https://www.unesco.org/en/higher-education> (accessed on 11 September 2024).

<sup>677</sup> UNESCO “Higher Education”, <https://www.unesco.org/en/higher-education> (accessed on 11 September 2024).

<sup>678</sup> UNESCO “Higher Education”, <https://www.unesco.org/en/higher-education> (accessed on 11 September 2024).

<sup>679</sup> UNESCO “Higher Education”, <https://www.unesco.org/en/higher-education> (accessed on 11 September 2024).

<sup>680</sup> UNESCO 2022:9.

<sup>681</sup> UNESCO 2022:8.

<sup>682</sup> Africa, Central Asia and Latin America.

institutions.<sup>683</sup> In many countries, including South Africa, the trend is to increase tuition fees and other indirect costs rather than progressively funding HE from public sources and providing it to students for free.

Equity in HE access and success is no longer optional, but an essential social justice imperative to achieve target 4.3 of SDG 4. As talent is equally distributed across populations, in all groups, regardless of their characteristics, it is possible to find students with the potential to succeed in HE in all contexts.<sup>684</sup> In some middle-income countries, disparities in HE enrolment between the wealthiest and poorest groups can reach 60 per cent or more,<sup>685</sup> underscoring that HE access is profoundly unequal along socioeconomic lines.

UNESCO encourages HE institutions to transcend disciplinary, professional, epistemic, reputational and institutional boundaries to broaden educational opportunities, promote professional excellence, and develop well-rounded citizens dedicated to social justice and sustainability.

It is important to include UNESCO in this thesis, as its policies and frameworks on HE establish internationally recognised standards for equity and inclusion. Engaging with these frameworks enables one to position South Africa's challenges within a broader global discourse, thus providing a critical lens through which to assess the country's progress towards social justice.

#### **4.3.3 The World Bank Group**

The World Bank's policies, funding mechanisms and policy advice have significantly shaped HE reform globally, especially in developing countries. This affects how access, redress and equity are conceptualised and implemented.

---

<sup>683</sup> UNESCO 2022:9.

<sup>684</sup> UNESCO 2023:4.

<sup>685</sup> UNESCO 2022:15.

The World Bank Group (WBG) sees tertiary education<sup>686</sup> as vital in fostering growth, reducing poverty and boosting shared prosperity. HE systems worldwide face a growing demand for enrolment, increasingly driven by non-traditional students.<sup>687</sup>

The role of the WBG has evolved over the years. In the 1960s, it primarily focused on infrastructure. It then shifted to support faculty improvement and the development of new institutions. This support faded in the mid-1980s in favour of investment in basic education.<sup>688</sup> However, there is a renewed interest in HE from the WBG, with a focus on supporting and promoting increased access and equity, among others. The International Finance Corporation (IFC), which belongs to the WBG, has aligned itself with the World Bank's approach, and also focuses on access, equity, relevance and quality.<sup>689</sup> The IFC's investments in post-school education are guided by an education strategy that seeks to make a positive contribution to development, helps mobilise resources, prioritises access for poorer students, emphasises scalability and innovation, and foregrounds skills, competencies and employability.<sup>690</sup>

According to the WBG, individuals with higher levels of education are more likely to be employable and demonstrate greater productivity.<sup>691</sup> They also tend to earn higher wages and possess an enhanced ability to adapt to economic shocks and uncertainties.

It was reported in April 2024 that only 9 per cent of the traditional-aged HE cohort in sub-Saharan Africa continues from secondary school to HE, which is the lowest regional enrolment rate globally.<sup>692</sup> At the same time, the economic return for HE graduates in sub-Saharan Africa is particularly great, as they are estimated to earn 21 per cent more than non-graduates.<sup>693</sup>

---

<sup>686</sup> The WBG uses the term "tertiary education", which refers to all formal post-secondary education. However, for uniformity, this thesis will continue to refer to HE.

<sup>687</sup> WBG 2017.

<sup>688</sup> WBG 2017.

<sup>689</sup> WBG 2017.

<sup>690</sup> WBG 2017.

<sup>691</sup> WBG "Tertiary education", <https://www.worldbank.org/en/topic/tertiaryeducation> (accessed on 13 September 2024).

<sup>692</sup> WBG "Tertiary education", <https://www.worldbank.org/en/topic/tertiaryeducation> (accessed on 13 September 2024).

<sup>693</sup> WBG "Tertiary education", <https://www.worldbank.org/en/topic/tertiaryeducation> (accessed on 13 September 2024); Varghese 2013:1.

For this reason, the World Bank has emphasised the importance of addressing equity issues in education in developing countries specifically. In 2006 already, they suggested that equity in HE should entail ensuring equality of opportunity, devising cost-sharing agreements that do not harm equity of access, and improving the participation of the least-represented groups. They urged governments to take action by assessing the extent and origins of HE equity issues, enhancing integrated planning between secondary school education and HE, considering positive discrimination policies for groups with a clearly defined educational disadvantage, and providing incentives for HE institutions to broaden participation and offer extra support for students from disadvantaged backgrounds.<sup>694</sup>

The WBG further believes that higher technical and vocational education and training can effectively complement traditional university education by equipping students with knowledge and skills directly relevant to the labour market.<sup>695</sup>

They state:

Both policies and academic degrees need to be strategically tailored to fit the needs of the local society and economy. Only then can governments realise the gains in primary and secondary school attainment through tertiary education access and progression and turn these successes into increased and sustained economic and social development.<sup>696</sup>

The extended LLB programme at the UFS aims to provide a degree specifically tailored to the needs of the local society, at least in the first two years of study, by offering additional time, support and foundational development to students who might otherwise be excluded from mainstream HE pathways. The extended curriculum approach reflects an understanding that access without the necessary support is insufficient. Meaningful participation requires structures that address both historical disadvantage and current educational inequalities.

#### **4.4 THE APPLICATION OF THE SOCIAL JUSTICE CONCEPTS OF ACCESS, REDRESS AND EQUITY IN HIGHER EDUCATION IN DIFFERENT JURISDICTIONS**

---

<sup>694</sup> World Bank 2006; Mkude 2011:368; Mzangwa 2019:6.

<sup>695</sup> See par. 4.3.1.

<sup>696</sup> WBG “Tertiary education”, <https://www.worldbank.org/en/topic/tertiaryeducation> (accessed on 13 September 2024).

As mentioned, the jurisdictions discussed in this section include high, middle and low-income countries, recognising that various forms of inequality create barriers for different social groups. By examining countries across the spectrum, it becomes possible to identify both common challenges and context-specific strategies in promoting social justice, access and equity in HE. Such a comparative approach provides insight into how varying historical, economic and social conditions influence HE policies and practices, which can inform the South African response. The developed countries of the UK,<sup>697</sup> the US and Australia are discussed first, followed by the developing nations of Brazil, Kenya and Tanzania.

#### **4.4.1 Developed countries**

The UK and the US provide valuable comparative contexts. While both are developed countries with well-established HE systems, they present different approaches to access, redress and equity. The UK's HE system has historically been characterised by significant elitism and stratification, with access traditionally concentrated among students from privileged social classes and elite schools. Although policy reforms have aimed to broaden participation, issues of class, race and socioeconomic disadvantage remain deeply embedded in its university landscape. The US's HE system is more diversified and massified, encompassing elite Ivy League universities alongside large public universities and community colleges, which collectively have played a significant role in expanding access to HE. At the same time, the US system faces its own structural barriers, particularly in terms of affordability, student debt and entrenched racial and socioeconomic inequalities. Australia provides a unique perspective, as its equity challenges are not always rooted in racial exclusion, but in social and cultural dynamics, such as parental background and attitudes towards HE. Australia has pursued broader participation through explicit national targets for equity groups, focusing particularly on students from low socioeconomic backgrounds, indigenous Australians, and those from rural and remote areas, while contending with persistent barriers linked to financial capacity and institutional culture.

---

<sup>697</sup> For ease of reference, this thesis uses the term "United Kingdom" in a general sense. However, the discussion primarily concerns developments in England and Scotland rather than all the constituent parts of the UK. The distinctions between the UK, Great Britain and England are acknowledged as constitutionally and geographically significant.

Examining these three countries enables a richer understanding of how developed countries with long-standing HE traditions have addressed the challenges of equity and access, and provides useful points of comparison with South Africa's own redress-oriented policies.

#### **4.4.1.1 United Kingdom**

The establishment of HE in the UK was deeply rooted in Christianity, with both lower education and HE provided through monastic and cathedral schools.<sup>698</sup> The history of HE in the UK dates back to the 12<sup>th</sup> and 13<sup>th</sup> centuries,<sup>699</sup> although most of the expansion occurred during the 20<sup>th</sup> century.<sup>700</sup> Since 1970, the UK has advocated for an improvement in the educational status of disadvantaged groups, as this enhances individual and collective lifestyle choices and quality of life, along with the associated levels of health, wealth and happiness.<sup>701</sup> UK students from relatively disadvantaged backgrounds are often denied access to HE due to their poor academic qualifications, thereby giving preference to students from independent schools.<sup>702</sup> To help remedy this, the UK HE authority introduced the "access course" initiative in the 1970s for students without the conventional qualifications to access HE.<sup>703</sup> In the mid-1980s, several research and development projects were also conducted on the recognition of prior learning to gain access to HE and further education.<sup>704</sup>

Fees for public universities in the UK were introduced in 1998 and have steadily increased over time. However, full loans are available to all students pursuing their first undergraduate degree, thereby ensuring the continued uptake of HE.<sup>705</sup> A 2003 White Paper on the future of HE in Britain stated: "All those who have the potential to benefit from higher education should have the opportunity to do so."<sup>706</sup> The widening of access has received significant attention in the UK since 1998, largely due to

---

<sup>698</sup> Mathekga 2012:20.

<sup>699</sup> These include the universities of Oxford and Cambridge. The former began as an Anglican university around the 12<sup>th</sup> century.

<sup>700</sup> McCowan 2016:654.

<sup>701</sup> Hoare & Johnston 2011:22.

<sup>702</sup> Hoare & Johnston 2011:21.

<sup>703</sup> Hoare & Johnston 2011:22.

<sup>704</sup> Van Rooy 2002:77.

<sup>705</sup> McCowan 2016:654.

<sup>706</sup> Straw 2003:34.



increasing global trade pressures.<sup>707</sup> In England, widening participation encompasses both broadening access and improving student success in HE, and is defined as “helping more people from under-represented groups, particularly low socio-economic groups, to participate successfully in higher education”.<sup>708</sup> Numerous reports and policies<sup>709</sup> also led to a change in the HE landscape, which has spurred universities, with the assistance of government incentives, to introduce programmes to widen participation.<sup>710</sup> Following the introduction of parliamentary devolution in 1999, the responsibility for HE policy was devolved across the four jurisdictions of the UK, namely England, Scotland, Wales and Northern Ireland.<sup>711</sup> British HE institutions were incentivised to enrol more “widening-participation students”<sup>712</sup> through a funding formula. The UK developed a central policy for accelerating the widening of participation, and delegated it to each university for implementation. The policy identified four main areas for the widening of participation, and left it to each university to plan its contribution to these areas.<sup>713</sup> The four areas were a) developing promotional activities aimed at increasing underrepresented groups awareness and aspirations towards HE in general and the specific institution itself; b) producing an own definition of a widening-participation student, and adjusting the university’s admission policy accordingly; c) tailoring bursaries and financial incentive structures at the university to support widening-participation students; and d) factoring in widening-participation criteria into the university’s selection process, given that a place in UK universities has to be earned by way of open competition through the Universities and Colleges Admission Service,<sup>714</sup> the world’s largest centralised HE admissions service. In response, England adopted a model of cost-sharing and government-backed loans to ensure equity in HE.

---

<sup>707</sup> Watt & Paterson 2000:108.

<sup>708</sup> Watt & Paterson 2000:108.

<sup>709</sup> This includes reports and policies from the Higher Education Funding Council (2001 and 2004), the National Audit Office (2002 and 2008), the Department for Education and Skills (2006), the Admissions to Higher Education Steering Group (2004), the National Committee of Inquiry into Higher Education/Dearing Report (1997) and independent lobbyists (Sutton Trust 2004 and 2005).

<sup>710</sup> David 2009:7; Hoare & Johnston 2011:21; Tonks & Farr 2003:27.

<sup>711</sup> Evans *et al.* 2019:102.

<sup>712</sup> These students were predominantly from particular social class backgrounds and state schools.

<sup>713</sup> Hoare & Johnston 2011:23.

<sup>714</sup> Hoare & Johnston 2011:23.

In 2004, however, the UK's *Higher Education Act* introduced a radical shift in student financing.<sup>715</sup> HE institutions that charge the maximum tuition fees must provide bursaries to low-income students to supplement their state-funded grants and maintenance loans.<sup>716</sup> The government also encourages HE institutions in England to provide additional discretionary financial support to improve accessibility and participation.<sup>717</sup> The Act reintroduced government-funded, means-tested grants. Thus, all undergraduate students can receive government-subsidised, income-contingent loans for tuition and living costs, while low-income students can also receive a grant and mandatory bursary.<sup>718</sup> These loans are similar to the NSFAS loans for missing-middle students in South Africa.<sup>719</sup>

Yet the so-called “elite”<sup>720</sup> universities’ reputation for cultural/social exclusion hinders widening-participation students from even applying to these universities, which impedes the notion of widening participation.<sup>721</sup> Universally, the lower the prestige of the institution, the less selective the admission criteria.<sup>722</sup> As a result, students from disadvantaged backgrounds tend to be better represented in the less prestigious HE institutions. In the UK, including England, Wales and Northern Ireland, individuals from affluent areas are five to six times more likely to attend university than young working-class individuals from disadvantaged areas.<sup>723</sup> Several HE institutions in the UK have attempted to change this, specifically focusing on widening participation for students from low socioeconomic backgrounds.<sup>724</sup> England’s policies on the widening of access specifically aim to improve this by actively engaging in outreach work in schools to raise the aspirations of prospective students from non-traditional backgrounds.<sup>725</sup>

There is a preference for widening participation rather than merely widening access. Widening access is seen as increasing the representation of specific subgroups of young people in HE, particularly those who are underrepresented and from low

---

<sup>715</sup> Callender 2009:127.

<sup>716</sup> Callender 2009:127.

<sup>717</sup> Knight 2009:xi; Callender 2009:127.

<sup>718</sup> Callender 2009:128.

<sup>719</sup> See par. 2.4.1.5 and 3.7.

<sup>720</sup> It is defined in terms of the international university league table.

<sup>721</sup> Hoare & Johnston 2011:24; David 2009:7; Goastellec 2010:285.

<sup>722</sup> Glancy & Goastellec 2007:141.

<sup>723</sup> Higher Education Financing Council of England 2011; Organisation for Economic Cooperation and Development 2006.

<sup>724</sup> David 2009:7.

<sup>725</sup> McCowan 2016:654; Hoare & Johnston 2011:24.

socioeconomic backgrounds.<sup>726</sup> Widening participation, on the other hand, aims to achieve a more representative diversity of young people across various universities and academic subjects, and includes assisting them to participate successfully in HE.<sup>727</sup> In other words, widening participation focuses on what students do once they have been admitted to university. The UK's focus on widening participation, therefore, combines widening access with improved student success in HE.<sup>728</sup>

Nevertheless, inequities persist in England's HE system, including the disparity between higher and lower socioeconomic groups, despite HE expansion. As stated earlier, social class remains one of the key barriers to HE access in England, particularly for low-income or working-class students, who often cannot picture themselves as belonging to an "elite" university, despite having universally accessible loans available to them.<sup>729</sup> Therefore, the highly stratified system significantly contributes to the inequality in the English HE sphere.

There are some positive takeaways from the English HE system, namely that a) place availability is substantial, with more than a hundred universities enrolling students; and b) student loans are available to cover fees, and are repayable at preferential interest rates. The emphasis on widening participation rather than merely widening access is also a strategy that could be adopted and adapted in the South African context.

In Scotland, several educational pathways exist for students seeking non-traditional routes to learning, with six universities providing summer school programmes.<sup>730</sup> Scotland also provides funding for widening-access initiatives, which include part-time study.<sup>731</sup> Summer school is a short, intensive university-style study period, and students who complete it successfully, gain access to university. This is another method for implementing wider access and ensuring that more students enter HE. Similar to South Africa, widening access in Scotland focuses on attracting students from disadvantaged backgrounds<sup>732</sup> and rectifying past issues that segregated the

---

<sup>726</sup> Tonks & Farr 2003:26; Callender 2009:143.

<sup>727</sup> Tonks & Farr 2003:26; David 2009:7; Hoare & Johnston 2011:21.

<sup>728</sup> Mzangwa 2019:6.

<sup>729</sup> McCowan 2016:655.

<sup>730</sup> Watt & Paterson 2000:109.

<sup>731</sup> Buchler *et al.* 2007:130.

<sup>732</sup> Watt & Paterson 200:109.

education system along the lines of race and socioeconomic background, among others.

Mullen<sup>733</sup> states some of the main barriers to HE access in Scotland. Barriers that affect young people's initial decision to enter HE during compulsory education include their parents' occupation and income, and the prospective student's social background. Other barriers faced, including by individuals who may wish to return to HE later in life or seek to enter HE through an alternative learning route, relate to geography (i.e. where the student lives) and the delivery methods of HE modules. Delivery methods can become a barrier when they fail to accommodate students' increasingly diverse circumstances, such as full-time work, varied learning styles and differing learning needs. Financial barriers due to the cost of studying are also increasing. Enrolment and admission practices create barriers, as stringent admission requirements and recruitment practices for some of the HE institutions' most sought-after courses mean that students from deprived areas are less likely to enrol. Articulation and transition, too, can create a barrier if transitioning from one learning route to another is difficult.

An example of an initiative to ensure the widening of HE access in Scotland is the University of Glasgow's top-up programme. The programme is intended for learners aged 17 and 18 attending schools with low HE participation rates.<sup>734</sup> The top-up programme aims to counteract the effects of disadvantage by providing academic preparation,<sup>735</sup> instilling in learners skills such as critical thinking, deep and active learning, conceptual thinking, and a well-developed writing style.<sup>736</sup> All these skills are essential for success in HE studies. In a study on the effectiveness of the programme, students indicated that it provided highly relevant preparation and eased the transition from school to HE. The study concluded that a programme such as this, which concentrates on preparation skills and attitudes relevant to a student's HE experiences, can combat educational underachievement and student non-completion.<sup>737</sup> The UFS's extended programme has similar goals and ideals to those of the University of Glasgow's top-up programme, focusing on the preparation skills

---

<sup>733</sup> 2010:2.

<sup>734</sup> Walker *et al.* 2006:43.

<sup>735</sup> Walker *et al.* 2006:43.

<sup>736</sup> Walker *et al.* 2006:46.

<sup>737</sup> Walker *et al.* 2006:58.

and attitudes essential to ensuring students' success in their studies. Widening-participation initiatives, therefore, emphasise not only access to HE, but also the provision of structured academic and psychological support to equip students with the necessary competencies to thrive in their chosen programmes of study.

Recognising that persistent inequalities affect both social justice and the broader health of the national economy, the Welsh government has prioritised a policy agenda to widen access to HE since 2009.<sup>738</sup> The widening-access policies in Wales are similar to those in England and the other UK jurisdictions.<sup>739</sup> The notion of “fair access” has evolved not only to include equal access to any university, but also to address patterns of entry across different types of institutions, as young people from disadvantaged backgrounds remain significantly less likely to enter high-ranking or prestigious universities.<sup>740</sup> In Wales, the government's 2009 strategy, titled “For Our Future”, framed widening access as a central mechanism for advancing both social justice and economic growth.<sup>741</sup> The Higher Education Funding Council for Wales operationalised this vision by developing its “Strategic Approach and Plan for Widening Access to Higher Education”. This plan prioritised an “all-ages” approach, aimed at supporting non-traditional students through flexible modes of study, including part-time and work-based learning; clear and accessible progression routes from schools, communities and further education colleges; and pre-degree qualifications such as foundation degrees.<sup>742</sup> Although the government sets the overarching policy direction, HE institutions retain substantial autonomy in implementing these objectives.<sup>743</sup> As a result, the practical realisation of widening access differs across institutions, shaped by their particular contexts, priorities and internal governance dynamics. Evans *et al.*<sup>744</sup> identify two primary mechanisms through which universities in Wales address access and equity. The first is widening access through pre-entry activity (outreach), which focuses on raising aspirations through university “taster” sessions, summer schools and workshops targeted at disadvantaged areas. Universities that follow this approach usually target high-attaining young people to

---

<sup>738</sup> Evans *et al.* 2019:102.

<sup>739</sup> Evans *et al.* 2019:102; Croxford & Raffe 2015:1627.

<sup>740</sup> Evans *et al.* 2019:101; McKenzie 2022:2; Boliver 2013:344.

<sup>741</sup> Evans *et al.* 2019:103.

<sup>742</sup> Evans *et al.* 2019:103.

<sup>743</sup> Evans *et al.* 2019:103.

<sup>744</sup> 2019:106-111.

maintain a meritocratic ideal and thus ensure that the best students can gain entry, regardless of their socioeconomic background, while recruiting high-calibre applicants.<sup>745</sup> The second mechanism is widening access through the HE experience,<sup>746</sup> which focuses on changing the mode of delivery (part-time, flexible or college-based) and the curriculum, including through foundation degrees, higher national certificates, and higher national diplomas.<sup>747</sup> While undergraduate HE qualifications in their own right, these programmes have a strong vocational focus and provide entry to employment as well as progression to degree-level study.<sup>748</sup> Universities that adopt this approach are usually those with a historical mission as technical or training institutions; often have stronger links with further education colleges; and recruit a higher percentage of mature and part-time learners.<sup>749</sup> However, Evans *et al.*<sup>750</sup> argue that the current implementation of widening-access policies in Wales may serve to reproduce existing university hierarchies rather than providing true redress for social inequalities. McKenzie<sup>751</sup> agrees that, despite decades of policy, inequitable access to HE in Wales persists, with some groups privileged over others. The authors provide a number of reasons for this state of affairs:<sup>752</sup> a) Due to marketisation, universities are under intense pressure to maintain their positions in global league tables, which intensifies competition for “high-status” students. b) Some universities focus on raising young people’s aspirations, which requires little change to the institution itself, while other universities admit more non-traditional students, but provide a university experience that is statistically associated with less-lucrative employment opportunities. c) Evans *et al.*<sup>753</sup> also suggest that policy implementation is used to construct institutional narratives: For instance, high-status universities may physically marginalise their lower-status programmes, such as their part-time or widening-access courses, into separate lifelong learning centres to protect their elite reputation. These concerns raise the question of whether the current approaches in Wales are truly compatible with the aim of social justice, as they may

---

<sup>745</sup> Evans *et al.* 2019:108.

<sup>746</sup> Evans *et al.* 2019:109.

<sup>747</sup> Evans *et al.* 2019:109.

<sup>748</sup> Evans *et al.* 2019:110.

<sup>749</sup> Evans *et al.* 2019:109.

<sup>750</sup> 2019:113.

<sup>751</sup> 2022:2.

<sup>752</sup> 2019:112-113.

<sup>753</sup> 2019:108.

simply be channelling different student groups into different modes of HE that offer unequal life and labour market opportunities.

In Northern Ireland, widening access is a policy priority aimed at increasing participation among underrepresented groups.<sup>754</sup> Ireland has the highest proportion of HE entrants from the lowest socioeconomic group compared to other parts of the UK,<sup>755</sup> although this is suggested to be a unique byproduct of migratory patterns rather than a direct result of widening-access interventions. Higher socioeconomic groups, it is argued, are more likely to migrate to England for studies, leaving a higher representation of lower socioeconomic groups in Northern Ireland's local universities.<sup>756</sup> The widening-access policy in Northern Ireland has generally followed the same principles as the policies in England.<sup>757</sup> Some scholars have identified certain barriers to participation in HE in Northern Ireland, with a major one being the selective secondary education system (also known as the "11+").<sup>758</sup> This system is said to do more than allocate school places; some argue that it functions as a primary engine of socioeconomic stratification, and a psychological determinant of lifelong learning.<sup>759</sup>

The barriers discussed above apply equally to South Africa. Like HE institutions in the UK, those in South Africa also seeks to maintain academic standards on the one hand and broaden access on the other. One of the recommendations suggested to combat this concern is to ensure that institutions are accountable for monitoring and reporting on the needs of non-traditional students. Several suggestions have also been made to help reduce attitudinal barriers among students themselves, including short induction programmes to demystify HE, student placement schemes, and mentoring.<sup>760</sup>

The UK experience illustrates that widening-participation initiatives that focus primarily on admissions reform and income-contingent financial support risk falling short of substantive transformation, unless they are coupled with sustained academic development and institutional accountability for student progression and completion.

---

<sup>754</sup> McAleavy *et al.* 2006:83; Osborne 2006:334.

<sup>755</sup> Osborne 2006:336.

<sup>756</sup> Osborne 2006:337.

<sup>757</sup> Osborne 2006:338; McAleavy *et al.* 2006:85.

<sup>758</sup> McAleavy *et al.* 2006:84; Osborne 2006:348.

<sup>759</sup> Osborne 2006:344; McAleavy *et al.* 2006:91.

<sup>760</sup> Watt & Paterson 2000:113.

This is a lesson particularly relevant to South Africa's LLB extended curriculum programmes, which are explicitly designed as redress mechanisms within a transformative constitutional framework.

#### **4.4.1.2 The United States of America**

In American society, as in most others, a college education is regarded as essential for achieving economic success and social mobility.<sup>761</sup> American HE has its origins in the establishment of Harvard College in 1636.<sup>762</sup> Yale College and the University of Pennsylvania followed in 1719 and 1740 respectively. Between 1746 and 1769, Princeton, Columbia, Brown, Rutgers and Dartmouth universities were established.<sup>763</sup> Most of these institutions were created with the primary goal of training clergymen. Later, the curriculum expanded to include the education of civic and business leaders. Access as inherited merit was prevalent in the early modern universities in the US.<sup>764</sup>

The US's struggle over equity has a long history. Like South Africa, the US also implemented differentiated education policies.<sup>765</sup> The Civil Rights Movement<sup>766</sup> was one of the legacies of the 1952 ruling in *Brown v Board of Education of Topeka*, which overturned the *Plessy v Ferguson*<sup>767</sup> ruling and brought the discrimination and disadvantage suffered by black people in the US to the world's attention.<sup>768</sup> One argument that surfaced after the *Brown* ruling, however, was that it failed to address the quality of education and the nature of educational procedures, programmes and policies needed to provide quality education.<sup>769</sup> In the aftermath of the Civil Rights Movement of the late 1960s, numerous colleges and universities across the US launched special educational programmes, primarily targeting African American

---

<sup>761</sup> Engle 2007:25. Importantly, for the discussion of the US, only general observations will be made regarding broadening access. The distinction between the state and federal education systems falls outside the scope of this thesis, since this distinction lies mainly in who has authority and responsibility. The US does not have a centralised education system; education is primarily a state responsibility, with the federal government playing a supporting and regulatory role.

<sup>762</sup> Mathekga 2012:21

<sup>763</sup> Mathekga 2012:21.

<sup>764</sup> See par. 4.2.

<sup>765</sup> Jones 2006:888; Astin & Oseguera 2004:322.

<sup>766</sup> It was started in the late 1940s by Martin Luther King Jr.

<sup>767</sup> *Plessy v. Ferguson* 163 U.S. 537 (1896). In this case, it was stated that racial segregation laws did not violate the US Constitution if the facilities for each race were equal in quality – a doctrine that came to be known as “separate but equal”.

<sup>768</sup> Astin & Astin 2015:66; Allen 2005:18.

<sup>769</sup> Jones 2006:891.



students, many of whom were admitted through newly implemented special admissions policies.<sup>770</sup> A study done in 1970 on the open admissions programme at the City University of New York found that specially admitted students, given the opportunity, were capable of college-level work; they just needed extra time, as well as support services such as tutoring and academic counselling.<sup>771</sup>

Although the US views its HE system as equitable and accessible because of its extensive network of community colleges, the system's internal structure is, in reality, highly hierarchical and elitist, with the most prestigious institutions accessible to only a small portion of the student population.<sup>772</sup> Community colleges play a crucial role in expanding access to HE by enrolling students from ethnic minority groups and those who are low-income, first-generation or underprepared for college-level work.<sup>773</sup> Despite the significant expansion of access to HE in recent years, students whose parents did not attend college still face a considerable disadvantage.<sup>774</sup> Data also indicates that racial inequality in American HE is growing,<sup>775</sup> while access for low socioeconomic status groups in the US is diminishing because of standardised entry tests and higher tuition costs.<sup>776</sup> Although many Ivy League universities offer generous aid packages to talented students from disadvantaged backgrounds, this does not fundamentally change the social hierarchy in the HE system.<sup>777</sup> Inequities have persisted, despite the significant expansion of affirmative action admissions programmes and the substantial growth of federal and state financial aid initiatives over the past 50 years. The college admissions battle rages on in US courts, with the majority threatening to outlaw affirmative action altogether.<sup>778</sup> While only a few institutions nationwide have completely eliminated the use of test scores, a growing number have adopted a "test-optional" policy to create a more equitable environment for underrepresented students of colour.<sup>779</sup> As in South Africa, affirmative action in the US aims to address social inequalities in HE through policies designed to improve access and broaden participation. However, there is little evidence that these

---

<sup>770</sup> Astin & Astin 2015:67.

<sup>771</sup> Astin & Astin 2015:67.

<sup>772</sup> Astin & Astin 2015:66.

<sup>773</sup> Bragg, Kim & Barnett 2006:6.

<sup>774</sup> Engle 2007:25.

<sup>775</sup> Bitzer 2010:302; Astin & Oseguera 2004.

<sup>776</sup> Astin & Astin 2015:66.

<sup>777</sup> Allen 2005:20.

<sup>778</sup> Allen 2005:18.

<sup>779</sup> Astin & Astin 2015: 68.

recommended structural changes have been fully implemented in the US, as community colleges face extremely high attrition rates, particularly among students from underrepresented groups.<sup>780</sup>

The analysis of the US illustrates the persistent tension between policy intentions and structural realities. While access may be broadened on paper, entrenched hierarchies continue to limit genuine transformation. This highlights that formal mechanisms such as affirmative action and financial aid are insufficient if deeper systemic inequities remain unaddressed.

The US demonstrates that, while holistic admissions and affirmative action measures may enhance access for underrepresented students, equity of success depends on well-resourced and long-term support structures, without which disparities in retention and completion will persist, despite increased enrolment. In contrast to South Africa's LLB extended curriculum programmes, which integrate access with structured academic support over an extended period to ensure students' success, the US experience shows that mere affirmative action and financial aid can broaden access without necessarily dismantling institutional hierarchies that continue to undermine equity of success.

#### **4.4.1.3 Australia**

In Australia, as in South Africa, HE access issues also revolve around socioeconomic factors: Those underrepresented in HE are primarily from rural areas or low socioeconomic backgrounds. Like in most other countries, Australia's HE system has evolved from an elite or merit-based model to a mass education or massification system.<sup>781</sup> A 1964 report noted the wide-held belief in Australia that HE should be accessible to all citizens based on their interests and abilities, which resulted in a binary<sup>782</sup> HE system.<sup>783</sup> Prior to 1973, universities charged students tuition fees upfront, supplemented by government-funded merit-based scholarships.<sup>784</sup> In 1974,

---

<sup>780</sup> Lane & Birds 2013:135; Astin & Astin 2015:68.

<sup>781</sup> Chesters & Watson 2013:199; Leach 2013:268. Massification had two dimensions: The first was to increase participation, and the second was to broaden access by making HE accessible to traditionally "underrepresented" groups.

<sup>782</sup> Australia's binary HE system consists of universities and colleges of advanced education.

<sup>783</sup> Leach 2013:272.

<sup>784</sup> Chesters & Watson 2013:200; Carson 2009:5.

the Commonwealth government committed to providing universal access to education for qualified students by abolishing tuition fees.<sup>785</sup> Since 1989, with the introduction of the Higher Education Contribution Scheme, university students in Australia have been required to contribute to the cost of their education through income-contingent student loan programmes.<sup>786</sup> However, higher socioeconomic groups continue to dominate HE, thereby undermining the equity objective.<sup>787</sup>

The 1990 publication “A Fair Chance for All”<sup>788</sup> laid the groundwork for the Australian government’s equity policy of 2000. The aim was to promote more equal representation of students from various underrepresented groups.<sup>789</sup> In 1996, a review by the National Board of Employment, Education and Training revealed some progress; however, this progress was not evident among low socioeconomic or rural and isolated groups.<sup>790</sup> By 2000, young people from Indigenous groups and rural areas still mostly came from low-income families and suffered socioeconomic disadvantage.<sup>791</sup> While HE globally faced funding constraints triggered by the 2008 economic recession,<sup>792</sup> enrolments by Australian students from low socioeconomic backgrounds increased slightly from 2005 to 2010.<sup>793</sup> However, even with policies in place to support the widening of participation, the proportion of underrepresented students has not increased as hoped. Families’ financial resources shape the low HE participation rate among young people from low socioeconomic backgrounds.<sup>794</sup> While some scholarships are available, these are reserved for bright or otherwise deserving low-income students. Government assistance is also available through the Youth Allowance System, but involves a stringent means test.<sup>795</sup>

A study on students’ sources of funding for HE revealed that most students enrolling at more elite institutions, such as Monash and La Trobe, relied on their parents for

---

<sup>785</sup> Coates & Krause 2005:35; Chesters & Watson 2013:198; Carson 2009:8.

<sup>786</sup> Chesters & Watson 2013:200; Carson 2009:7.

<sup>787</sup> Leach 2013:272.

<sup>788</sup> Birrell *et al.* 2000:50; Leach 2013:272; Carson 2009:7.

<sup>789</sup> Birrell *et al.* 2000:50; Coates & Krause 2005:35; Carson 2009:7. These groups included women, persons from non-English-speaking backgrounds, residents of rural or remote areas, people from Indigenous backgrounds, and those from low socioeconomic backgrounds.

<sup>790</sup> Leach 2013:272.

<sup>791</sup> Birrell *et al.* 2000:50; Coates & Krause 2005:38.

<sup>792</sup> Leach 2013:277.

<sup>793</sup> Leach 2013:278.

<sup>794</sup> Birrell *et al.* 2000:51.

<sup>795</sup> This is similar to the NSFAS loans in South Africa. See par. 2.4.1.5 and 3.7.

funding.<sup>796</sup> This could explain the overrepresentation of students from high socioeconomic backgrounds in Australia's universities. Another argument is that this group's overrepresentation is not because of their parents' capacity to support them, but rather that affluent families have certain characteristics that favour their children's participation in HE.<sup>797</sup> This argument supports the view that participation in HE is often decided long before gaining access to a university.<sup>798</sup> In addition to income, therefore, factors such as family values, family encouragement as well as peer group support all influence the social composition of Australia's HE student population.<sup>799</sup>

The Australian Department of Education, Training and Youth Affairs has promoted equality of opportunity, but has also implemented policies that require students to contribute a higher share of their university costs, tightening the criteria for access to the Youth Allowance System.<sup>800</sup> In 2000, it was suggested that enhancing access and participation in HE depended not on increased financial aid, but on a shift in the values of parents and peers.<sup>801</sup> Access issues in Australia, therefore, are not due to previous policies excluding certain races from participation, but often stem from an unfamiliarity with HE because of parents' employment backgrounds. Access strongly correlates with family wealth, as wealthier families can afford to support their children in HE.<sup>802</sup> The higher the family income, the higher the HE participation rate.<sup>803</sup> It is widely acknowledged in Australia that individuals from low socioeconomic backgrounds are more likely to view the rising costs of HE as a barrier to participation, and are less likely to take out loans to fund it.<sup>804</sup> This suggests that student loan policies may not effectively reach students from low socioeconomic backgrounds, undermining the goal of promoting equity. Institutional behaviour needs to change to effectively address the persistent inequality in Australian HE with more long-term policy and funding commitments.<sup>805</sup>

---

<sup>796</sup> Birrell *et al.* 2000:521.

<sup>797</sup> Birrell *et al.* 2000:51; Leach 2013:279.

<sup>798</sup> See par. 2.6; Cardak & Ryan 2009:440.

<sup>799</sup> Cardak & Ryan 2009:434; Birrell *et al.* 2000:51.

<sup>800</sup> Birrell *et al.* 2000:52.

<sup>801</sup> Birrell *et al.* 2000:52.

<sup>802</sup> Cardak & Ryan 2009:439.

<sup>803</sup> Birrell *et al.* 2000:56.

<sup>804</sup> Leach 2013:280.

<sup>805</sup> Chesters & Watson 2013:211.

The discussion on Australia emphasises that equity challenges are not always rooted in explicit racial exclusion; instead, they can arise from more subtle social and cultural dynamics such as parental background, financial capacity, and prevailing attitudes towards HE. This highlights the importance of recognising the varied and often intersecting barriers that may prevent genuine HE access. Ultimately, while their causes may differ, any barrier to equity needs to be addressed.

The Australian model also underscores the need to embed access and equity initiatives in a comprehensive institutional framework that integrates funding, student support and outcome measurement, as redress in education requires systemic rather than fragmented interventions. Compared to South Africa's explicit focus on historical redress through alternative curriculum pathways, Australia's equity initiatives reveal that, without sustained institutional commitment and targeted support, access-oriented policies risk reproducing socioeconomic stratification rather than advancing substantive equality.

#### **4.4.2 Developing countries**

Brazil, Kenya and Tanzania have been chosen as developing-country models for investigating the social justice issues of access, redress and equity because of their distinctive social and policy contexts. Each of these countries illustrates different dimensions of educational inequality. Brazil offers a compelling case through its implementation of affirmative action measures, complemented by targeted financial aid initiatives, thereby providing insights into the role of legal and institutional mechanisms in addressing entrenched social disparities. Kenya illustrates the challenges associated with the rapid expansion of HE, where increased access has not uniformly translated into equitable participation, as socioeconomic and regional disparities continue to influence students' enrolment and progression. Tanzania, with its post-independence emphasis on education as a tool for nation-building, demonstrates how historical legacies, resource limitations and policy priorities shape patterns of access and participation, particularly for historically marginalised populations. Collectively, these three countries offer a comparative lens for understanding how diverse approaches to redress and broadening participation operate in varying sociopolitical and economic contexts, and how their experiences

may inform South Africa's ongoing efforts to foster greater equity in HE, particularly through the extended LLB programme.

#### **4.4.2.1 Brazil**

In terms of education, developments in Brazil have been similar to those in South Africa. The country also has other similarities with South Africa because of cooperative trade and economic arrangements and other mutually beneficial projects, as well as both countries' membership of BRICS.<sup>806</sup> As in South Africa, income inequalities in Brazil are reflected in the education system, manifesting as racial, socioeconomic and geographical disparities.<sup>807</sup> Educational opportunities are distributed unfairly.<sup>808</sup> The country's history of Portuguese colonial occupation has also given rise to a highly unequal HE system.<sup>809</sup> In 2003, the foreign ministers of Brazil, India and South Africa committed themselves to establishing a Trilateral Joint Commission, as outlined in the Brasilia Declaration.<sup>810</sup> In doing so, these countries publicly committed to enhancing equity by expanding access to HE.

The 1964 military coup in Brazil ended the national development process and ushered in an authoritarian approach centred on economic internationalisation. Educational policies were readjusted, with a specific focus on HE to adapt to the needs of Brazilian capitalism.<sup>811</sup> It was during this time that graduate programmes and master's and doctoral degrees were introduced. Enrolment growth began in the 1960s, and HE became more accessible to middle-income social groups.<sup>812</sup> However, although this led to a growth in demand for HE, there was no significant growth in the number of places available. Lower-income students' participation remained insignificant. The inequality is significant: Two-thirds of students attending the predominantly free public education institutions come from the highest income quintile, while only 5 per cent come from the combined bottom two quintiles.<sup>813</sup> Brazil's public HE institutions

---

<sup>806</sup> Mathekga 2012:39. Brazil forms part of BRICS, along with fellow emerging economies Russia, India, China and South Africa. BRICS serves as a platform for cooperation on issues such as trade, investment, sustainable development, and reforming global institutions.

<sup>807</sup> Akoojee & Nkomo 2011:121.

<sup>808</sup> McCowan 2007:583; Mathekga 2012:39.

<sup>809</sup> Majee & Ress 2020:464.

<sup>810</sup> Akoojee & Nkomo 2011:118.

<sup>811</sup> Neves 2009:171.

<sup>812</sup> Neves 2009:171.

<sup>813</sup> Akoojee & Nkomo 2011:121; Majee & Ress 2020:471.

maintained an elitist character during the 1970s and 1980s, with private institutions focusing on teaching and offering low-cost courses. The current state of HE in Brazil was formalised and regulated in the *Federal Constitution* of 1988 and the *Law of Guidelines and Bases of National Education* of 1996.<sup>814</sup>

Brazil has a highly differentiated public and private education system. Public universities are entirely subsidised by the state and are fee-free to students.<sup>815</sup> Private universities, on the other hand, have significant autonomy and receive very little public funding. They generate the necessary revenue through fees from students.<sup>816</sup> The Brazilian HE system rapidly expanded from the 1990s in the context of neoliberal<sup>817</sup> policies in many social sectors. Access and social inclusion became key priorities for the federal government,<sup>818</sup> which sparked an increase in private HE institutions and, therefore, expanded access to HE.<sup>819</sup>

One of Brazil's greatest challenges is low educational attainment.<sup>820</sup> HE intake depends on the number of learners who enrol for and successfully complete secondary schooling.<sup>821</sup> In Brazil, a minimum of eight years of education is mandatory, yet the average length of education of people aged 15 and over falls short of this threshold, at 7,2 years.<sup>822</sup> Secondary school enrolment is very low, which means that a significantly smaller fraction of students enter HE. Therefore, socioeconomic factors lower the accessibility of HE for certain social groups.<sup>823</sup>

Limited access to HE in Brazil is further exacerbated by the highly selective entry examination (known as the “vestibular”) for public universities.<sup>824</sup> Preparation for this stringent examination includes costly preparatory courses taken during the final stages or upon completion of secondary school.<sup>825</sup> The likelihood of passing the vestibular is closely linked to attendance at high-quality primary and secondary schools as well as

---

<sup>814</sup> Neves 2009:172.

<sup>815</sup> McCowan 2016:655.

<sup>816</sup> McCowan 2016:656.

<sup>817</sup> Neoliberalism is a political and economic ideology that advocates for free-market capitalism and emphasises a reduction in the government's intervention in the economy. It also advocates for the privatisation of public assets and services.

<sup>818</sup> Neves 2009:170; Knight 2009:xii.

<sup>819</sup> McCowan 2016:656.

<sup>820</sup> Neves 2009:170.

<sup>821</sup> Mathekga 2012:40; Akoojee & Nkomo 2011:121.

<sup>822</sup> Neves 2009:169.

<sup>823</sup> Neves 2009:176.

<sup>824</sup> Majee & Ress 2020:471; Mathekga 2012:40; McCowan 2016:656; Akoojee & Nkomo 2011:121.

<sup>825</sup> McCowan 2007:585.

completion of the paid preparatory courses, which remain inaccessible for most lower-income students.<sup>826</sup> It is reasonable to conclude, therefore, that students from low-income and disadvantaged socioeconomic backgrounds have a low likelihood of passing the entry examination and qualifying for admission to HE institutions.

Private institutions in Brazil play a significant role in providing HE access. The private HE system allows students to work full-time and study in the evenings, which enables many middle-class Brazilians to fund their studies.<sup>827</sup> However, even the low fees at some private institutions are a barrier to access. Although loans have facilitated access, these are not universally available like those in England and lack the same preferential repayment safeguards.<sup>828</sup>

The Restructuring and Expansion Plan for Federal Universities was established in 2007 by presidential decree to broaden access and improve retention in HE by optimising the utilisation of existing physical structures and human resources at federal universities.<sup>829</sup> Participation is voluntary. Among many other goals, the programme aims to increase the graduation rate in undergraduate courses, broaden policies for inclusion and student assistance, and promote undergraduate and graduate studies among learners at primary and secondary schools.

The Programa Universidade Para Todos (Prouni), in turn, is one of Brazil's most significant initiatives to broaden access.<sup>830</sup> Prouni grants tax breaks to private institutions in exchange for allocating places to low-income students free of charge,<sup>831</sup> which allows more than a million students to access HE through scholarships. However, the downside to Prouni is that it, too, is a stratified-access model.<sup>832</sup>

Another approach followed in Brazil to enhance access is the implementation of quotas in public institutions. In 2012, the federal government enacted a law mandating that 50 per cent of available spots be reserved for students from public schools, with

---

<sup>826</sup> Majee & Ress 2020:471; McCowan 2016:656.

<sup>827</sup> Mathekga 2012:40; Neves 2009:172.

<sup>828</sup> McCowan 2016:656.

<sup>829</sup> Neves 2009:185.

<sup>830</sup> McCowan 2016:656; Akoojee & Nkomo 2011:122; Majee & Ress 2020:471.

<sup>831</sup> Neves 2009:169; McCowan 2016:656; Akoojee & Nkomo 2011:122.

<sup>832</sup> Stratified in this context means that low-income students enter lower-prestige institutions with a lower value in the employment market.



a significant portion allocated to students of African<sup>833</sup> or Indigenous descent.<sup>834</sup> Other affirmative action policies in public universities include a score bonus on entry examination results for students from lower-income backgrounds.<sup>835</sup>

Similar to the developed-country jurisdictions discussed earlier, Brazil's HE system also emphasises access as an inherent merit, as it is primarily attained by affluent individuals. Although Brazilian HE is recognised for its rapid expansion and a robust private sector that is improving access, this still does not improve equity, as the paid courses at these private institutions are often of low prestige and quality. These challenges in Brazil are directly relevant to South Africa's extended LLB programme, which was designed to redress similar inequities by providing historically marginalised students with access to legal education. By emphasising the social justice imperatives, the extended LLB programme seeks not only to expand access, but also to ensure that students are adequately prepared to succeed academically and professionally, thereby addressing both historical disadvantage and contemporary barriers. In doing so, it reflects the broader global efforts to balance access, equity and quality in HE.

While South Africa's LLB extended curriculum programme seeks to couple broader access with foundational academic development, Brazil's experience reveals that the formal access provided through quota-based access policies, yet without parallel investment in comprehensive academic support and institutional capacity, may entrench stratification rather than promote substantive equality and genuine equity of success.

#### **4.4.2.2 Kenya**

Kenya's robust and expanding HE sector is the largest in East Africa in terms of the number of institutions and student enrolments.<sup>836</sup> HE in Kenya dates back to 1951, when the Royal Technical College of East Africa was established in Nairobi.<sup>837</sup> In 1961, the Royal Technical College was transformed into the University College of

---

<sup>833</sup> African Brazilians are significantly underrepresented at Brazilian universities, estimated at as low as 2 per cent.

<sup>834</sup> McCowan 2016:656.

<sup>835</sup> McCowan 2016:657; Akoojee & Nkomo 2011:122.

<sup>836</sup> McCowan *et al.* 2018:102; Pillay 2009:23; Amutuhair 2023:31.

<sup>837</sup> Onsongo 2007:112.

Nairobi, which awarded degrees of the University of London.<sup>838</sup> In 1970, the University of Nairobi was established through an act of Parliament<sup>839</sup> and gained independence from its affiliation with the University of London and the University of East London.<sup>840</sup>

This heralded a boom in HE for Kenya. Many new public and private institutions have emerged because of the demand for university education, particularly since 2000, but access remains highly restricted.<sup>841</sup> This manifests in various ways, from low female enrolment to low representation from geographically marginalised regions of Kenya.<sup>842</sup>

Until 2010, Kenyan universities had no policies or mechanisms in place to implement the proposals made at the 1998 UNESCO World Conference aimed at addressing gender inequalities in HE specifically.<sup>843</sup> A new HE governance framework introduced in 2010, however, has seen more rapid expansion of the sector.<sup>844</sup> Some public universities in Kenya have started adopting strategies similar to those of private universities, introducing flexible admission policies and programmes to expand access to university education.<sup>845</sup> Admission to private universities in Kenya is contingent on the student's ability to cover the costs of their education and accommodation.<sup>846</sup> Most students at private universities come from high-income families, resulting in a generally high socioeconomic status among their student populations.<sup>847</sup> Private HE is beyond the reach of many Kenyans, especially those from poor and marginalised backgrounds. Although this has implications for gender equity, as many Kenyan communities value the education of boys over that of girls,<sup>848</sup> university access for women has been significantly expanded through private universities' flexible admission procedures.<sup>849</sup>

Growing concerns exist in Kenya that the rising cost of HE is preventing students from low socioeconomic backgrounds and specific regions and ethnic groups from

---

<sup>838</sup> Onsongo 2007:112.

<sup>839</sup> *University of Nairobi Act* 1970.

<sup>840</sup> McCowan 2016:657.

<sup>841</sup> Onsongo 2007:113.

<sup>842</sup> Pillay 2009:23; McCowan 2016:657; Onsongo 2007:114.

<sup>843</sup> See par. 4.3.2; Onsongo 2007:114.

<sup>844</sup> McCowan *et al.* 2018:102. Between 2010 and 2015, the number of public universities increased from 12 to 23.

<sup>845</sup> Onsongo 2007:118.

<sup>846</sup> Onsongo 2007:118.

<sup>847</sup> Onsongo 2007:118; Odhiambo 2016:200.

<sup>848</sup> Onsongo 2007:119.

<sup>849</sup> Onsongo 2007:130.

accessing HE.<sup>850</sup> Due to the low government capitation to fund the expansion of the HE sphere, institutions rely on private household incomes. This resulted in the development of the so-called “parallel stream” in public universities – a unique development in Kenya that enhances HE access (for those who can afford it).<sup>851</sup> The parallel stream facilitates access by allowing students who do not pass the competitive entry exam for public universities to gain admission to prestigious public institutions by paying a substantial fee.<sup>852</sup> Yet, while it expands access, the system clearly raises concerns regarding equity. Through their financial resources, wealthier groups of society can secure place at prestigious universities for their children, which would likely ensure the children’s future financial success. As in Brazil, lower-income students in Kenya, too, face access barriers in the form of competitive entry exams for public universities and high tuition fees for private universities.

Kenyan HE has undergone various funding policy changes, ranging from full government support to cost-sharing and private-sector involvement, all aimed at addressing access challenges.<sup>853</sup> Public HE was initially free and fully funded by the government, regardless of students’ socioeconomic status. This approach was driven by the country’s goal of developing a highly skilled workforce.<sup>854</sup> However, as the demand for HE grew at a time when the Kenyan economy was not growing, this arrangement became unsustainable.<sup>855</sup> Various student financing schemes were introduced as a result, from full government-sponsored scholarships, to partial government funding (where the government covers a portion of students’ programme costs), to full private sponsorship (where the student covers all HE costs from personal or family sources).<sup>856</sup> Loan financing for university education is government-supported, with the state, through the Higher Education Loans Board, providing loans to students who meet the means-tested criteria.<sup>857</sup> Public spending on education in Kenya is highly inequitable, as the government allocates a disproportionately large share of its resources to a relatively small number of students, and the distribution of

---

<sup>850</sup> Odhiambo 2016:198.

<sup>851</sup> McCowan 2016:657; Johnson & Hirt 2014:238; McCowan *et al.* 2018:102; Pillay 2009:23.

<sup>852</sup> McCowan 2016:657. Government-sponsored students enter on academic merit.

<sup>853</sup> Odhiambo 2016:204.

<sup>854</sup> Odhiambo 2016:204.

<sup>855</sup> Odhiambo 2016:204.

<sup>856</sup> Pillay 2009:25; Odhiambo 2016:204.

<sup>857</sup> Pillay 2009:25.

HE is heavily skewed in favour of the wealthy.<sup>858</sup> Furthermore, the student loan programme is inequitably distributed, with 80 per cent of loans being accessed by public university students to the detriment of private<sup>859</sup> university students, who have limited access to Higher Education Loans Board funds.<sup>860</sup>

HE quality is another concern, as the growth in student numbers is placing strain on human and physical resources. At the same time, the number of graduate-level jobs remains stagnant. These two factors appear to be linked, as some argue that the issue is not the lack of graduate-level jobs, but the quality of the workforce, with 29 per cent of firms reporting an inadequately educated<sup>861</sup> workforce.<sup>862</sup>

Therefore, the expansion of HE in Kenya has not substantially reduced social inequalities in access. The focus should shift from merely increasing participation to actively broadening access for previously underrepresented groups in the country. This highlights an important parallel with South Africa's extended LLB programme, which similarly seeks to move beyond the expansion of student numbers by addressing the deeper social justice imperative of enabling disadvantaged students to succeed in HE. By explicitly confronting structural inequalities rather than assuming that access alone is sufficient, both Kenya and South Africa demonstrate that equity in HE requires systemic support mechanisms.

The Kenyan context illustrates the challenges faced by access-oriented programmes in resource-constrained environments, emphasising that without adequate funding and support structures, expanded access alone is unlikely to translate into equitable student success. In contrast to South Africa's attempt to institutionalise equity through structured extended programmes, the Kenyan experience demonstrates that cost-sharing models can broaden access for some, while simultaneously reinforcing inequality for students from the most disadvantaged backgrounds.

#### **4.4.2.3 Tanzania**

---

<sup>858</sup> Pillay 2009:25.

<sup>859</sup> Students seeking access to private universities mostly come from lower socioeconomic backgrounds.

<sup>860</sup> Pillay 2009:25.

<sup>861</sup> This mainly relates to the lack of work readiness skills.

<sup>862</sup> McCowan *et al.* 2018:102.

HE in Tanzania encompasses all forms of education provided after the completion of secondary school.<sup>863</sup> Like South Africa, Tanzania, too, was a British colony, and therefore, its origins lie in colonial administration.<sup>864</sup>

Like many other African countries that gained political independence in the early 1960s, Tanzania witnessed a rapid increase in the demand for access to university education in the past 20 years.<sup>865</sup> The country's first university was established in 1963 as part of the University of East Africa, which also served Kenya and Uganda and operated as a college of the University of London.<sup>866</sup>

In 1963, the country abolished all forms of discrimination that hindered access to education. In the 1960s and 1970s, Tanzania started reshaping its HE institutions to align with an African policy agenda, addressing issues of greater significance for Africans<sup>867</sup> and recognising education as a right of every citizen.<sup>868</sup> Although HE quality and access was high from the 1960s to the mid-1970s, it declined from 1979 to 1984.<sup>869</sup>

The Tanzanian government's policies are inclined towards development, growth and equity,<sup>870</sup> prioritising equity and transformation at HE institutions to broaden access, participation, and equity of opportunities.<sup>871</sup> Since the early 1990s, Tanzania has been actively working to transform its education system as the country transitioned from a socialist framework to a neoliberal market-based system,<sup>872</sup> with the government supplying additional resources and funding.

The *Education Act* of 1995 provided for the establishment of the private HE sector.<sup>873</sup> The rapid growth of private HE institutions during this period turned education into a commodity for sale to those who can afford it.<sup>874</sup> Coupled with underfunding of HE,

---

<sup>863</sup> Mathekga 2012:42.

<sup>864</sup> Mbirigenda 2021:15. The education system in Tanzania in the colonised era had its own aims and objectives, and did not necessarily have the citizens of Tanzania in mind.

<sup>865</sup> Tanzania Commission for Universities 2019:37; Ishengoma 2011:2; Varghese 2013:5.

<sup>866</sup> Mathekga 2012:42.

<sup>867</sup> Mzangwa 2019:3.

<sup>868</sup> Mbirigenda 2021:12.

<sup>869</sup> Mbirigenda 2021:12.

<sup>870</sup> As per the Tanzania Development Vision 2025. See United Republic of Tanzania National Planning Commission 2000.

<sup>871</sup> Mzangwa 2019:4.

<sup>872</sup> Ishengoma 2011:2.

<sup>873</sup> Ishengoma 2011:2.

<sup>874</sup> Mbirigenda 2021:23.

this raises issues of access, equity and quality.<sup>875</sup> A recent article suggests that the underfunding of HE in Tanzania threatens access and equity, and the considerable public subsidy for HE disproportionately benefits already affluent and well-connected families,<sup>876</sup> considering that the majority of Tanzanians live below the poverty line.<sup>877</sup>

In 1999, Tanzania issued its National Higher Education Policy, which urged private stakeholders and communities to play an active role in establishing and sustaining private HE institutions as a long-term strategy to broaden access for various socioeconomic groups in the country.<sup>878</sup> Private HE institutions in Tanzania outnumber public ones, yet enrol less than 22 per cent of the total number of students in a year.<sup>879</sup> The policy continues to guide HE in Tanzania,<sup>880</sup> aiming to address issues such as access, equity and quality.

The Higher Education Students' Loan Board, in turn, aims to assist needy and eligible Tanzanian students in accessing loans and grants for HE.<sup>881</sup> However, due to the stringent eligibility criteria<sup>882</sup> contained in section 3 of the *Higher Education Students' Loan Board Act*,<sup>883</sup> many students who gain access to HE still do not qualify for loans.<sup>884</sup> A recent study has shown that students who do not secure loans face various challenges, including difficulties with registration, social isolation, stress, and stigma. It has also been found that students who are loan beneficiaries tend to perform better than their peers without loans.<sup>885</sup>

Tanzanian HE has a stringent selection process, which further restricts access.<sup>886</sup> In 2011,<sup>887</sup> there were three ways to gain access to HE in Tanzania: direct entry (based on Advanced-level performance), equivalent qualifications (based on qualifications other than Advanced-level performance, usually additional learning certifications that

---

<sup>875</sup> Mbirigenda 2021:12; Ishengoma 2011:3.

<sup>876</sup> Mbirigenda 2021:12; Ishengoma 2011:32.

<sup>877</sup> Mbirigenda 2021:12; Salema 2020:112.

<sup>878</sup> Ishengoma 2011:2.

<sup>879</sup> Mbirigenda 2021:12; Varghese 2013:9.

<sup>880</sup> Mbirigenda 2021:19.

<sup>881</sup> Salema 2020:110.

<sup>882</sup> The criteria for eligibility include that an applicant must be a continuing student with results/progress that allow them to continue their studies. The *Higher Education Students' Loan Board Act* 9 of 2004 also defines a needy student. Candidates who are needy and eligible may apply.

<sup>883</sup> 9 of 2004.

<sup>884</sup> Salema 2020:110.

<sup>885</sup> Salema 2020:112.

<sup>886</sup> Mathekga 2012:42.

<sup>887</sup> Mkude 2011:368.

are deemed a sufficient substitute for Advanced level) and the mature age scheme (based on passing a special examination).

Currently, students who do not meet the minimum entry requirements for admission to a bachelor's programme at a Tanzanian university can obtain entry by passing the Open University of Tanzania (OUT) foundation programme.<sup>888</sup> The OUT foundation programme is a one-year bridging programme designed to provide HE access to students who fall just short of the required qualifications for admission to bachelor's degrees. The Tanzania Commission for Universities (TCU) approved the programme in March 2018. Candidates who pass the OUT foundation programme as per the approved criteria will be eligible for admission into various bachelor's programmes. The TCU's 2019 handbook<sup>889</sup> mentions neither student admission requirements, nor the mature age scheme route that existed in 2011 to obtain admission to HE institutions in Tanzania. The handbook refers only to gender equality and equity,<sup>890</sup> while it remains silent on other equity issues such as broadening participation. Male dominance in HE participation, particularly in the sciences, suggests that the country still struggles with access as an inherited merit.<sup>891</sup> To improve the efficiency of efforts to widen HE participation and include traditionally disadvantaged groups for greater equity in HE,<sup>892</sup> the government in 2006 extended the university loan system to students at all higher learning institutions.<sup>893</sup> Still, however, some argue that, while Tanzania does not lack higher learning institutions, it lacks institutions that provide quality education that is accessible to the poor.<sup>894</sup>

The discussion on Tanzania highlights the limitations of access strategies that focus narrowly on funding without addressing structural inequities in preparation, participation and outcomes. The OUT foundation programme aims to bridge disadvantage, but without broader social justice interventions, it risks being a temporary measure rather than a transformative mechanism. This resonates strongly with the rationale behind South Africa's extended LLB programme, which deliberately

---

<sup>888</sup> Tanzania Commission for Universities 2019:77; OUT 2022:1.

<sup>889</sup> Tanzania Commission for Universities 2019:77.

<sup>890</sup> Tanzania Commission for Universities 2019:28-29.

<sup>891</sup> See par. 2.4; Mathekga 2012:43.

<sup>892</sup> Mkude 2011; Ishengoma 2011; Mbirigenda 2021.

<sup>893</sup> Mbirigenda 2021:23.

<sup>894</sup> Mbirigenda 2021:24.

integrates academic support and equity measures to ensure that access translates into meaningful success.

Unlike South Africa's extended curriculum programmes, which consciously integrate access with sustained, deliberate academic support to address underpreparedness, Tanzania's expansion strategies highlight the limitations and risks of access-focused reforms that are not accompanied by adequate institutional capacity and mechanisms to support student progression and completion.

Together, the experiences of Brazil, Kenya and Tanzania illustrate both the promise and shortcomings of access reforms in HE. While all three countries have introduced mechanisms such as quotas, affirmative action and parallel streams, along with loan schemes and bridging programmes to address inequities, these initiatives often do not achieve genuine social justice outcomes. What is needed is a model such as the extended LLB programme, which combines access with sustained academic and institutional support to ensure that historically disadvantaged students are not only admitted, but also empowered to succeed.

## **4.5 CONCLUSION**

Economic success in a globalised world relies on the capacity to manage knowledge and technology, and HE is essential to develop the human capital for this purpose. HE was traditionally designed to serve the elite, thus reinforcing elitism. Its benefits and privileges were meant for a select few.

Collectively, the SDGs, UNESCO's frameworks and the World Bank's policies reflect a worldwide effort to ensure access, redress and equity in HE. These international instruments provide not only aspirational goals, but also concrete benchmarks against which national initiatives can be measured. Their relevance for purposes of this thesis lies in showing that South Africa's extended LLB programme is more than a localised response to the country's history of exclusion; it also forms part of a broader international movement aimed at dismantling structural barriers and promoting social justice in HE. Seeing the programme within this global context strengthens the argument that meaningful redress and equity requires sustained alignment with international commitments to ensure transformative and sustainable change.



Clearly, broadening access and rectifying past wrongs in HE is not a uniquely South African challenge, as many countries worldwide are dealing with this issue in one way or another. Social equity initiatives in the UK, for instance, are primarily linked to class issues and defined by economic factors. In the US, similar to South Africa, access policies are influenced by both race and class, reflecting the country's history of racism. The concept of inherited merit lost favour and has been replaced by a more democratic approach, emphasising equal rights and asserting that HE should be accessible to all, regardless of social background.

Although their jurisdictions face different forms of inequality, all governments discussed above are committed to expanding access to HE as widely as possible within the constraints of public finances, to maximise the system's impact on society. They are also trying to reduce barriers, especially for those marginalised by social class, language or ethnicity. All are working to create policies that address solutions at all levels of education, including affirmative action, and to eliminate financial barriers to equity and expanded participation. Ultimately, it is the system itself that hinders the flow of new students into institutions, which leads Watt and Paterson<sup>895</sup> to state that the future of broader access lies in better communication, sensitive guidance and consistent financial and strategic collaboration among providers and policymakers.

In both the UK and US, English is the dominant language, and therefore, language cannot be seen as a physical barrier to access. Previously, language was a physical barrier in South Africa; yet this is no longer the case, since most universities have English as their language of instruction.<sup>896</sup> However, although using one common language eases access and ensures the equal application of standards, it can create an epistemological<sup>897</sup> barrier to access for students whose mother tongue is not English. For this reason, South Africa's 2020 Language Policy Framework for Public Higher Education<sup>898</sup> aims to develop and strengthen indigenous African languages as languages of scholarship, teaching, and communication. This policy, promulgated

---

<sup>895</sup> 2000:115.

<sup>896</sup> See chapter 3. Note, however, that although the language of instruction is English, language can still be a barrier to participation.

<sup>897</sup> If language is an epistemological access barrier, it means that linguistic differences prevent individuals from fully accessing, understanding or engaging with knowledge or learning. This barrier limits their ability to participate in educational or intellectual activities, as the language used may not be familiar or accessible to them, hindering their comprehension and expression of ideas.

<sup>898</sup> DHET 2020.

under the *Higher Education Act*,<sup>899</sup> represents a decisive shift from symbolic multilingualism to a transformative language regime in South African HE. Grounded in section 29 of the *Constitution*, this framework reconceptualises language as not only a medium of instruction, but as a determinant of epistemological access, equity and institutional inclusivity.<sup>900</sup> By mandating the development of indigenous African languages as languages of scholarship, teaching, learning and institutional communication, and by requiring universities to implement funded language plans with measurable outcomes, the policy seeks to dismantle structural linguistic barriers.<sup>901</sup> If properly implemented, it has the potential to broaden access beyond formal admission by developing previously disadvantaged languages to serve as languages of learning and scholarship.

HE institutions in many parts of the world address the issue of broadening access by either providing financial aid to students with a low socioeconomic status, or adapting admission policies and selection criteria to be sensitive to students' socioeconomic background.<sup>902</sup> From the comparative study above, however, it appears that developed countries allocate more resources to education and offer greater access to loans for disadvantaged and needy students. By contrast, developing countries often fail to invest sufficiently in education, particularly HE, with financing being both inequitable and inefficient.<sup>903</sup> In Africa, for instance, only a handful of countries have student loan schemes, despite the high demand for HE. They struggle to structure student loans for various economic backgrounds and maintain fairness and an equal right for all. As a result, in many countries, students who advance to higher levels of schooling tend to come from higher socioeconomic backgrounds. These students are more likely to access HE because of their academic achievements as well as their ability to afford it. This creates a cycle that perpetuates inequality in already highly unequal societies.

Nevertheless, the discussion above has shown that many countries believe that the notion of inherited merit should give way to the equality of rights, as HE should be accessible to a diversity of students, regardless of their socioeconomic status. It is

---

<sup>899</sup> 101 of 1997.

<sup>900</sup> DHET 2020:5.

<sup>901</sup> DHET 2020:17.

<sup>902</sup> Mzangwa 2019:5.

<sup>903</sup> See par. 2.3.

important that efforts to broaden HE access should not only focus on the system, but also specifically on the most prestigious institutions. Expansion can exacerbate social inequality, as mass HE systems become segmented, with access to elite universities and highly sought-after programmes increasingly skewed towards higher social classes.<sup>904</sup>

When addressing social justice and ideals of democratisation, the focus tends to be less on widening participation and more on broadening access for previously disadvantaged groups. This is also the case in South Africa, where the initial focus has been on entry into HE,<sup>905</sup> broadening access to redress the wrongs of the past. Now, however, the focus should shift to widening participation, which includes both entry into HE and ongoing support<sup>906</sup> to ensure the successful completion of students' studies. Until this shift occurs, HE policies have not, in practice, fully realised the view of accessibility as outlined in international law.

The international jurisdictions examined in this chapter demonstrate that while broadening access to HE is a shared global objective, equity-driven interventions succeed only where access is accompanied by sustained institutional commitment, adequate funding, and coherent academic and psychosocial support structures. Across both developed and developing contexts, reliance on admissions reform or financial aid alone has proven insufficient to address entrenched inequalities, particularly for students from low socioeconomic and historically marginalised backgrounds. A recurring lesson is the importance of aligning access mechanisms with outcome measures so that success is evaluated not merely in terms of enrolment, but also in terms of progression, retention and completion rates. The comparative analysis further highlights the risks of stratification, where disadvantaged students are disproportionately channelled to less-prestigious institutions or programmes with weaker support, thereby reproducing inequality under the guise of inclusion.

At the same time, although many of South Africa's HE challenges are similar to those in the foreign jurisdictions discussed, the uncritical transplantation of foreign models is not advised because of the diversity of socioeconomic, historical and institutional

---

<sup>904</sup> Bitzer 2010:304.

<sup>905</sup> This includes the removal of barriers such as financial constraints and insufficient academic preparation.

<sup>906</sup> This should continue throughout their study years and can include support such as tutoring, mentoring and financial assistance.

contexts. Instead, the comparative discussion underscores the need for locally responsive approaches that are constitutionally grounded and sensitive to South Africa's unique legacy of educational disadvantage. For South Africa's LLB extended curriculum programme, these lessons reinforce the argument that meaningful redress and equity require an integrated model that combines alternative admission pathways with sustained academic development, institutional accountability, and a clear focus on equity of success.

Globally, active strategies must be implemented to address HE access and equity. The tension persists between HE's broader social goals to promote equality, and the need for educational institutions to operate efficiently and sustainably within their available means – also known as the tension between social effectiveness and efficiency. Access and equity in HE should be a national priority, especially in developing countries, since beyond matters of social justice, the economic prosperity of these countries also depends on an increasingly well-educated workforce.

The international perspectives in this chapter have helped clarify how international instruments and other jurisdictions address the social justice imperatives of access, redress and equity. The comparative analysis has highlighted both the successes and limitations of various access strategies, revealing recurring challenges such as financial barriers, selective entry processes, and inconsistent implementation of equity measures.

These findings now provide a critical framework for evaluating South Africa's approaches to expanding access and promoting social justice. It enables a study of the South African context to determine what broadening access means for universities in South Africa, and of the strategies employed to create alternative means of HE access for previously disadvantaged and minority groups.

Therefore, the next chapter turns to the South African context, specifically the development and role of the extended LLB programme. It examines how South Africa has sought to adapt and localise international lessons, while also addressing the country's unique historical and social challenges. In the process, it highlights both the opportunities and challenges that arise when social justice imperatives are applied in local contexts.

## **CHAPTER 5: THE EXTENDED LLB PROGRAMME – A SOUTH AFRICAN PERSPECTIVE**

### **5.1 INTRODUCTION**

Building on the comparative lessons distilled in chapter 4, this chapter examines the South African LLB extended curriculum programme as a situated case study through which the incorporation and realisation of social justice imperatives can be assessed in practice. The international analysis demonstrated that access-oriented interventions are transformative only when supported by sustained funding, coherent admissions policies, integrated academic and psychosocial support structures, and outcome measures that prioritise equity of success rather than enrolment alone. The comparative dimensions now inform the analytical framework applied to the South African context, enabling a critical evaluation of how the LLB extended curriculum programme responds to historical and systemic disadvantage within the specific constitutional, institutional and socioeconomic context of South African HE. Rather than treating the South African programme in isolation, therefore, this chapter assesses it against the comparative insights developed earlier, with particular attention to whether and how the programme meaningfully broadens access, advances redress and promotes equitable student success.

The LLB extended curriculum programme was introduced as a direct response to, among others, the historical exclusion of marginalised groups from legal education, aiming not only to broaden access, but also to ensure academic success and professional readiness for students who did not meet the admission requirements for the mainstream LLB programme.<sup>907</sup> By situating the extended LLB programme within the broader framework of social justice imperatives, this chapter explores how South Africa has translated global lessons on equity and inclusion into local practice, while keeping in mind the distinct national, local and individual factors that compound matters in the South African HE context, including the legacy of institutionalised inferior education for black people during apartheid.<sup>908</sup>

---

<sup>907</sup> While there are various extended curriculum programmes in South Africa, this thesis confines its scope to the LLB extended curriculum programme.

<sup>908</sup> See chapter 3.

More specifically, the evaluation in this chapter aims to determine whether the LLB extended curriculum programme is suitable for its students, identifying challenges in its implementation and support, and establishing how these issues can be addressed. A study of the structure of the extended programme and the resources provided to students enables an assessment of whether students are sufficiently prepared and supported to complete their studies successfully. This is critical, not only to improve the programme's quality and effectiveness, but also to ensure that the social justice imperatives of access, redress and equity are meaningfully achieved.

Additionally, the chapter focuses on aspects such as the various extended programme models available, as well as factors outside the university that may influence students' academic performance, including social justice issues. This allows for a systemic assessment of how the programme translates policy intentions into practice, how effectively it addresses barriers to academic success, and how it may be refined to ensure that all students in the extended LLB programme are adequately supported to complete their studies successfully.

Before embarking on a national comparative study, though, a study of the development of foundation provision<sup>909</sup> is valuable, as it provides the historical and structural context that explains why extended programmes were introduced and how they aim to address entrenched inequalities. Understanding foundation provision is crucial for assessing whether the LLB extended curriculum programme effectively translates the principles of access, redress and equity into meaningful educational outcomes. In this way, any assessment of the programme is grounded in both the historical realities and the current needs of the students the programme is intended to serve.

The DHET is committed to extended curriculum programmes as one of the key strategies to improve student success.<sup>910</sup> According to the DHET, these programmes, along with initiatives such as NSFAS funding, student housing, and teaching

---

<sup>909</sup> The terms "foundation provision" and "extended curriculum programme" are used interchangeably in the literature. Although some technical differences might exist, the concept is the same. However, since the term "foundation programme" does not accord with the formal definition of a programme, the term "foundation provision" is used for clarity and consistency in the literature. For the purposes of this thesis, the terms "extended curriculum programme" and "foundation module" are mostly used instead of "foundation provision".

<sup>910</sup> DHET 2015:2.

development grants, have contributed to a steady decline in first-year dropout rates.<sup>911</sup> According to the Report of the Ministerial Committee for the Review of the Funding of Universities,<sup>912</sup> foundation provision is considered transformative because it seeks to formalise an extended curriculum that accommodates the substantial number of students who may not otherwise cope with the demands of university studies and are at risk of dropping out.

The primary purpose of foundation provision is to enhance the academic performance of students who face educational challenges because of their backgrounds.<sup>913</sup> HE patterns reveal that many students enrolling in mainstream programmes are at risk as a result of disadvantaged educational backgrounds. Even among students who meet the minimum admission criteria, many are still inadequately prepared for mainstream programmes, which often ends in dropout.<sup>914</sup> Extended curriculum programmes aim to provide students from disadvantaged educational settings with the academic foundations necessary to complete their studies successfully and graduate, thereby improving this cohort's graduation and success rates.<sup>915</sup>

Importantly, foundation provision is not intended to enrol more first-year students than the total planned first-time entering enrolments in a particular year.<sup>916</sup> Foundation provision and extended programmes are being employed to facilitate the enrolment of educationally disadvantaged students who satisfy the minimum statutory entry criteria, but fall short of meeting the specific admission requirements for a particular programme. In this way, if applied correctly, extended programmes broaden access, achieve redress and ensure equity of outcomes.

Foundation provision and extended programmes also aim to address the conundrum of academics complaining about the underpreparedness of students entering HE, while on the other hand, universities and academics have also been criticised for being ill-prepared themselves to deal with such students.<sup>917</sup>

---

<sup>911</sup> DHET 2015:19.

<sup>912</sup> DHET 2013a:317; Nyoni & Agbaje 2021:252.

<sup>913</sup> DHET 2024b:24; DHET 2012:1; Mokganya & Zitha 2024:154.

<sup>914</sup> DHET 2012:1.

<sup>915</sup> See chapter 2.

<sup>916</sup> This would result in a university's total teaching input units remaining higher than the total state-funded teaching input units. It also places an unnecessary burden on staff, as already overburdened lecturers would need to teach students who are not state-funded (or subsidy-earning).

<sup>917</sup> Deacon *et al.* 2009:1077.

In light of these aims, it is crucial to critically examine how the LLB extended curriculum programme is implemented, the effectiveness of the support structures made available to students, and whether it genuinely equips students to navigate the academic demands of the LLB programme, ensuring that access translates into meaningful achievement rather than merely entry into the programme.

## 5.2 CLARIFICATION OF TERMINOLOGY

The terminology used in the context of foundation provision can be confusing, since institutions use different terms for the same concept. To overcome this, four concepts are clarified in the paragraphs below.

The confusion is compounded further by the draft Policy Framework for Extended Curriculum Programmes of 2019,<sup>918</sup> which introduces more terminology changes. The draft policy framework marks a significant consolidation of foundation provision in the South African HE sphere. It does so by repositioning extended curriculum programmes as integral, credit-bearing components of mainstream qualifications, rather than peripheral remedial interventions. It shifts the focus from student deficit to institutional responsibility for enabling success, embedding extended curriculum programmes in national funding, quality assurance and monitoring systems. In this way, the framework enhances accountability, while affirming extended programmes' legitimacy as mechanisms of redress, equity and enhanced throughput. The framework also advances an understanding of access that extends beyond formal admission to encompass structured epistemic support, curriculum scaffolding, and systemic responsiveness to schooling inequalities. Nevertheless, since the policy framework has yet to take effect, it is disregarded for purposes of this thesis.

The first concept to clarify is *foundation programme* or *foundation provision*, which are often used interchangeably. These terms refer to the learning activities intended to enable students from disadvantaged educational backgrounds to acquire the academic foundations to succeed in HE. However, since the learning activities to acquire the necessary academic foundations for success do not automatically result in a qualification, and a foundation programme does not accord with the formal

---

<sup>918</sup> DHET 2019.



definition of a registered programme,<sup>919</sup> the term *foundation provision* is preferred. Foundation provision encompasses a selection of modules, courses<sup>920</sup> and various curricular components designed to provide underprepared students with the academic fundamentals.<sup>921</sup> Compared to the coursework prescribed for the regular/mainstream curriculum, foundation provision is an additional learning activity. Importantly, foundation provision must be located within a ministerially approved degree or diploma.

The second concept is *extended curriculum programme*, which refers to the entire degree or programme<sup>922</sup> in which the foundation provision is located.<sup>923</sup> It is an access programme of sorts, and is credit-bearing. It is sometimes also called an “extended programme with an integrated foundation phase”. An extended curriculum programme must be one of the institution’s formal, ministerially approved programmes that includes substantial foundation provision. Because of the additional work, the extended curriculum programme is completed over a longer period – at most one year longer – than the minimum time set for the relevant mainstream curriculum. Put differently, the extended curriculum programme is an accredited programme that has been extended and results in a qualification upon successful completion. Extended curriculum programmes are a combination of credit-bearing and additional academic support modules.<sup>924</sup> The credit-bearing modules attract a state subsidy, while the additional academic support modules are funded by the foundation grant.<sup>925</sup>

*Foundation grant*, being the third key concept, is the funding earmarked by the government for foundation provision, allowing institutions to offer extended curriculum programmes.<sup>926</sup>

The fourth and final concept is *access/bridging programmes*. These programmes provide access to tertiary education for learners who do not meet the standard

---

<sup>919</sup> DHET 2012:4.

<sup>920</sup> These courses or modules are subject to the same design, presentation, assessment, administration and quality assurance standards as the regular courses/modules.

<sup>921</sup> DHET 2012:5.

<sup>922</sup> Which is ministerially approved. Ogude *et al.* 2019:220.

<sup>923</sup> DHET 2012:4.

<sup>924</sup> Bass 2011:47.

<sup>925</sup> Bass 2011:47.

<sup>926</sup> The Ministerial Funding Statement of 2003 introduced the notion of “earmarked” grants as a component of the upcoming funding formula for public HE to be implemented from 2004. GN 1791, Government Gazette 25824. Among these earmarked grants was a specific allocation for implementing foundation programmes.

academic entry requirements, serving as a foundation for mainstream programmes.<sup>927</sup> They are designed to accommodate students from disadvantaged academic backgrounds who are not adequately prepared for HE.<sup>928</sup> These programmes focus on identifying and addressing gaps in students' academic preparedness to equip them for successful HE participation. Traditionally known as "academic development programmes", these programmes are non-credit-bearing and were not initially state-funded. The creation of academic development programmes laid the groundwork for the introduction of extended curriculum programmes, which represent a more structured, formalised approach to supporting student success.

### **5.3 ACADEMIC DEVELOPMENT PROGRAMMES AS A FORERUNNER TO EXTENDED CURRICULUM PROGRAMMES**

As discussed earlier, apartheid embedded highly discriminatory principles by which universities and technikons were segregated along racial lines.<sup>929</sup> Because of this history, South Africa has a legacy of divided social orders, which contribute to social inequalities.<sup>930</sup>

The academic development programme (ADP) was a forerunner to the extended programme. Used in South African HE in the early 1980s<sup>931</sup> as an institutional academic redress strategy,<sup>932</sup> the ADP was a way to help black students succeed in HE. Due to the apartheid-era schooling, the transition from school to tertiary-level education was and remains extremely difficult for many black students.<sup>933</sup>

The ADP had its roots in academic support programmes (ASPs), which were founded at English-medium universities in the 1980s.<sup>934</sup> ASPs were originally developed as bridging programmes to help integrate and include black students in HE.<sup>935</sup> The bridging courses carried no academic credit, which undermined their credibility and

---

<sup>927</sup> Bass 2011:47; Ogude *et al.* 2019:220.

<sup>928</sup> Ogude *et al.* 2019:220.

<sup>929</sup> See par. 3.5.

<sup>930</sup> Mzangwa 2019:10; Kirby & Dempster 2018:2.

<sup>931</sup> Scott in Bitzer 2009:21; Boughey in Hutchings & Garraway 2010:4; CHE 2020:1; Slabbert & Friedrich-Nel 2015:47.

<sup>932</sup> Akoojee & Nkomo 2011:4; Boughey in Hutchings & Garraway 2010:4.

<sup>933</sup> Kirby & Dempster 2018:4; Deacon *et al.* 2009:1076.

<sup>934</sup> These universities include Wits, UCT, UKZN and Rhodes University. Scott in Bitzer 2009:21; CHE 2020:1; Kirby & Dempster 2018:2.

<sup>935</sup> CHE 2020:1.

limited their effectiveness.<sup>936</sup> These programmes were mainly concerned with equity of access, which in the 1980s was already a focus at English-medium liberal universities.<sup>937</sup> The funding for these bridging programmes came from private sources, relying on the generosity and support of donors, as no government funding was available.<sup>938</sup> Different forms of support were provided to students in these programmes:<sup>939</sup> Support included tutorials, language development courses and skills development. Another means of support was in terms of access and admission, where students with the potential to succeed in HE, despite their poor scores in the matric examination and their disadvantaged background, were identified.

### **5.3.1 The three phases of academic development**

The three phases of academic development – academic support, academic development and institutional development – were not necessarily distinct from one another, but were employed as deemed appropriate to respond to student support needs at the time.<sup>940</sup>

Early academic support initiatives were considered adjunct, which meant that students normally had to attend these courses at technical or further education colleges. The non-credit-bearing courses only prepared students for tertiary education.<sup>941</sup> Achievement in these courses, which varied from a summer school to longer, more substantial offerings, determined access to degree programmes. Because it was non-credit-bearing, students were reluctant to engage in academic support. They were also unable to perceive the benefits of academic support for their eventual mainstream classes, as the support was separated from academic subjects.<sup>942</sup> Additionally, students were unhappy with the term “disadvantaged” that was frequently used to describe the target population of academic support, and many saw themselves as merely different from mainstream students rather than disadvantaged. Some models of academic support did provide students with a certified exit point if they were judged

---

<sup>936</sup> Nyoni & Agbaje 2021:241.

<sup>937</sup> CHE 2020:1; Nyoni & Agbaje 2021:241.

<sup>938</sup> CHE 2020:1; Hofmeyer & Spence 1989:38; Scott in Bitzer 2009:25.

<sup>939</sup> Boughey 2010:5.

<sup>940</sup> Boughey 2010:4.

<sup>941</sup> Boughey 2010:5.

<sup>942</sup> Boughey 2010:10.

unsuitable for higher education beyond this initial phase.<sup>943</sup> However, many students who had completed the academic support courses and gone on to enter mainstream programmes still had difficulty engaging with mainstream teaching without ongoing support, and started failing soon after the foundation phase.<sup>944</sup>

Attitudes towards academic support were varied, reflecting the political and academic ideological spectrum pre-1994.<sup>945</sup> These programmes were said to do more harm than good, as the fact that they were intended for black students caused significant stigmatisation.<sup>946</sup> ASPs were originally designed along the lines of North American minority programmes, with little regard for the unique challenges faced by students experiencing inequity and disadvantage in South Africa.<sup>947</sup> The ASPs emphasised academic support through specialised teaching, tutoring and instructional design.<sup>948</sup> The initial focus of academic support was the individual, particularly individual behaviour and cognitive development, with the aim of supporting underprepared students by identifying the issue with students themselves. However, this practice proved unsustainable within the context of massification. During the mid-1980s, scholars began to consider that perhaps the issue did not only lie with students, but also with the institutions that admitted them.<sup>949</sup> This is when the focus shifted from academic support to academic development, emphasising the broader social and cultural context, and how these influenced behaviour, thought and power dynamics.<sup>950</sup> This included staff, students, the curriculum as well as the institution.<sup>951</sup>

To address the revolving-door syndrome<sup>952</sup> – where many African students leave university without graduating – the Department of Education introduced a strategy to ensure that access to HE also led to student success. They provided funding to support the implementation of ADPs in universities. This was done by adjusting the funding system to include “targeted redress” funds, which were specifically allocated

---

<sup>943</sup> Boughey 2010:5.

<sup>944</sup> Boughey 2010:6.

<sup>945</sup> Scott in Bitzer 2009:25; Hay & Marais 2004:59.

<sup>946</sup> Deacon *et al.* 2009:1077.

<sup>947</sup> Scott in Bitzer 2009:25.

<sup>948</sup> Scott in Bitzer 2009:21.

<sup>949</sup> Boughey in Hutchings & Garraway 2010:4; Vilakazi & Tema 1985:19.

<sup>950</sup> Boughey 2010:10.

<sup>951</sup> Scott in Bitzer 2009:22.

<sup>952</sup> Wilson-Strydom 2011:409.

to programmes aimed at improving access and success rates.<sup>953</sup> Although academic development is defined in different ways, the focus is on equity and redress,<sup>954</sup> which remains the focus of foundation programmes today. As mentioned before,<sup>955</sup> numerous school leavers lack adequate preparation for HE. The already scarce resources of a developing country are inadequate to ensure the type of mass schooling system that would produce more matriculants with the level of preparedness needed for HE.<sup>956</sup> It can take decades until a tangible difference is perceived.

The challenge lies in addressing the disparity between what learners exiting secondary school know and can do, and what first-year university students are expected to know and do. Many South African learners from disadvantaged backgrounds lack equal access to adequate education prior to their first year of university study.<sup>957</sup> The need for foundational support will not diminish until the vicious cycle<sup>958</sup> of inadequate schooling is broken.

In a 2013 DHET report<sup>959</sup> that summarised feedback from universities and HE stakeholders regarding the foundation provision grant, the following important points were highlighted: a) The need for foundation provision remained, as the majority of students entered HE ill-prepared. b) Foundation programmes continued to provide access to poor students. c) Foundation programmes were responsibly broadening access and improving success and graduation rates among students from disadvantaged backgrounds. The 2013 DHET report indicated that universities would continue to provide foundation programmes as long as the schooling system performed suboptimally.<sup>960</sup> Indeed, the increase in student participation has not necessarily resulted in higher graduate success,<sup>961</sup> as many students remain underprepared for tertiary education due to the gap between the skills and knowledge

---

<sup>953</sup> Nkomo *et al.* 2007:407. Importantly, redress funding is not student funding or student loans. It is funding allocated to universities.

<sup>954</sup> Academic development deals with two issues: what the core business of HE institutions is, and who higher education is for. Scott argues that the essential purpose of HE is the production and dissemination of knowledge and that AD supports the notion that the essence of transformation is inclusiveness in those who benefit from higher education. Scott in Bitzer 2009:23-24.

<sup>955</sup> See par. 2.3.1.

<sup>956</sup> See par. 2.3.1.

<sup>957</sup> Mgutshini 2022:59.

<sup>958</sup> The “vicious cycle” refers to an inadequate teaching force that produces poorly prepared students, which leads to inadequate teacher production. Kirby & Dempster 2018:4; Greenbaum 2014:12.

<sup>959</sup> DHET 2013a:323.

<sup>960</sup> DHET 2013a:8.

<sup>961</sup> Arise 2022:51.

acquired in high school and the expectations at university.<sup>962</sup> Education without the necessary support does not equate to a fair opportunity in HE, which is why, after 1994, the achievement of equity became one of the pillars of HE policy.<sup>963</sup>

Academic and social systems must be developed to assist students from underprivileged and underprepared communities.<sup>964</sup> A conventional approach to bridge the gap and achieve equity was the implementation of bridging courses.<sup>965</sup> Before 2004, these programmes did not attract subsidies, and many institutions that offered them relied on external funders for support.<sup>966</sup> One of the challenges of ADPs and extended curriculum programmes is the achievement of equity without diminishing academic quality.<sup>967</sup> A degree of negativity towards these bridging and support programmes was noted initially,<sup>968</sup> with some arguing that, apart from those bridging the gap, the rest of the institution's courses and teaching methods should remain unchanged.<sup>969</sup> The attitude was that only students needed to change, not institutions, even though curricula and teaching methods were not designed to educate students in the best way possible. As stated earlier,<sup>970</sup> bridging or support programmes did not earn credits towards a degree, nor did they attract state subsidies. This paved the way for an alternative that would close the gap by starting where the students were, teaching them appropriately, and simultaneously earning credits towards a degree and attracting state subsidies. At the UFS, this alternative was the Career Preparation Programme.<sup>971</sup>

In 2001, the NPHE emphasised the role of extended curriculum programmes not only to increase access, but also achieve equity of outcomes.<sup>972</sup> The plan also stated that ADPs as well as foundation and extended programmes should be incorporated into

---

<sup>962</sup> Arise 2022:521.

<sup>963</sup> DHET 1997; Hay & Marais 2004:59.

<sup>964</sup> Arise 2022:53.

<sup>965</sup> Hay & Marais 2004:59. Bridging courses are also called "foundation" or "access courses".

<sup>966</sup> Hay & Marais 2004:59.

<sup>967</sup> This means that HE institutions must create an environment where students can succeed, while maintaining the institution's academic standards.

<sup>968</sup> Hay & Marais 2004:62.

<sup>969</sup> Ogude *et al.* 2019:220.

<sup>970</sup> See par. 5.3.

<sup>971</sup> More on this programme under par. 5.8.

<sup>972</sup> See par. 2.4.2. Equity of outcomes means that all students, regardless of their socioeconomic background or capabilities, could achieve similar levels of success and academic performance. Hay & Marais 2004:59; Nkomo *et al.* 2007:407; CHE 2020:1.

the funding formula for HE.<sup>973</sup> This meant that HE institutions needed to strive for the retention and improved graduation rates of black students, especially first-year African students, who constituted the bulk of students leaving university without graduating.<sup>974</sup> According to the NPHE, “the role of academic development in improving the efficiency of the higher education system in terms of graduate output is critical”.<sup>975</sup> The form of ADP favoured by the NPHE was an extended curriculum rather than supplementary support, and the plan emphasised that the integration of historically disadvantaged students into the mainstream should not be directed at black students only.<sup>976</sup>

Equity of outcomes remains a challenge, however. While the massification of HE resulted in better representation of black students, issues of equity have not been resolved<sup>977</sup> – again, largely due to the poor quality of the South African schooling system that fails to prepare students adequately for HE.<sup>978</sup> Nkomo *et al.*<sup>979</sup> suggest that these students may need more time to obtain their qualifications due to their schooling deficit. ADPs, therefore, were proactive institutional measures to ensure access, redress and success, and paved the way for extended curriculum programmes.

It has been argued that the enrolment and access systems at historically white universities do not sufficiently accommodate students from disadvantaged or low-income backgrounds, as all students are automatically viewed as university-ready.<sup>980</sup> However, treating all students as university-ready is similar to forcing them into a single mould, regardless of their unique needs and backgrounds. Due to the disconnect between HE access and success, HE institutions must accommodate significant discrepancies in achievement levels between secondary schooling and HE studies, and provide students with the necessary support to achieve success in HE as well. In their 2013 publication,<sup>981</sup> the DHET reported the success rate of the foundation phase as 82 per cent, indicating the importance of adequate academic support for

---

<sup>973</sup> DHET 2001:28.

<sup>974</sup> Nkomo *et al.* 2007:407; Kirby & Dempster 2018:7.

<sup>975</sup> DHET 2001:31.

<sup>976</sup> DHET 2001:31.

<sup>977</sup> Kirby & Dempster 2018:7.

<sup>978</sup> Kirby & Dempster 2018:8.

<sup>979</sup> 2007:407.

<sup>980</sup> Mzangwa 2019:11.

<sup>981</sup> DHET 2013a:9.

underprepared students. A 2018 study, in turn, found that additional support in requisite core modules benefited students with lower academic preparation levels.<sup>982</sup>

Understanding underpreparedness through the capabilities lens also highlights why principles of redress and equity are so important: It is not only about broadening access, but also about providing the support and opportunities needed to help underprepared students succeed. This challenge directly connects with the broader social justice imperatives of access, redress and equity in HE, as discussed earlier.<sup>983</sup> It is precisely in response to these imperatives that extended curriculum programmes were introduced. Extended curriculum programmes are designed to align students with the support that best meets their individual needs, while enhancing their potential for academic success.

#### **5.4 THE DEVELOPMENT OF EXTENDED CURRICULUM PROGRAMMES IN GENERAL**

In the early 2000s, “extended programmes with an integrated foundation phase”, now widely termed extended curriculum programmes (ECPs), started to emerge in South Africa.<sup>984</sup> This development was enabled by the redress funding provided by the government.<sup>985</sup> Foundation provision is directly linked to the government’s performance-based funding framework for universities, serving as an earmarked funding allocation.<sup>986</sup> The Green Paper on Higher Education Transformation endorsed this funding and allocated R150 million for redress in 1997.<sup>987</sup> In 2013,<sup>988</sup> it was noted that the demand for foundation programmes exceeded the funding made available to universities, and additional resources were allocated. ECPs admit students who do not meet the minimum university entry requirements for a mainstream programme, and extend the years of study needed to complete the degree by one additional year. This additional year’s instruction provides added learning opportunities that either lay a foundation for mainstream learning or provide support in some other way.<sup>989</sup> Put

---

<sup>982</sup> Woods *et al.* 2018:176-196.

<sup>983</sup> See chapter 2.

<sup>984</sup> CHE 2020:1; Kirby & Dempster 2018:1.

<sup>985</sup> Boughey 2011:1; CHE 2020:1.

<sup>986</sup> DHET 2012:3; Kioko in Hutchings & Garraway 2010:40.

<sup>987</sup> Moja & Hayward 2000:344.

<sup>988</sup> DHET 2013a:9.

<sup>989</sup> Boughey 2011:1.



simply, foundation programmes are regular degrees or diplomas that are extended, with additional support for learning. Not all additional instruction has to occur in the first year of study, since funding rules permit this to occur throughout the curriculum. Foundation programmes<sup>990</sup> aim to reduce the learning pace by creating additional time for establishing foundational skills and enhancing language and literacy. ECPs also aim to promote access, equity and success in HE.<sup>991</sup> The aim is for the student, upon successful completion of the first two years of study, to have acquired the fundamental knowledge and skills needed to succeed in further studies. At that point, they will also be able to work at the pace required of university students.<sup>992</sup> One key advantage of ECPs is that students immediately start earning credits toward their qualification, boosting their motivation. By integrating developmental support with mainstream learning, these programmes create an authentic learning experience that helps students engage more effectively with academic discourse.<sup>993</sup>

Early foundation programme models were designed to teach students essential skills, such as reading and writing, so as to support their understanding of university-level subjects, based on the assumption that these students were underprepared due to inadequate schooling.<sup>994</sup> Additional modules, such as language, study skills, and academic information management, are provided.<sup>995</sup> Currently, the focus is on making the processes by which subject knowledge is constructed and produced – i.e. developed, organised and presented – more transparent.<sup>996</sup> Rather than simply delivering information, the goal is to help students understand how knowledge is created, including the reasoning, structures and methods used in different disciplines. This is also an example of creating epistemological access.<sup>997</sup> ECPs enable students to enrol for tertiary studies and receive the academic foundation necessary to complete their studies successfully.<sup>998</sup>

---

<sup>990</sup> Foundation programmes refer to “learning activities at the lower end of the higher education band that are intended to enable students from disadvantaged educational backgrounds to acquire the academic foundations necessary for succeeding in higher education”. DHET 2012:4.

<sup>991</sup> Kioko in Hutchings & Garraway 2010:41; Ogude *et al.* 2019:220.

<sup>992</sup> Ogude *et al.* 2019:220.

<sup>993</sup> Ogude *et al.* 2019:221.

<sup>994</sup> Garraway in Hutchings & Garraway 2010:31; Greenbaum 2014:11.

<sup>995</sup> Ogude *et al.* 2019:221.

<sup>996</sup> Garraway in Hutchings & Garraway 2010:31.

<sup>997</sup> See par. 2.5.1.

<sup>998</sup> Slabbert & Friedrich-Nel 2015:45.

Funding for the ECPs allows for a mix of courses that provide these additional skills or instruction. Integrating this support and development with mainstream teaching is challenging for the faculty involved, with one of the challenges being the need for academic staff to adapt their teaching and assessment methods to accommodate both the mainstream and ECP students.<sup>999</sup>

When determining eligibility for enrolment in an ECP, universities are encouraged to prioritise students who meet the institutional admission criteria, but due to educational disadvantage, may face diminished prospects of success if directly admitted into a mainstream programme.<sup>1000</sup> This would involve identifying at-risk<sup>1001</sup> students. Furthermore, where space is available, students facing educational disadvantage who meet the minimum statutory admission requirements, but not the programme-specific criteria, should be considered for inclusion in an ECP.<sup>1002</sup>

The following are crucial considerations in deciding on whether to implement an ECP:

- a) It should not be seen as an add-on, where teaching methods and content remain unchanged. The teaching methods should be designed to assist the students in the ECP.
- b) Not only the students need to be assisted. Support must be provided to institutions and staff to ensure a transformative experience for the students admitted into ECPs.
- c) The curriculum and teaching approaches should be designed to best educate the students, which can have time and money implications for universities and faculties.

Understanding these considerations is essential before exploring the various types of ECPs, each designed to address specific student needs and institutional contexts.

## **5.5 DIFFERENT TYPES OF EXTENDED CURRICULUM PROGRAMMES**

---

<sup>999</sup> Boughey 2011:2.

<sup>1000</sup> DHET 2012:2; Mzangwa 2019:11.

<sup>1001</sup> At-risk means at risk of dropping out or failing to complete their studies in the given time.

<sup>1002</sup> DHET 2012:2.

Foundation courses may adopt various models tailored to specific educational objectives and target groups.<sup>1003</sup> The four ECP models<sup>1004</sup> used in South Africa currently are as follows:<sup>1005</sup>

**Model 1:**     *Extended curriculum incorporating a “fully foundational year”*

This model comprises a full year of foundation modules, followed by the mainstream curriculum. The aim of this programme is to fill the gaps in students’ knowledge and skills.

**Model 2:**     *Mainstream/regular first-year curriculum taken over two years, with the incorporation of substantial foundation provision*

This model entails an extended curriculum where the content of the mainstream first-year curriculum is taken over two years, interwoven with substantial foundational work in both years.

**Model 3:**     *A mainstream/regular first-year curriculum taken over two years, combining foundation and mainstream modules*

The content of the mainstream first-year curriculum is taken over two years through a combination of foundation and mainstream modules.

**Model 4:**     *Using “augmented modules”*

Similar to models 2 and 3, this model also offers the content of the mainstream first-year curriculum over two years, but there is a combination of augmented and mainstream modules. An augmented module covers all the material of a regular module and has the same duration, but is taught separately, integrating substantial foundational material through additional, formally timetabled contact time. Augmented modules imply additional staff time and notional learning hours.

---

<sup>1003</sup> DHET 2012:8. The DHET refers to “models of foundation courses (or modules)”. They use the term “course” instead of “module”. However, for the purposes of this thesis, the term “module” is used.

<sup>1004</sup> The DHET discusses four foundation module models, but this thesis focuses only on the four ECP models. DHET 2012:8-9. See also CHE 2020:3.

<sup>1005</sup> DHET 2012:11-20; CHE 2020:3.

Regardless of the model adopted, the DHET<sup>1006</sup> expects *foundation provision* in any particular programme to satisfy the following conditions:

- a) The main purpose must be to provide a set of learning activities designed to enable students from educationally disadvantaged backgrounds to perform successfully in their chosen field of study.
- b) The foundation provision components should be integral parts of the curriculum of the extended programme.
- c) The foundation provision components must be a module that earns credits towards the awarding of the formal qualification.
- d) Foundation provision must be additional to the coursework prescribed for the relevant mainstream curriculum.

The *ECP*, in turn, must satisfy the following conditions:<sup>1007</sup>

- a) It must be one of the institution's formal undergraduate degrees in which substantial foundation provision is incorporated.
- b) Students engaged in an ECP must be registered for the relevant approved undergraduate qualification.
- c) Due to the additional work expected of ECP students, institutional regulations must specify that the curriculum of an ECP is longer<sup>1008</sup> than the minimum set for the relevant mainstream curriculum.
- d) Even though an ECP requires additional provision and study time, the total HEMIS<sup>1009</sup> credit values assigned to the programme must not exceed the ministerially approved credit total for the regular mainstream programme.

The distinction between models 1 to 4 is not merely technical, but reflects materially different pedagogical philosophies and institutional commitments. Model 1, with its fully foundational year, assumes that academic deficits must first be remediated before disciplinary engagement can occur, thereby maintaining a sequential divide between preparation and mainstream study. Although models 2 and 3 both extend the mainstream first-year curriculum over two years, they differ in how foundation

---

<sup>1006</sup> 2012:4.

<sup>1007</sup> 2012:5.

<sup>1008</sup> Although the actual years are more than one, the HEMIS credits should not exceed one academic year.

<sup>1009</sup> Higher Education Information Management System.

provision is structured. Model 2 integrates substantial foundational support directly into the mainstream curriculum, resulting in a more unified and scaffolded design. Model 3, by contrast, combines mainstream modules with separate foundation modules over the two-year period, creating a more differentiated structure. The key distinction between models 2 and 3, therefore, lies in the degree of curriculum integration. Model 4 goes further by structurally augmenting mainstream modules themselves, embedding additional contact time and scaffolded support in credit-bearing discipline courses. The different models represent differing approaches to epistemological access, curriculum transformation, and the locus of responsibility for student success.

The regulatory conditions prescribed by the DHET underscore that foundation provision is neither optional nor peripheral. It must be credit-bearing, integral to the qualification, additional to mainstream coursework, and specifically designed to enable students from educationally disadvantaged backgrounds to succeed. At the same time, ECPs must remain formally equivalent to mainstream qualifications in total credit value, despite requiring longer study periods and additional structured support. This regulatory framework reveals a deliberate balancing act: ECPs are designed to advance substantive equality without diluting academic standards, thereby institutionalising extended provision as a mechanism for redress rather than a marginal support initiative in South African HE.

This thesis focuses specifically on the LLB ECP, as the researcher teaches in the programme and is directly engaged in the design, content and pedagogical structure of the curriculum.

## **5.6 SOUTH AFRICAN UNIVERSITIES OFFERING LLB EXTENDED CURRICULUM PROGRAMMES**

Only a few universities in South Africa offer extended programmes, and even fewer provide an extended LLB programme. Those offering an LLB ECP are the UFS, UWC, NMU, NWU, UFH and UL.<sup>1010</sup> ECPs offered in other disciplines include, for instance, the Science foundation programme at the University of KwaZulu-Natal (UKZN), which was one of the forerunners of alternative access initiatives in South Africa.<sup>1011</sup> UKZN

---

<sup>1010</sup> CHE 2018:26. Initially, UCT also offered an LLB ECP, but it is no longer available.

<sup>1011</sup> Kirby & Dempster 2018:11.

offers two alternative pathways to tertiary studies, both of which lead to the completion of an undergraduate Bachelor of Science degree.<sup>1012</sup> The ECP is divided into an augmented stream and a foundation stream. The key condition for acceptance into either of these access streams is that students must come from a disadvantaged school. Students who enter the augmented stream have met the minimum requirements for entry into UKZN's degree programme, but failed to meet the Science Faculty's additional admission requirements. Students in the foundation stream, in turn, have not met the "university-level pass", and their entry scores are substantially lower than the regular admission criteria, making them less prepared for HE. The content of each foundation module serves as a platform for learning opportunities that actively engage students in scientific practices and foster the development of scientific literacy.<sup>1013</sup> The foundation students must pass all of the foundation modules before they can proceed to join the mainstream.

The augmented programme is regarded as more cost-effective for two main reasons.<sup>1014</sup> First, the augmented curriculum is fully integrated into the first year of the formal degree programme, with standard progression rules in place. This enables students to remain within the university system for the prescribed duration, even if they fail, thereby attracting government subsidy for a longer period. Second, for half of their first-year curriculum, students in the augmented programme participate in regular mainstream contact sessions, which are typically large, minimally supported classes taught by permanent<sup>1015</sup> academic staff. Students in the augmented programme face a double workload in half the number of modules compared to those enrolled in the regular, direct-entry stream during the first year of the degree programme; in other words, students in the augmented programme need to do twice as much work in each module, but they take fewer modules than regular first-year students due to their tutorial and practical classes, which are supplemental and closely articulated with the coursework of standard mainstream programmes.<sup>1016</sup> Both these UKZN ECP streams include a compulsory counselling component and a comprehensive academic

---

<sup>1012</sup> Kirby & Dempster 2018:10.

<sup>1013</sup> Kirby & Dempster 2018:12.

<sup>1014</sup> Kirby & Dempster 2018:12-13.

<sup>1015</sup> As stated earlier, one of the criticisms against ECPs is that they are usually taught by ad hoc staff who are not permanently employed and not always familiar with the setting of the particular university. See par. 5.3.1.

<sup>1016</sup> Kirby & Dempster 2018:13.

monitoring system that facilitates timely remedial intervention, if necessary.<sup>1017</sup> Students are also required to complete academic literacy courses that are designed to prepare those from disadvantaged schools for the academic literacy demands of their undergraduate studies.<sup>1018</sup>

UKZN's ECP streams prove the value of differentiated pathways for students with varying degrees of preparedness. The augmented and foundation streams tailor support to students' starting points, using foundation modules to build scientific literacy and skills. This demonstrates that meaningful access requires not just entry, but structured learning opportunities that prepare students for success in mainstream degree programmes. The augmented stream, in particular, illustrates how extended provision can be cost-effective while maintaining alignment with mainstream degree requirements, highlighting that careful curriculum design and monitoring can enable meaningful access without compromising academic standards.

## **5.7 NEW-GENERATION EXTENDED CURRICULUM: FLEXIBLE DEGREE AS A PROPOSED IMPROVED TYPE OF EXTENDED CURRICULUM PROGRAMME**

In 2013, the CHE released a document calling for a flexible curriculum structure and curriculum reform. Their call for reform was based on the argument that the existing curriculum structures posed a systemic obstacle to access and success.<sup>1019</sup> The CHE proposed the introduction of an extended and flexible curriculum structure for undergraduate education in South Africa.<sup>1020</sup> By "extended", the CHE meant that all current three-year degrees and diplomas should be extended by one year, with an additional 120 credits. "Flexible" referred to an accelerated route through an exemption for those able to complete their studies in less than four years.<sup>1021</sup> At the time of writing this thesis, the flexible degree proposal was yet to be implemented.

Another proposed flexibility dimension is to allow students to switch between the mainstream programme and the ECP, depending on their performance.<sup>1022</sup> This could

---

<sup>1017</sup> Kirby & Dempster 2018:13.

<sup>1018</sup> Kirby & Dempster 2018:13.

<sup>1019</sup> Shay *et al.* 2016:ii.

<sup>1020</sup> CHE 2013:107.

<sup>1021</sup> CHE 2013:108.

<sup>1022</sup> Nyoni & Agbaje 2021:242.

enable students admitted to an extended programme who do not meet one or more of the admission criteria, particularly due to poor school performance, to transfer to the mainstream programme and complete their degree within the standard duration. In such a case, it would be crucial to conduct periodic assessments to determine whether students can move to the mainstream programme or should remain in the ECP.<sup>1023</sup>

In 2014, a multi-institutional<sup>1024</sup> research and development project was launched to understand the strengths, limitations and overall effectiveness of ECPs. No LLB ECPs were included in the project. However, several general observations were made that could be valuable for future research. The project asked two main questions, namely what key principles should inform undergraduate curriculum reform, and to what extent the curriculum reform principles of the flexible degree proposal were already being implemented in existing ECPs.<sup>1025</sup> The answers to these questions could help identify areas for future development. The curriculum reform principles<sup>1026</sup> necessary to address structural problems were identified as a) foundation provision to fill students' knowledge gaps, b) epistemic transitions, referring to the scaffolding of knowledge beyond the foundation level, c) enhancement of knowledge through greater exposure for students to better prepare them for the contemporary world, and d) enrichment of the curriculum through key literacies.

Scaffolding of knowledge is particularly important, as it enables meaningful learning for students who do not enter HE with the same level of academic preparedness as their peers, thereby directly supporting substantive equality rather than merely formal access.<sup>1027</sup>

From a pedagogical perspective, scaffolding involves the intentional sequencing of learning, in which complex legal concepts, skills and forms of reasoning are introduced gradually and supported through structured guidance, feedback and practice.<sup>1028</sup> This is particularly important in legal education, where students are expected to master unfamiliar epistemologies, specialised language, and abstract modes of reasoning. Without scaffolding, underprepared students are expected to perform at the same level

---

<sup>1023</sup> Nyoni & Agbaje 2021:242.

<sup>1024</sup> Including the Cape Peninsula University of Technology, UCT, UFH and UJ.

<sup>1025</sup> Shay *et al.* 2016:iii.

<sup>1026</sup> Shay *et al.* 2016:ii.

<sup>1027</sup> Soled & Hoffman 2021:269.

<sup>1028</sup> Soled & Hoffman 2021:277.



as their peers, even though they have not had equivalent opportunities to develop the necessary foundational competencies, which can lead to exclusion disguised as merit-based assessment.<sup>1029</sup>

Within a social justice framework, scaffolding functions as a mechanism of redress. It acknowledges that students' prior educational experiences are shaped by structural inequality, and that equal treatment in curriculum design may perpetuate disadvantage. By breaking down complex knowledge, providing multiple entry points into learning, and offering repeated opportunities for engagement and feedback, scaffolding promotes epistemological access – i.e. not merely access to the institution, but access to the ways of knowing and thinking that define legal education.<sup>1030</sup>

Scaffolding is also closely linked to equity of success. Research shows that students are more likely to persist, progress and complete their studies when learning is supported in ways that build confidence, competence and academic identity over time.<sup>1031</sup> In LLB ECPs, scaffolding supports the gradual development of legal reasoning, academic literacy and professional identity, enabling students to transition from a reliance on structured support to independent legal thinking.

Importantly, scaffolding does not dilute academic standards. Rather, it makes standards attainable by rendering expectations explicit and achievable. In this sense, scaffolding is not remedial, but transformative. It challenges exclusionary assumptions about merit and preparedness, and repositions curriculum design as a key site where legal education can either reproduce inequality or actively contribute to substantive justice.

As for the curriculum reform principles that were already being implemented in existing ECPs, the 2014 research project found that the curriculum principle of foundation provision was being achieved, and that students were being successfully supported through their second academic year, even to the extent that the ECP cohort performed better than the mainstream cohort.<sup>1032</sup> In a previous study on the LLB ECP at the UFS,<sup>1033</sup> it was found that students in the extended programme performed better than

---

<sup>1029</sup> Van de Pol *et al.* 2010:272.

<sup>1030</sup> Van de Pol *et al.* 2010:272.

<sup>1031</sup> Van de Pol *et al.* 2010:287.

<sup>1032</sup> Shay *et al.* 2016:iii; Kirby & Dempster 2018; Garraway 2010..

<sup>1033</sup> Van Niekerk 2013.

their mainstream peers in certain, perceived-to-be-difficult mainstream modules that were presented during their first two years of study.<sup>1034</sup> A similar finding was made by Kirby and Dempster<sup>1035</sup> in a study on the Science ECP at UKZN. This improved performance is likely due to the targeted academic and social support provided in the ECPs, which addresses students' specific learning gaps and equips them with the skills and confidence needed to succeed in challenging modules.

The principles of epistemological transition, enhancement and enrichment were not being fully implemented in most ECPs. The ECPs' developmental support ended when foundation provision ended. This observation was also made in Van Niekerk's study of the LLB ECP.<sup>1036</sup> Research by Shay *et al.*<sup>1037</sup> found that completion rates were better in extended programmes, being truly extended, four-year programmes, than in programmes confined to foundation provision only.

Additionally, the 2014 research found that ECPs provided significant access and retention to talented and capable yet underprepared black students.<sup>1038</sup> Key enabling and/or constraining conditions in ECPs were also identified.<sup>1039</sup> The ECPs that appeared to be most successful were those where the leadership (either the head of the department, the dean, or both) strongly supported the programmes. By contrast, the departments with less successful programmes did not see it as their responsibility to support students throughout foundation provision, expecting instead that students would emerge from the two-year programme fully prepared to cope with the demands of the mainstream module. Staff on the more successful ECPs enjoyed greater job security and more favourable working conditions, while, on the opposite end of the spectrum, there was a significant divide between lecturers in the ECPs and those in the mainstream programmes. The successful programmes were resource-intensive and well-funded,<sup>1040</sup> and also had well-considered placement practices in place. This

---

<sup>1034</sup> Van Niekerk 2013.

<sup>1035</sup> 2018.

<sup>1036</sup> Van Niekerk 2013.

<sup>1037</sup> 2016.

<sup>1038</sup> Shay *et al.* 2016:iii.

<sup>1039</sup> Shay *et al.* 2016:32.

<sup>1040</sup> The DHET foundation grant represents an acknowledgement that it takes more resources to support underprepared students.

ensured that only students who would benefit most from the ECP were placed accordingly, thereby maximising the use of scarce resources.<sup>1041</sup>

Clearly, there needs to be an ongoing commitment to ECPs and, more specifically, LLB ECPs. As epistemological access and development in the sciences differ vastly from those in professional qualifications, such as law, there is no one-size-fits-all approach. Ensuring that these programmes continue to evolve is essential for promoting fairness and inclusivity in HE, as they provide students from previously disadvantaged backgrounds with the necessary support to succeed and fully participate in the academic and professional spheres.

## **5.8 THE DEVELOPMENT OF THE CAREER PREPARATION PROGRAMME AND RECOGNITION OF PRIOR LEARNING AS FORERUNNERS FOR EXTENDED CURRICULUM PROGRAMMES AT THE UNIVERSITY OF THE FREE STATE**

The UFS introduced the Career Preparation Programme (CPP) in 1993.<sup>1042</sup> The rationale behind the initiation of the CPP was to address the demand for HE access and rectify the disparities in the schooling system that caused deserving students to fall short of university admission requirements.<sup>1043</sup> Initially implemented as NEED (“Need for Education Elevation and Development”),<sup>1044</sup> the CPP’s primary aim was to provide students with the opportunity to enter general formative and vocationally-directed studies at various higher and further education institutions.<sup>1045</sup> The CPP focuses on learners’ academic preparation and a holistic approach towards learner development.

The programme aimed to close the gap by starting where students were in their capabilities,<sup>1046</sup> and teaching them appropriately. The CPP also addressed students’ broader needs, such as quality of personal life, study skills, self-assertiveness, problem-solving, reading and writing skills as well as other generic competencies through modules such as Skills and Competencies in Lifelong Learning, Academic

---

<sup>1041</sup> Shay *et al.* 2016:32.

<sup>1042</sup> There is very little on record regarding the development of ECPs at the UFS.

<sup>1043</sup> Hay & Marais 2004:63; Daffue 2008:1.

<sup>1044</sup> Hay & Marais 2004:63.

<sup>1045</sup> Hay & Marais 2004:63. Ten institutions in the Free State region came together in a consortium to implement the programme.

<sup>1046</sup> See chapter 2.

Language, and Numeracy Skills.<sup>1047</sup> In fact, one of the most valuable aspects of the CPP was its holistic approach to learner development, emphasising not only academic preparation, but also broader aspects of students' growth and development. After successfully completing the four courses of the CPP, students could proceed with their studies at the UFS.<sup>1048</sup> The CPP's success hinged on the support the students received, and therefore, the programme evolved over the years from a lecture-based curriculum, focusing heavily on lecture-led presentations and structured classes, to a resource-based learning curriculum, where students are encouraged to explore various learning materials independently.<sup>1049</sup>

During the bridging year, students earned credits for the subjects they complete at a further education and training college (FET). In other words, when they progress to university, they have already obtained half of the required first-year credits of the HE programme they have enrolled for.

The growth in the number of black students enabled by this programme helped the UFS transform rapidly and, therefore, move towards its transformation aims. The increase in enrolments allowed the university to make tangible progress in addressing historical inequalities, promoting diversity and fostering greater inclusivity in both the student body and the broader academic environment. The CPP also provided the UFS with valuable insights into the development of learning among disadvantaged students, and affords the institution an opportunity to identify deficiencies in the standardised tests and selection methods. As a result, the UFS was one of the first universities to be granted permission to eliminate matriculation exemption as an absolute requirement for university admission.<sup>1050</sup> By challenging these traditional barriers, the university created greater opportunities for students from historically disadvantaged backgrounds, directly promoting the principles of access, redress and equity. This shift not only broadened participation, but also ensured that admission policies were more inclusive and better aligned with the social justice objectives in HE.

---

<sup>1047</sup> Hay & Marais 2004:63.

<sup>1048</sup> This was a way for students to gain access to the LLB programme prior to the implementation of the LLB ECP. See par. 5.4 in this regard.

<sup>1049</sup> Daffue 2008:1.

<sup>1050</sup> Daffue 2008:4.

Another programme implemented was the Recognition of Prior Learning Programme (RPL). RPL is recognised in the White Paper on Education and Training.<sup>1051</sup> It contributes to social transformation by recognising learning and skills acquired through experience, on-site training or self-education that can be formally assessed and credited towards certificates. This, in turn, enables people to qualify for entry into additional education or training.<sup>1052</sup> It is often used when students wish to access a programme without meeting the traditional admission requirements.

In South Africa, RPL emerged in the wake of social reconstruction after 1994, aiming to transform the HE landscape. RPL addresses various social justice aspects, namely access, redress and equity, as it opens up more inclusive pathways for people to attain HE and obtain a qualification.<sup>1053</sup> It enables institutions to provide access<sup>1054</sup> to historically disadvantaged students who lack the opportunity to gain access to HE. RPL might also enable HE institutions to review their admission criteria by providing alternative pathways to access. The relevance of RPL lies in its focus on broadening HE access and providing alternative pathways for students who may not meet traditional admission requirements. In the context of the extended LLB programme, RPL exemplifies the principle of equity by formally recognising prior learning and experience, thereby enabling students from disadvantaged or non-traditional backgrounds to enter the programme. This aligns with the broader aims of redress and social transformation in South African HE, ensuring that legal education is more inclusive and accessible to a diverse student population.

According to Van Rooy,<sup>1055</sup> in determining whether a prospective student's prior learning is at the necessary level for HE access, the source of the prior learning must be identified, the factors affecting the learning must be explored, and the present knowledge and skills must be assessed. In other words, a reliable, valid and objective decision must be made on whether the student possesses the level of learning required by the criteria and standards of the degree or qualification to which they seek admission. Van Rooy's framework aligns closely with the principles of access and

---

<sup>1051</sup> DHET 1995:27.

<sup>1052</sup> DHET 1995:27; Van Rooy 2002:75. It is important to note that RPL is different from a mere credit transfer from one university to another where students wish to change institutions.

<sup>1053</sup> Van Rooy 2002:77; Harris & Saddington 1995:7; Ntshoe 2010:33.

<sup>1054</sup> Both physical and epistemological. See par. 2.5.1.

<sup>1055</sup> 2002:78.

equity, which are central to this thesis. By emphasising the need to identify the source of prior learning, consider contextual factors affecting learning, and evaluate present knowledge and skills, the approach ensures that non-traditional or disadvantaged students are assessed fairly and holistically rather than being excluded based on rigid or narrow admission criteria. This directly supports redress, as it recognises that students from historically marginalised backgrounds may have acquired relevant skills and knowledge outside of conventional schooling. This approach should be supported, as it balances fairness with academic rigour, allowing universities to admit students who are genuinely prepared for HE while still maintaining standards. In the context of the extended LLB programme, applying Van Rooy's criteria ensures that students who demonstrate the necessary capability, regardless of their prior formal education, can access legal education, which helps achieve the social justice goals, inclusivity and equity in HE.

## **5.9 DEVELOPMENT OF THE EXTENDED CURRICULUM PROGRAMME AT THE UNIVERSITY OF THE FREE STATE**

In 2005, the UFS implemented ECPs across various faculties to address the need for broader access to HE in the face of the legacy of apartheid. The university currently has 21 approved extended programmes in total.<sup>1056</sup>

The Faculty of Law introduced the LLB ECP in 2005. By 2019, the number of first-time entering students in the mainstream LLB programme was 194, while the LLB ECP had 433 students. This means that 69 per cent of all first-year students registered at the Faculty of Law were enrolled in the LLB ECP. As stated earlier, the UFS is one of only six South African universities offering an LLB ECP.

Prior to implementing the ECP, the Faculty of Law utilised the CPP route for students to enter the LLB programme if they did not meet the programme's admission requirements. However, while the CPP provided an alternative route, it was limited in scope and duration, offering only a means of entry. It did not fully address the deeper academic gaps or provide the sustained support needed for success in the rigorous LLB curriculum. As a result, many students still struggled to cope with the demands of

---

<sup>1056</sup> Including the Bachelor of Science ECP, Bachelor of Commerce ECP, Bachelor of Administration ECP, and Bachelor of Commerce (Accounting) ECP.

law studies. This highlighted the need for a more comprehensive and structured approach such as the LLB ECP, which combines extended foundational coursework and academic support. Another entry route was through the RPL programme.

Since the implementation of the Higher Education Qualifications Framework (HEQF) on 1 January 2009, all new HE qualifications submitted for registration on the NQF and accreditation by the HEQC, along with all existing programmes and qualifications, must conform to the requirements of the HEQF. This brought about greater access to HE for students, as envisioned by the CHE.<sup>1057</sup> By establishing clear frameworks and standards for qualifications, the HEQF also advanced the principles of access, redress and equity, ensuring that students from disadvantaged backgrounds could gain fair entry to HE and that programmes were designed to support their successful participation and completion. Furthermore, by mandating alignment with these standards, the HEQF encouraged universities to develop inclusive curricula, appropriate support mechanisms and alternative pathways such as ECPs, all of which contribute to a more equitable and socially just South African HE system.

The strict<sup>1058</sup> admission requirements of the four-year LLB mainstream programme, combined with specific numeracy and literacy requirements, contributed to the problem of low programme enrolments. Therefore, the need arose to create alternative routes of admission to law studies. In doing so, efforts to enhance academic and professional standards by raising admission requirements had to be balanced with the transformational responsibility of ensuring access for underprepared students, thereby achieving the social justice principles of access, redress and equity. By creating alternative admission pathways, the LLB ECP was able to provide historically disadvantaged or underprepared students with fair opportunities to enter the legal profession, contributing to social justice and the transformation of HE.

The introduction of the LLB ECP led to several adjustments to the existing four-year LLB programme in the faculty, as well as an accompanying need for additional capacity to support students in the ECP. The extended programme provides greater access to legal studies through a lower AP score, combined with an additional study

---

<sup>1057</sup> CHE 2004:81.

<sup>1058</sup> In 2005, when the LLB ECP was introduced, the mainstream programme had an admission requirement of an M score of 34 (Senior Certificate) or an AP score of 33 (NSC), with additional language and mathematics requirements. The admission requirement for the LLB ECP in 2005 was an M score of 28 or an AP score of 28.

year, including foundation modules. Students phase into the mainstream programme after a prolonged first year of study.

The extended programme was designed as an adaptation of the four-year programme. First-year modules were spread over a two-year period, thus extending the programme by a year. The ECP also requires students to register for various developmental modules in their first year of study, namely English Academic Literacy for Law, Computer Literacy and Advanced Computer Literacy, Mathematical Literacy, Legal Skills, and Introduction to Law. Previously, ECP students also completed the module Skills and Competencies in Lifelong Learning, although this was removed with the introduction of Introduction to Law. Initially, ECP students had only one law foundation module in their first year of study, namely Legal Skills, which is presented exclusively for ECP students. In 2020, a second foundation module, Introduction to Law, was introduced exclusively for LLB ECP students in their second year of study. These two modules are the only foundation modules presented by the Faculty of Law; other faculties present the remaining foundation modules. The content of the two modules is tailored to LLB ECP students' needs, and is different from the standard Legal Skills and Introduction to Law modules offered to LLB mainstream students at faculties across the country.

LLB ECP students at the UFS have a reduced academic load in their first two years of study and receive additional support through facilitation sessions. Their first year of study is spread over two years. This serves a dual purpose, namely to ensure both a smooth transition from high school to university, as well as into the mainstream programme in their third year of study. The programme structure of the third year of the ECP aligns with the second year of the four-year LLB programme. Therefore, all faculty support activities are accessible to all students. Lecturing and assessment methods are applied equally to both ECP and mainstream programme students. Consequently, general development activities in the faculty also enhance the performance of LLB ECP students, contributing not only to their academic success, but also to the broader goals of access, equity and social justice. These activities provide students with the necessary academic foundations, professional skills and personal confidence to succeed in their studies and future legal careers. In this way, faculty initiatives transcend mere individual support. They represent a deliberate institutional commitment to addressing structural inequalities in HE, ensuring that



underprepared students are not excluded from the legal profession, but are instead empowered to participate fully in it. The success of such interventions aligns directly with the overarching argument in this thesis, namely that extended programmes are not remedial measures in isolation, but mechanisms for realising social justice in legal education. Ultimately, the LLB ECP speaks to the transformational responsibility of South African HE to redress past inequalities and foster a more inclusive and representative legal profession.

**Table 5.1: Differences between the LLB mainstream and extended curriculum programmes**

|                        | LLB mainstream programme                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | LLB extended curriculum programme                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Admission requirements | <p>i. The candidate must comply with the requirements for admission to a bachelor's degree in the General Academic Rules.</p> <p>ii. In addition to paragraph (i) above, the candidate should be in possession of an endorsed Senior Certificate (until 2007) with an M-score of at least 34 points, or a National Senior Certificate (NSC) (from 2008) or National Certificate (Vocational) with an AP score of at least 33 points, with a minimum performance mark of 70% (performance level 6) in</p> | <p>i. The candidate must comply with the requirements for admission to a bachelor's degree in the General Academic Rules.</p> <p>ii. In addition to paragraph (i) above, the candidate should be in possession of an endorsed Senior Certificate (until 2007) with an M-score of at least 30 points, or a National Senior Certificate (NSC) (from 2008) or National Certificate (Vocational) with an AP score of at least 30 points, with a minimum performance mark of 50% (performance level 4) in</p> |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>English Home Language or English First Additional Language, and a minimum performance mark of 70% (performance level 6) in Mathematical Literacy or a minimum performance mark of 50% (performance level 4) in Mathematics.</p> <p>iii. Notwithstanding subparagraphs (i) and (ii) above, a candidate can, at the recommendation of the Dean, be admitted if the candidate applied for admission by means of a process of recognition of prior learning in terms of the General Academic Rules.</p> <p>iv. In terms of the General Academic Rules, all candidates should take the Academic and Quantitative Literacy Test of the National Benchmark Tests (NBTs) and must have done so within three years prior to registration.</p> | <p>English Home Language or English First Additional Language.</p> <p>iii. Notwithstanding subparagraphs (i) and (ii) above, a candidate may, at the recommendation of the Dean, be admitted if the candidate meets one of the following requirements:</p> <p>a. The candidate is in possession of an endorsed Senior Certificate (until 2007) or an NSC (from 2008) with an M-score of 26 to 29 or an AP score of 27 to 29 points, and has successfully completed at least the first year of study of an ECP without failing any module. or</p> <p>b. The candidate has an M-score of less than 26 points or an AP score of less than 27 points and has successfully completed the Higher Certificate in Humanities with a final mark of 70% per module and without</p> |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                       |                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       |                                                    | <p>failing any of the modules.</p> <p>or</p> <p>c. The candidate applied for admission by means of a process of recognition of prior learning in terms of the General Academic Rules.</p> <p>iv. All candidates should take the Academic and Quantitative Literacy Test of the National Benchmark Tests (NBTs) prior to registration and comply with the requirements of the General Academic Rules in this regard.</p> |
| Duration of study     | A minimum of four years and a maximum of six years | A minimum of five years and a maximum of seven years                                                                                                                                                                                                                                                                                                                                                                    |
| Developmental modules | Not applicable                                     | English Academic Literacy for Law; Computer Literacy; Advanced Computer Literacy; Mathematical Literacy; Legal Skills; Introduction to Law                                                                                                                                                                                                                                                                              |

One problem identified with ECPs is that the foundation modules have little relevance to the regular modules.<sup>1059</sup> This is not the case with the UFS's LLB ECP. The foundation modules, presented by other faculties, are law-related and were designed

---

<sup>1059</sup> CHE 2020:6.

in collaboration with law lecturers. As a result, students are equipped with the skills that future legal practitioners will need.

The LLB ECP also aligns with the UFS's Vision 130,<sup>1060</sup> which elaborates on the strategic intent to reposition the institution for 2034, when the UFS will commemorate its 130th anniversary. One of the core values identified in Vision 130 is social justice, in pursuit of which the UFS strives to promote the values of human dignity through ethical and transparent institutional responsiveness. Vision 130 states: "We interpret social justice within the South African historical context to entail an emphasis on inclusiveness, the reduction of inequality, and the creation of opportunities and pathways out of poverty and dispossession."<sup>1061</sup> The desired institutional culture of the UFS is one that mirrors social justice. This will require values that are not only professed, but are also put into action, as the LLB ECP does. In doing so, the programme becomes a tangible expression of the capability approach,<sup>1062</sup> demonstrating how social justice in HE can be realised through practical mechanisms that advance access, equity and transformation.

## **5.10 NATIONAL COMPARATIVE STUDY OF UNIVERSITIES THAT OFFER LLB EXTENDED CURRICULUM PROGRAMMES**

Bachelor's qualifications are typically divided into general and professionally orientated degrees.<sup>1063</sup> A professionally orientated bachelor's degree, such as the LLB, is specifically designed to provide a broad and coherent foundation in legal knowledge, theory and methodology. Its core purpose is to develop graduates who are not only academically competent, but also professionally prepared to take initiative and assume responsibility in legal and related professional settings.<sup>1064</sup> While both general and professional degrees aim to deliver a well-rounded education, the professional degree places greater emphasis on readiness for practice in the legal sphere.

---

<sup>1060</sup> Vision 130 lays the foundation for the goals, objectives and activities of the UFS in the medium term.

<sup>1061</sup> UFS 2022.

<sup>1062</sup> See par. 2.6.1.

<sup>1063</sup> CHE 2015:6.

<sup>1064</sup> CHE 2015:7.

The preamble to the Qualification Standard for Bachelor of Laws emphasises the foundational role of law in supporting and advancing South Africa's constitutional democracy.<sup>1065</sup> It emphasises that law has been central to the country's transition to democracy, and continues to play a vital role in entrenching and consolidating the constitutional democratic project.<sup>1066</sup> These sentiments will remain unachievable without proper legal education. Legal education, as a public good, must be responsive to the needs of the economy, the legal profession, and society as a whole.<sup>1067</sup> It should develop graduates who are not only highly skilled and capable critical thinkers, but also informed and engaged citizens. Law graduates should possess a thorough understanding of the transformative role of the Constitution in shaping South African law and be committed to promoting democratic values, human rights and social justice in diverse and complex contexts.<sup>1068</sup>

In the next sections, the discussion shifts to whether the current model of LLB ECPs offered at universities in South Africa, including at the UFS, effectively implements the social justice concepts of access, redress and equity. In investigating the programmes, focus is also placed on the structure of the extended programme and the support offered to establish whether LLB ECP students are sufficiently equipped to complete their studies successfully. More specifically, close attention is paid to the demographic data of these programmes, admission requirements, the composition of the extended/foundation modules offered, whether additional support is provided to students, and how the universities address the concepts of access, redress and equity in their respective programmes.

## **5.11 RESEARCH METHODOLOGY**

The paragraphs that follow elaborate on the descriptive multiple-case study design adopted for the research, the data collection method employed for the multiple-case study, and the steps taken to ensure the validity and reliability of the quantitative results and the trustworthiness of the qualitative findings. This is followed by a discussion of ethical considerations during the research, and a reflective evaluation of the limitations

---

<sup>1065</sup> CHE 2015:7.

<sup>1066</sup> CHE 2015:7.

<sup>1067</sup> CHE 2015:7.

<sup>1068</sup> CHE 2015:8.

of the research design and methods. The final sections of chapter 5 are devoted to a discussion and analysis of the data collected.

## **5.12 RESEARCH DESIGN**

This study adopts a qualitative, descriptive multiple-case study design. The cases examined are the six South African universities that offer an LLB ECP. Each ECP constitutes a distinct case, embedded within its specific institutional, historical and resource context. A multiple-case study approach was selected to enable comparative analysis across institutions, while allowing for an in-depth examination of how social justice concepts of access, redress and equity are understood and operationalised in different programme contexts.<sup>1069</sup>

The phenomenon under investigation, therefore, is not a single institution, but rather the application of social justice imperatives within LLB ECPs as a category of intervention in South African legal education. Treating each programme as a separate case enables the identification of both commonalities and differences in programme design, implementation, and institutional commitment. This approach is consistent with established case study methodology, which recognises that multiple-case designs strengthen analytical generalisation by allowing findings to be compared across different settings.<sup>1070</sup>

Descriptive case study research is concerned with providing a systemic, detailed and contextually grounded account of a phenomenon as it occurs in real-world settings.<sup>1071</sup> Rather than seeking tentative propositions or causal explanations, a descriptive approach documents patterns, practices and institutional arrangements to deepen understanding and establish a sound empirical basis for future explanatory or evaluative research.

Accordingly, the contribution of this research lies in its detailed documentation and comparative analysis of LLB ECPs as institutional responses to social justice imperatives in legal education. By indicating how these programmes are structured, justified and implemented across multiple institutional contexts, the study provides a

---

<sup>1069</sup> Yin 2018:352.

<sup>1070</sup> Yin 2018:40.

<sup>1071</sup> Yin 2018:325, 350.

nuanced descriptive account that can inform policy development, institutional reflection and future research, without claiming to offer definitive explanations or predictive conclusions.

A case study is the preferred strategy when addressing “how” and “why” questions<sup>1072</sup> in order to “obtain a detailed description and gain an understanding of the case”.<sup>1073</sup> A flexible form of inquiry best suited for studying a phenomenon in its natural context, case studies are often used to gain an in-depth understanding of a complex issue in a real-life setting.<sup>1074</sup> In this instance, the real-life setting is the LLB ECP at South African universities, including the UFS.

To Maree *et al.*,<sup>1075</sup> the researcher-centred approach of case study research is a key strength of this design, with the researcher often observing participants and striving to offer a comprehensive understanding of the research setting. Another strength of a case study is its use of multiple sources and techniques in the data-gathering process.<sup>1076</sup> A case study integrates quantitative and qualitative information to both measure and describe the occurrence of a particular phenomenon.<sup>1077</sup>

A multiple-case study, in turn, is prompted by the desire to gain a close understanding of a number of cases set in their real-world contexts,<sup>1078</sup> enabling the researcher to explore and analyse within and across cases.<sup>1079</sup>

For the multiple-case study, quantitative and qualitative data were collected from all South African universities that offer LLB ECPs, to compare the implementation and effectiveness of the programmes across institutions. . This data is presented below. The data was obtained through a questionnaire (Annexure B) sent to the relevant programme directors of the universities offering an LLB ECP.

The multiple-case study builds on the literature review in chapters 2 and 3, which utilised case law, academic journal articles, policies and legislation (Chapters 2 and 3) to analyse the different views on access, redress and equity in HE. It is further based

---

<sup>1072</sup> According to Martinson & O’Brien in Newcomer *et al.* 2015:177.

<sup>1073</sup> McMillan 2008:288.

<sup>1074</sup> Yin 2018:40.

<sup>1075</sup> Maree *et al.* 2023:90; McMillan 2008:288.

<sup>1076</sup> Maree *et al.* 2023:76; Martinson & O’Brien in Newcomer *et al.* 2015:177.

<sup>1077</sup> Quintão *et al.* 2020:266.

<sup>1078</sup> Maree *et al.* 2023:91; Martinson & O’Brien in Newcomer *et al.* 2015:178.

<sup>1079</sup> Maree *et al.* 2023:90.

on the information gathered regarding the realisation of social justice concepts in HE in selected foreign jurisdictions, presented in chapter 4.

Adopting a qualitative methodology grounded in case studies facilitates a deeper understanding of the context in which social justice concepts are applied, and help identify strategies that can be adapted to fit the unique context of the LLB ECP's at higher education institutions in South Africa.

### **5.13 DATA COLLECTION METHOD**

To collect quantitative and qualitative data to help answer the research questions posed in chapter 1, the director or leader of the LLB ECP at each identified university was purposefully selected for participation, and contacted. Their contact information is readily available on the respective university websites, and as programme directors or leaders, they have sufficient knowledge, and access to the relevant data. Purposive sampling was considered the most appropriate method, as it ensured that the comparative institutional data was directly relevant to the context of the LLB ECP and, therefore, would produce findings that meaningfully respond to the research objectives.

To allow for meaningful comparison of the effectiveness of the LLB ECPs, the period of 2018 to 2024 was selected, as it covers three distinct phases: the final years of the old LLB curriculum, the Covid-19 period characterised by online delivery, and the subsequent introduction of the new LLB curriculum.

Data collection for the multiple-case study occurred after the researcher had established a strong theoretical foundation and background knowledge on social justice in HE, both locally and abroad, and on the unique historical factors at play in the South African context. For instance, data was collected against the backdrop of a literature review that explored the social justice concepts of access, redress and equity in South African HE.<sup>1080</sup> It was concluded that, in the South African context, access, redress and equity are interdependent and essential for achieving social justice in HE, particularly in legal education. Historical inequalities continue to shape participation and success, which necessitates mechanisms such as LLB ECPs. ECPs ensure that access goes beyond entry into HE to include meaningful engagement, support and

---

<sup>1080</sup> See chapter 2.



successful completion, particularly for students from disadvantaged educational backgrounds. In this way, the principles of social justice become embedded in the academic project.

Further setting the scene for data collection was the comparative study of social justice imperatives in HE in foreign jurisdictions.<sup>1081</sup> This investigation concluded that international HE systems also grapple with the imperatives of access, redress and equity, although the approaches vary according to specific socioeconomic and historical contexts. The comparative study revealed that targeted interventions, such as extended programmes, redress policies and state-funded support, are widely employed to promote equity and broaden participation. It highlighted both the challenges and successes in other jurisdictions, affirming that South Africa's LLB ECP, specifically the one offered at the UFS, is consistent with global social justice practices in its aims to address historical disadvantage, broaden access and foster equitable outcomes.

Additionally, the overview of the apartheid and post-apartheid history of HE in South Africa<sup>1082</sup> underscored the deep and enduring impact of systemic inequality on HE access and success. Apartheid policies entrenched exclusion and privilege along racial lines, creating structural barriers that limited educational opportunities for the majority of South Africans. Although the advent of democracy brought transformative policies aimed at broadening participation and dismantling these legacies, the effect of historical disadvantage continues to shape HE outcomes, demonstrating that achieving genuine equity requires more than formal access. It demands sustained redress through targeted interventions, such as the LLB ECP, to ensure that historically marginalised students are not only admitted into HE, but are also meaningfully supported to succeed.

The focus of the descriptive multiple-case study, described below, is on the demographic data (race and gender profiles) of LLB ECP students at South African universities, the admission requirements of the ECPs, the composition of the extended/foundation modules offered, whether additional support is provided to students, and how the universities address the concepts of access, redress and equity

---

<sup>1081</sup> See chapter 4.

<sup>1082</sup> See chapter 3.

in their respective ECPs. The analysis of this data provides a critical lens through which to evaluate how LLB ECPs actively implement the social justice concepts of access, redress and equity by addressing historical and systemic disadvantage, and ensuring that underprepared or marginalised students are afforded meaningful access to succeed. The data analysis, therefore, directly advances the central theme of this thesis by demonstrating how HE institutions translate social justice imperatives into practice, and identifying areas where interventions are needed to strengthen equitable participation and outcomes.

As mentioned, data was collected through a questionnaire that was distributed via email to the selected universities. One of several techniques available to collect data from respondents,<sup>1083</sup> the questionnaire offers benefits such as relative ease as well as affordability. Respondents were given a few months to return the completed questionnaires. The questionnaire was clear and offered the option to seek clarification via email. However, many universities did not respond by the deadline, as the requested information had to be obtained from multiple institutional sources, which required time and coordination. One university did not respond at all. Beyond logistical difficulties, another possible reason might be that, beyond the purpose of the research, there was little direct benefit to the universities, so completing the questionnaire represented just another administrative burden. Therefore, respondents' late response or failure to respond should be seen in the context of the practical constraints at HE institutions and the limited incentives for participation.

### **5.13.1 Information requested via the questionnaire**

The data range, being the seven years from 2018 to 2024, was chosen specifically to provide a comprehensive understanding of the implementation and operation of the LLB ECPs across South African universities. The selected period saw key changes in curriculum structure, teaching methods, and student support strategies. By analysing data from multiple institutions offering the LLB ECP, it was possible to assess how different universities implement these programmes, responded to challenges such as

---

<sup>1083</sup> Maree *et al.* 2023:156-157.

online learning during the pandemic, and incorporate measures to promote access, redress and equity.

The following information was required, most of which was collected through the two-part questionnaire. Part 1 dealt with consent to participate, while part 2 required respondents to provide the following information for the period 2018 to 2024:

a) Admission requirements for LLB ECP students

Since one of the primary aims of extended programmes is to broaden access to HE, the admission requirements and processes of the universities offering an LLB ECP have to be investigated. Extended programmes typically have lower admission requirements to enable students from diverse and disadvantaged backgrounds to access HE. An investigation into the admission requirements is essential to establish whether they broaden access, but also whether particularly the AP score is not perhaps too low, which might explain the possible ineffectiveness of the programme.

b) The demographics of all students enrolled in the LLB ECP

Analysing the racial and gender composition of the students in the different LLB ECPs allows one to determine whether previously underrepresented groups are gaining access, thus achieving one of the core aims of these programmes. It also facilitates an evaluation of redress, indicating how the extended programme helps correct historical educational disadvantage.

c) Total headcount of enrolments in the LLB ECP

Based on this data, the number of students enrolled annually in the LLB ECPs can be determined, providing insight into the programme's role in broadening access to HE. Analysing total headcounts alongside demographics also provides evidence of how the extended programme contributes to redress and equity by demonstrating the extent to which historically disadvantaged and underrepresented groups are being included and supported in HE.

d) Which ECP model the university is applying

This information helps determine whether the different ECP models used by different law faculties are effective in implementing the social justice concepts of access, redress and equity. By examining the chosen model, admission processes and student

support in the extended programme, it becomes possible to evaluate which approaches most successfully broaden participation, address historical disadvantage and provide equitable opportunities for students from underprepared and historically marginalised backgrounds.

- e) What support is provided to LLB ECP students, such as additional language skills

The provision of additional support reflects a recognition that access to HE involves more than simply gaining entry. Therefore, by analysing the information on the types of support provided, such as language and mathematical skills or dedicated foundation modules, one can determine whether institutions acknowledge and respond to the epistemological needs of students admitted with lower admission scores than their peers in the mainstream LLB programme. The measure of support provided sheds light on whether universities are focused mainly on physical access, or are also ensuring that underprepared students receive the guidance and resources necessary to engage meaningfully with the programme, thereby supporting the principles of access, redress and equity, which are central to social justice in HE.

- f) Module composition/how foundation modules are distributed over the study years

Based on this information, it becomes possible to determine whether the LLB ECP's modules are structured in a way that provides adequate academic support for underprepared students. Data on the number and types of foundation modules offered indicates whether the programme is structured to provide students with adequate opportunities to build the academic foundations they need to succeed.

- g) How the LLB ECP addresses the social justice concepts of access, redress and equity

Along with the data on headcounts, racial and gender profiles, the types of modules offered, and the support provided, this data can help assess the extent to which underprepared and historically disadvantaged students are included and supported.

- h) Whether additional support was provided to LLB ECP students during Covid-19 (2020 and 2021)

By examining the types and extent of support offered during Covid-19, one can determine whether these measures likely met the needs of underprepared students during the pandemic and ensured their meaningful engagement with the curriculum. It also enables an assessment of whether such additional support should be continued or enhanced to promote access, redress and equity.

### **5.13.2 Administering the questionnaire**

On 23 January 2025, respondents<sup>1084</sup> were invited via email to participate in the study. An information sheet (see Annexure A) was attached to the email. The information sheet requested respondents to indicate, by return email, their willingness to participate in the survey. Those who agreed to participate had to provide informed consent (see part A of the questionnaire in Annexure B). Once they had provided such consent, respondents were immediately directed to the questionnaire on the SurveyMonkey platform.<sup>1085</sup>

In the initial email, respondents were requested to complete the questionnaire and provide the requested data by 1 March 2025. Follow-up emails were sent to remind respondents of the deadline and encourage timely submission. When several respondents failed to reply within the specified time, the final deadline was extended to 31 March 2025 to allow additional time for completion. Despite these efforts, only two responses were received by the extended deadline; the remaining responses were received in the months that followed, with the last response received on 19 August 2025. Five of the six surveyed universities provided feedback. This demonstrates the challenges associated with obtaining timely responses and highlights the limitations of relying on voluntary participation.

## **5.14 ANALYSING AND INTERPRETING THE DATA**

After downloading the data from SurveyMonkey, the researcher created an Excel spreadsheet, allocating code numbers (A to F) to the participants. Thereafter, the headcounts and demographic data were analysed by a professional statistician, using

---

<sup>1084</sup> Respondents were the programme directors for the LLB ECPs of the various universities. See par. 1.3.

<sup>1085</sup> Available at <https://www.surveymonkey.com> (accessed on 27 September 2025).

R Version 4.5.1.<sup>1086</sup> Appointed specifically to assist with the technical analysis of the quantitative data, the statistician was responsible for processing the raw data, performing the relevant statistical procedures, and generating the statistical outputs. However, the researcher remained responsible for interpreting the findings, integrating them into the broader research framework, and aligning them with the theoretical constructs of access, redress and equity. This approach ensured both technical precision in data handling and theoretical coherence in the analysis, while maintaining intellectual responsibility for the conclusions drawn. The quantitative and qualitative results are discussed and interpreted later in this chapter.<sup>1087</sup>

### 5.15 VALIDITY AND RELIABILITY OF THE CASE STUDY

As Fraenkel and Wallen<sup>1088</sup> explain, “reliability refers to the consistency of scores or answers from one administration of an instrument to another, and from one set of items to another”. Kerlinger<sup>1089</sup> emphasises that the reliability of research depends on the accuracy of the measuring instruments, and the selection of appropriate statistical procedures. Reliability of qualitative studies relates to the results being consistent with the collected data.<sup>1090</sup> Lincoln and Guba<sup>1091</sup> state: “Since there can be no validity without reliability, a demonstration of the former (validity) is sufficient to establish the latter (reliability).”

Validity pertains to the suitability, significance, accuracy and practical value of the researcher’s conclusions.<sup>1092</sup> There are two types of validity, namely internal and external. Internal validity refers to the extent to which causal conclusions can be drawn, while external validity has to do with the applicability of the results and research findings to a broader environment.<sup>1093</sup>

---

<sup>1086</sup> For more on the R environment, see <https://www.R-project.org/> (accessed on 25 September 2025).

<sup>1087</sup> See figure 5.17.

<sup>1088</sup> 2009:147.

<sup>1089</sup> 1986:405.

<sup>1090</sup> Merriam 2009:206.

<sup>1091</sup> 1985:316.

<sup>1092</sup> Fraenkel & Wallen 2009:147.

<sup>1093</sup> Maree *et al.* 2023:44.

Various criteria were applied to ensure the quality of the quantitative and qualitative research, with particular attention to Yin's<sup>1094</sup> criteria of construct validity, internal validity, external validity, and reliability.

### **5.15.1 Construct validity**

Construct validity refers to the extent to which a research instrument accurately measures the theoretical concepts it is intended to assess.<sup>1095</sup> The primary theoretical concept in this research is social justice as manifested in access, redress and equity in HE, ECPs in general, and LLB ECPs specifically. This concept was explicitly dealt with in chapter 2 and the earlier sections of this chapter, and also formed the basis for the information requested in the questionnaire in Annexure B. The questionnaire specifically asked the programme directors of LLB ECPs how they addressed said social justice concepts in their programmes. Therefore, the theoretical grounding of the research, together with the careful design and content validation of the questionnaire, contributes to its construct validity.

Since the questionnaire items were directly informed by relevant literature and aligned with the research objectives, this thesis can confidently claim that the data collected reflects the intended constructs, enhancing the credibility and reliability of the findings.

### **5.15.2 Internal validity**

Internal validity guarantees that the inferences made are appropriate to the data obtained.<sup>1096</sup> This research ensured internal validity by employing data triangulation, which involved analysing data from participant questionnaires as well as reviewing relevant literature on social justice in legal education and LLB ECPs. Triangulation can be described as using multiple data-gathering methods to obtain a more comprehensive and substantiated picture of reality, and is often seen as a means of validating findings.<sup>1097</sup> In other words, it involves comparing multiple sources of

---

<sup>1094</sup> 2018:78.

<sup>1095</sup> Strauss & Smith 2009:7; Colliver *et al.* 2012:368; Yin 2018:79.

<sup>1096</sup> Yin 2018:80.

<sup>1097</sup> Maree *et al.* 2023:45; McMillan 2008:296; Yin 2018:170.

evidence before making a decision on the finding.<sup>1098</sup> Triangulation helps reduce bias and provides a more comprehensive understanding of the research problem.

To further bolster internal validity, the researcher examined the alignment between the theoretical concepts of access, redress and equity and the participants' responses to establish meaningful relationships, as discussed later in this chapter. This ensured that data interpretation was consistent with the theoretical framework.

Finally, the assistance of a qualified statistician was obtained to enhance the accuracy and objectivity of data interpretation.

### **5.15.3 External validity**

External validity refers to whether the results accurately represent the phenomenon being studied.<sup>1099</sup> This was ensured by carefully considering how the findings could be applied to similar educational settings, particularly other LLB ECPs and legal education contexts. The focus on access, redress and equity in this research offers valuable insights relevant to all South African institutions providing LLB ECPs, identifying how these social justice principles can be operationalised in practice. By examining admission processes and requirements, module composition, student demographics as well as additional support provided to LLB ECP students, this thesis demonstrates the strategies and challenges that universities face in broadening both physical and epistemological access, addressing historical disadvantage, and promoting equitable outcomes for underprepared students. The research included participants from the various universities offering the LLB ECP, and the same questionnaire was sent to all to ensure consistency. Incorporating the experiences of a broader range of institutions automatically renders the findings more applicable to diverse educational contexts. The results were also compared with existing research on social justice and legal education, confirming alignment with broader trends and best practices. By clearly outlining the research context, participants and the methodology utilised, the thesis provides a practical framework that institutions can use to enhance social justice, improve student support and increase the success of underprepared students in LLB ECPs specifically as well as ECPs in general.

---

<sup>1098</sup> Martinson & O'Brien 2015:191.

<sup>1099</sup> Maree *et al.* 2023:44; Yin 2018:80.



#### 5.15.4 Reliability

Reliability ensures that subsequent studies following the same research procedures to study the same phenomenon will arrive at the same findings and conclusions.<sup>1100</sup> It also pertains to the extent to which participant and/or rater scores are error-free.<sup>1101</sup>

The reliability of this research, specifically the multiple-case study, was ensured by using clear and consistent procedures throughout the research process. The questionnaire, being the main data collection instrument, was carefully designed to consistently measure the social justice concepts of access, redress and equity. Furthermore, the procedures for data analysis were documented to allow for replication of the study by future researchers.

#### 5.16 ETHICAL CONSIDERATIONS

Before commencing with the research, the researcher obtained ethical clearance from the UFS's General/Human Research Ethics Committee (see Annexure C). Gatekeeper's approval to conduct the study in the respective law faculties was also obtained from the UFS (Annexure D), UWC (Annexure E), UFH (Annexure F), NMU (Annexure G), UL (Annexure H) and NWU (Annexure I).

In this research study, the ethical considerations of informed consent, confidentiality and anonymity were applied to participants completing the questionnaire. In reporting on the data, the identity of participants and institutions is kept confidential. The different institutions are referred to by assigned pseudonyms. Although participants did not complete the questionnaire anonymously, their identity is never revealed.

After receiving the completed questionnaires via email or on SurveyMonkey, the researcher assigned pseudonyms to the participants and institutions, anonymised their responses to the questions, and recorded the data in Excel™. The only parties who have had insight into participants' identities apart from the researcher were the reviewers responsible for ensuring due process, including the researcher's supervisor and the respective research ethics committees of the UFS, as well as the qualified statistician. All other requirements of POPIA<sup>1102</sup> were adhered to.

---

<sup>1100</sup> Yin 2018:82; Newcomer *et al.* 2015:16.

<sup>1101</sup> McMillan 2008:149.

<sup>1102</sup> *Protection of Personal Information Act* 3 of 2013.

## **5.17 LIMITATIONS OF THE RESEARCH**

Despite the strengths of utilising a multiple-case study as chosen research methodology, certain challenges were encountered during the research process.

One of the biggest limitations that emerged was the delay in obtaining gatekeeper's approval from the various institutions. The researcher needed formal approval from each identified institution to gain access to their LLB ECP programme directors and institutional data. The approval process was subject to administrative and ethical requirements, which caused delays in the data collection process, affected the research timeline, and impeded the researcher's ability to access certain participants. As a result, adjustments had to be made to the research timeline, and numerous follow-up emails and reminders were sent to some institutions and participants.

Another limitation might be that the participants provided socially desirable responses regarding their respective LLB ECPs.

Moreover, the findings of the study are applicable only to ECPs in law faculties in South Africa and, therefore, have limited generalisability.

A further, significant limitation of the study is the absence of the voices of students enrolled in the LLB ECP. The empirical component of the research relied primarily on institutional documentation and questionnaires sent to programme directors, thereby foregrounding institutional perspectives on the design, objectives and perceived outcomes of these programmes. While these perspectives are valuable in understanding how social justice imperatives are conceptualised and operationalised at the programme level, they do not fully capture how these interventions are experienced by students in their day-to-day lives. The lack of direct student participation limits the extent to which this research engages with the lived realities of those most directly affected by extended curriculum interventions.

Programme directors understandably tend to describe LLB ECPs in terms of their intentions, formal structures, and compliance with policy imperatives relating to access, redress and equity. From this perspective, social justice is often framed through programme design features such as extended timeframes, additional academic support, or tailored pedagogical interventions. However, students' lived

experiences may differ significantly from these institutional narratives. Based on the researcher's own experience as a law lecturer working closely with students in the LLB ECP, students can sometimes experience these programmes as spaces of ambivalence, tension and, at times, marginalisation.

One dimension that is likely to be captured insufficiently because of the absence of the student voice is the experience of stigma. While the LLB ECPs may be designed to promote equity and success, students may nevertheless internalise deficit-based narratives that position them as academically inferior or less capable than their peers in the mainstream programme. Such perceptions can affect their sense of belonging in the faculty and at the institution more broadly. Issues of spatial separation, labelling and differential treatment, whether explicit or subtle, may shape students' experiences in ways that are not readily visible at the level of programme coordination or policy design.

Similarly, the pedagogical effectiveness of extended curriculum interventions may be perceived differently by students than by programme designers. Formally available support mechanisms may be experienced as inaccessible due to time constraints, workload pressures, or misalignment with assessment practices that continue to privilege traditional modes of learning and evaluation. Students may also experience tensions between the promise of additional support and the reality of intensified academic demands, particularly where extended curricula coexist with expectations of maintaining conventional standards of performance.

The absence of the student voice also limits the study's ability to fully interrogate questions of equity of success. While institutions may point to throughput rates or programme completion as indicators of success, students may evaluate success more holistically, taking into account factors such as psychological wellbeing, confidence, identity formation, and readiness for professional legal practice. These dimensions of success are difficult to capture without direct engagement with students' narratives and experiences.

This limitation does not negate the value of the findings presented in this study. Yet it does qualify the conclusions that can be drawn. Therefore, the analysis offered here should be understood as an institutional and programme-level account of how social justice imperatives are articulated and implemented, rather than a comprehensive

account of their lived impact. Future research would benefit significantly from incorporating student voices through qualitative methods such as interviews, focus groups or longitudinal narrative studies. This would develop a more nuanced and ethically grounded understanding of how LLB ECPs are experienced by those they are intended to support.

## **5.18 DISCUSSION OF THE DATA**

The national comparative study reported on in this thesis involved only those South African universities that offer LLB ECPs. Some universities choose not to offer an LLB ECP on account of the scope of support already provided to their students.<sup>1103</sup>

The study data is reported anonymously, and the universities are referred to by pseudonyms (A to F). Anonymising data safeguards the identities of universities, particularly when discussing sensitive data, including institutional challenges. This protects the institutions from potential reputational harm and ensures respect for institutional privacy. As the primary aim of the data analysis is to identify overarching trends, challenges and areas for development in the HE system in general and the LLB ECP specifically, anonymity ensures that the focus remains on systemic transformation rather than competitive benchmarking or institutional comparison. Public identification of institutions may cause data to be misinterpreted or taken out of context by external stakeholders, including the media and the general public. Anonymity, therefore, reduces the risk of such misuse and ensures that findings are considered within the appropriate context.

## **5.19 ANALYSIS OF DEMOGRAPHIC (GENDER AND RACE) DATA<sup>1104</sup>**

Throughout the analysis, it must be kept in mind that the data pertains to a specific group of universities and a specific time period. The data analysed here is also inherently random. If the study were to be repeated, the numbers would differ. While one can attempt to estimate the extent to which this will be the case, those estimates

---

<sup>1103</sup> CHE 2018:26. These universities include UKZN, the University of Pretoria and the University of Zululand.

<sup>1104</sup> This analysis was performed by a professional statistician.

are themselves uncertain. However, this does not significantly affect the reliability of the research.

The computer software used for the data analysis is tried and tested, yet the analysis does involve multiple human elements. Both the statistician and researcher may have introduced human error at various stages of the research process. Thus, no guarantee can ultimately be given on the correctness of any findings below.

The primary analysis method used for this descriptive multiple-case study is visual analysis. The visual analysis is supported by simple linear regression analysis. Linear trend lines with 95 per cent confidence intervals are drawn behind the observed data. These have not been adjusted for multiple testing and should be interpreted conservatively. Only trend lines that have strong slopes – strong enough that one cannot visualise a horizontal line inside the intervals – should be investigated as possible changes over time.

Moreover, it is essential to note that some universities provided data for first-time entering newcomers (FTENs, i.e. first-years) in their LLB ECP, while others provided data for the entire student body in the programme (across all years). For FTENs, the proportions can change rapidly over time or vary significantly from year to year. For the entire student body, the changes are attenuated by having students counted in multiple years, making changes much more difficult to detect. These two cases are illustrated separately below.

#### **5.19.1 Student headcount: First-time entering newcomers**

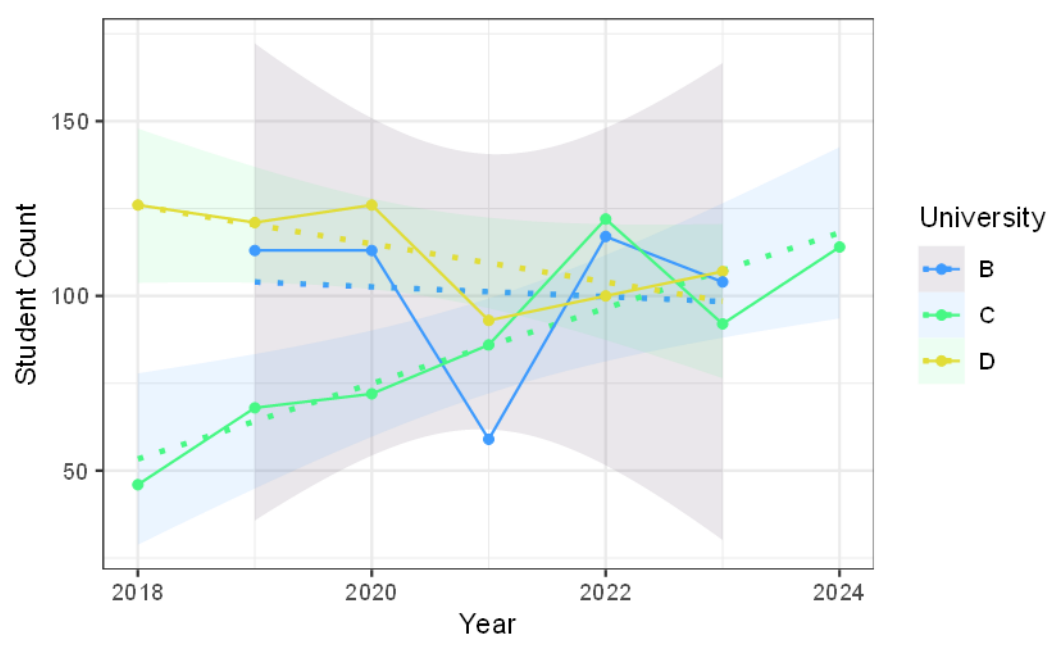


**Figure 5.1: Student headcount: First-time entering newcomers**

The number of FTENs in the LLB ECPs shows a generally upward trend across the years surveyed. This increase reflects the growing demand for access to legal education, and the continued reliance on extended programmes as a mechanism for broadening access to legal education. The gradual rise in student numbers may also indicate that universities are expanding capacity to accommodate students from diverse educational backgrounds, in line with the social justice imperatives of access and equity. Although some year-to-year fluctuations are expected, the overall pattern suggests an institutional commitment to inclusivity and redress through the LLB ECPs.

### 5.19.2 Student headcount: All years

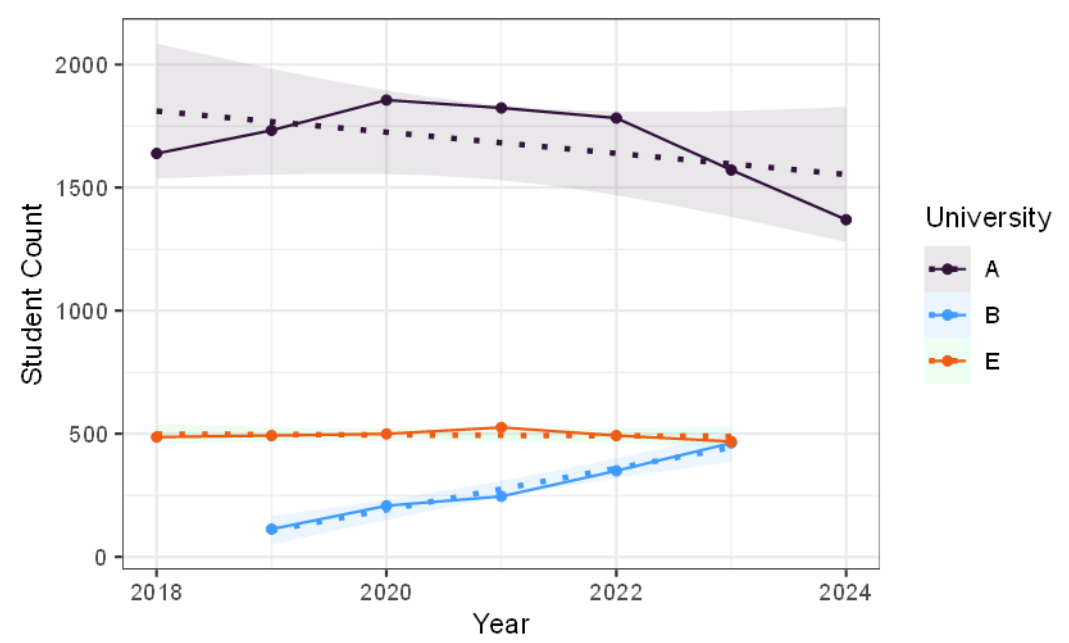


**Figure 5.2: Student headcount: All years**

An analysis of the total student headcount across all years of the LLB ECP reveals a steady and sustained increase, except for University A, which experienced a decline in numbers. This general upward trajectory indicates not only that more students are entering the programme, but that retention and progression are improving. This may point to enhanced academic support structures and more effective pedagogical interventions aimed at student success. The cumulative growth across all years, therefore, supports the notion that the LLB ECP contributes to educational redress by enabling previously underprepared students to persist and ultimately complete their studies.

### 5.19.3 Proportion of students identifying as female: First-time entering newcomers

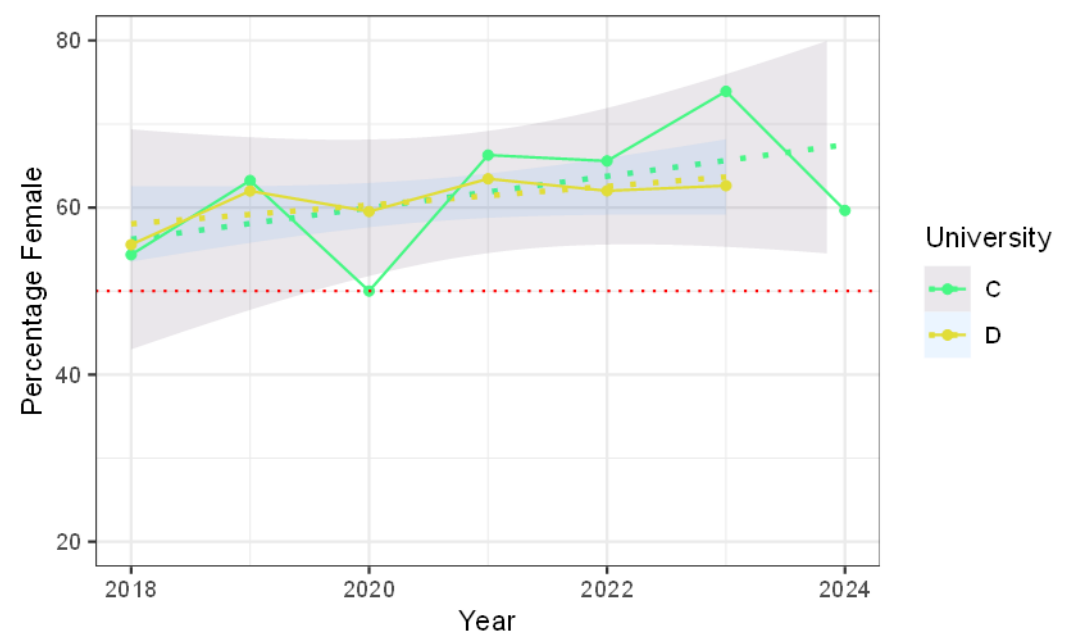


**Figure 5.3: Proportion of students identifying as female: First-time entering newcomers**

The proportion of FTENs identifying as female shows a moderately upward trend over the study period, with some year-on-year variation. This pattern suggests a positive movement towards gender balance in the extended LLB ECP intake. The steady increase in female participation may reflect the impact of broader equity initiatives in HE, and deliberate efforts by universities to recruit and support women in legal education. The findings underscore the extended programme's potential to facilitate gender inclusivity.



#### 5.19.4 Proportion of students identifying as female: All years

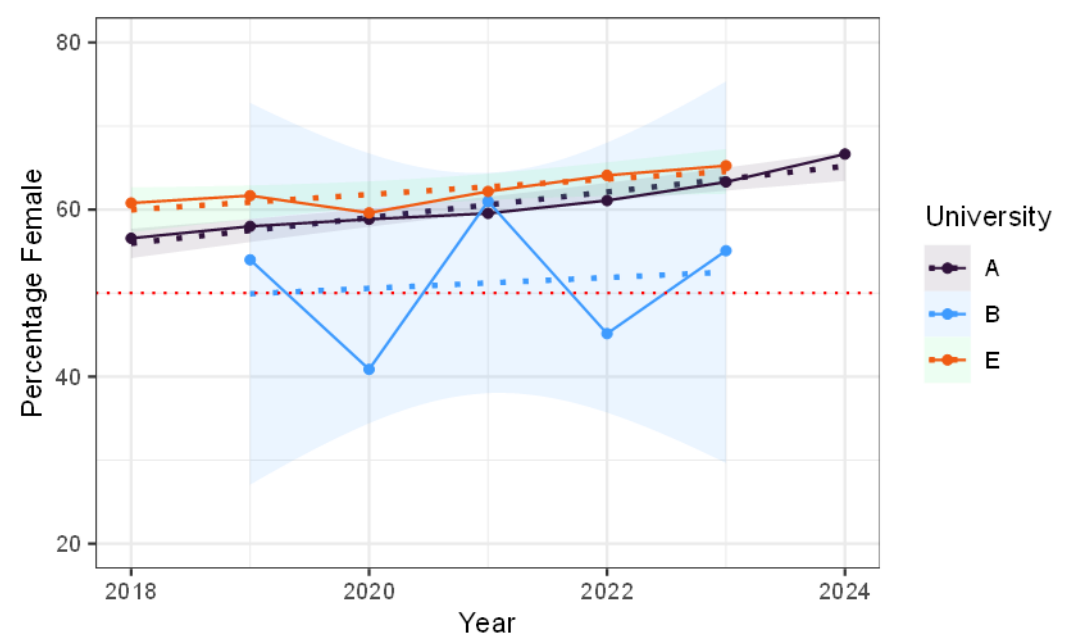


**Figure 5.4: Proportion of students identifying as female: All years**

For all year cohorts, the proportion of female students remains consistently high, with a slight upward trajectory, suggesting that women not only access, but also persist successfully in the LLB ECPs. This stability implies effective retention and progression of female students once enrolled, possibly supported by inclusive teaching practices and student support systems. The data reinforces the view that the LLB ECP's structure contributes meaningfully to equitable participation in legal education, sustaining gender representation across study years.

### 5.19.5 Proportion of students classified as African: First-time entering newcomers

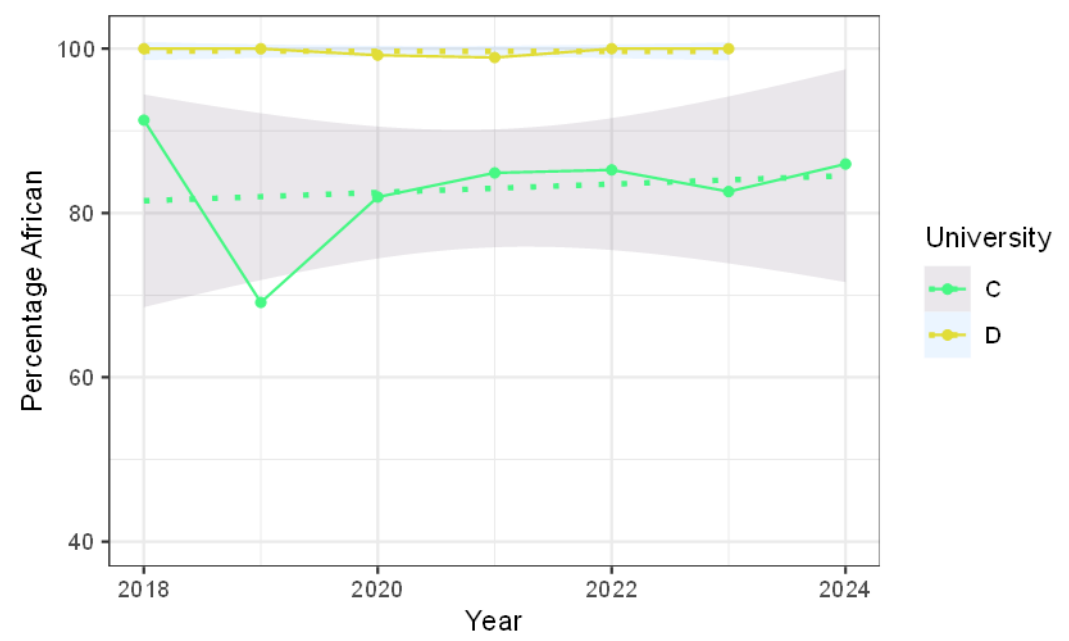


**Figure 5.5: Proportion of students classified as African: First-time entering newcomers**

The proportion of African students in the FTEN cohort shows a clear upward trend, which points to broadened access for historically disadvantaged groups – a central objective of social justice in South African HE. The rising participation of African students highlights the role of LLB ECPs in addressing racial inequities and promoting redress by widening entry points for students from underresourced schooling systems. The trend aligns with the transformational aims of the LLB ECP.

### 5.19.6 Proportion of students classified as African: All years

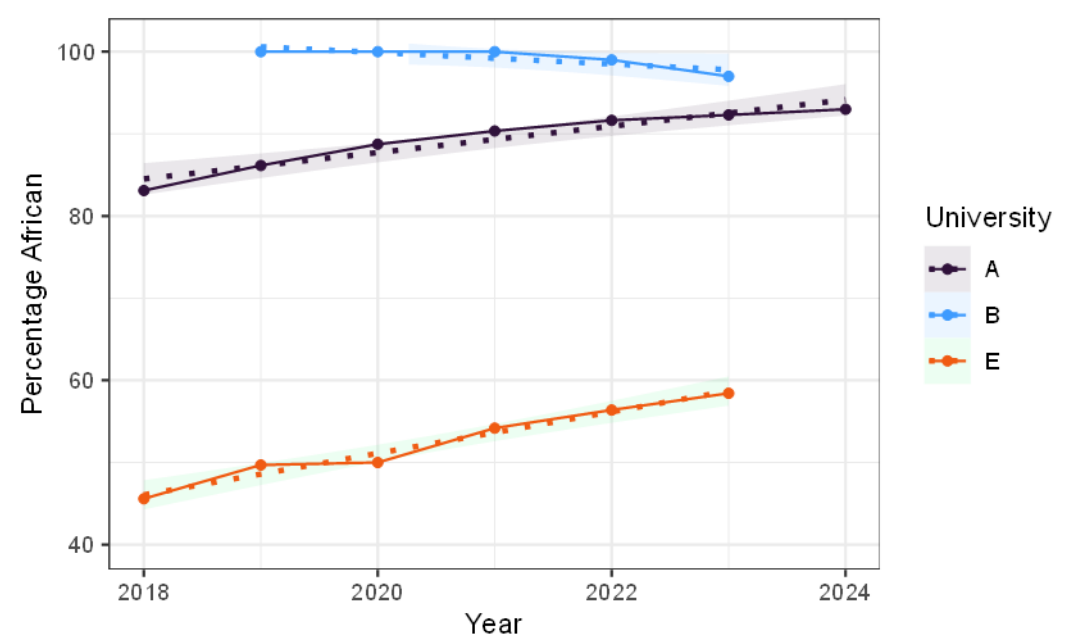


**Figure 5.6: Proportion of students classified as African: All years**

The proportion of African students remains consistently high across study years, with evidence of gradual growth over time. This sustained representation suggests that African students not only access the LLB ECP, but also persist through to later years, reflecting improved academic integration and support. The stability of this trend underscores the extended programme's capacity to deliver on long-term redress and retain students from historically marginalised communities through to graduation.

### 5.19.7 Proportion of students classified as black: First-time entering newcomers

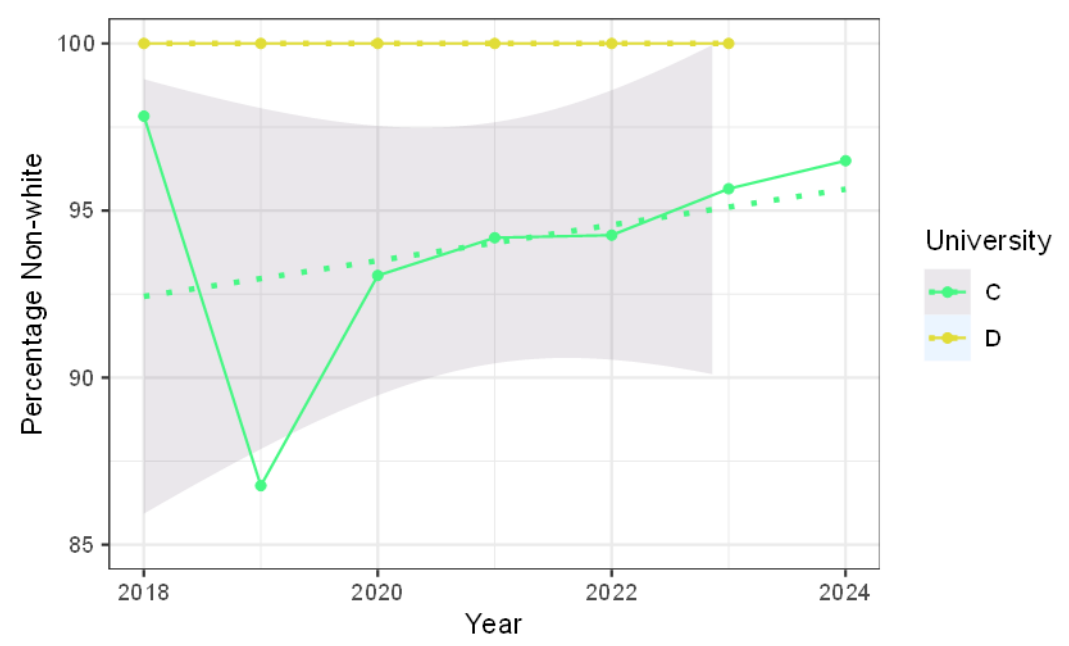


**Figure 5.7: Proportion of students classified as black: First-time entering newcomers**

The proportion of black students in the FTEN cohort shows a noticeable upward trend over the study period. This rise demonstrates the success of the LLB ECP in attracting a more demographically representative intake, in line with the post-apartheid goals of inclusive access to HE. The increasing diversity in the first-year cohorts signifies the broadening of opportunity and the reduction of racial barriers to entry in legal education.

### 5.19.8 Proportion of students classified as black: All years

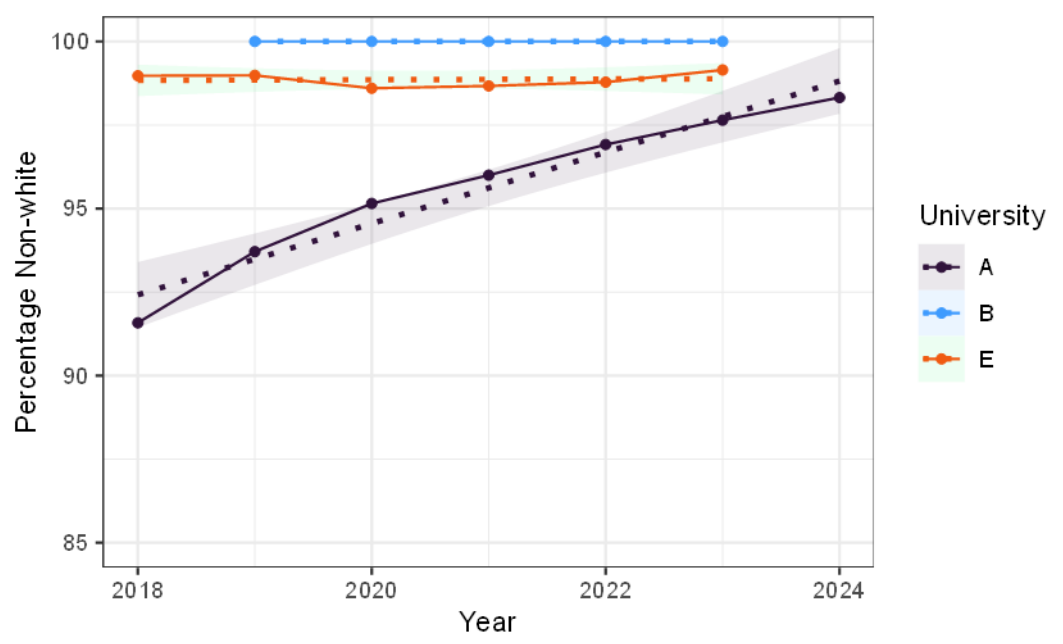


**Figure 5.8: Proportion of students classified Black: All years**

The trend in the proportion of black students remains consistently high across study years, with a gradual increase, suggesting that LLB ECPs are maintaining and even strengthening their inclusive profile as students move through the programme. The stability in the trend reflects successful progression and retention of students from diverse racial backgrounds, indicating that the programme is functioning as a sustainable mechanism for equity and transformation in the HE system.

## 5.20 DISCUSSION OF THE DEMOGRAPHIC DATA AND HEADCOUNTS

The demographic data and headcounts enabled an assessment of the effectiveness of the LLB ECP in promoting social justice by evaluating whether it meets its aims of broadening access, fostering redress and advancing equity. From 2018 to 2024, the gender composition of students consistently reflected a female majority. As shown in the figure on female participation in the FTEN cohort, women made up over 60 per cent of enrolments across most years, peaking at nearly 74 per cent in 2023. This trend demonstrates that LLB ECPs are broadening access for women in a field where they have historically been underrepresented, aligning with the broader social justice

aim of creating equitable opportunities in HE. At the same time, the comparatively lower and, at times, declining male enrolments raise questions of equity, as the principle of social justice requires inclusion of all gender groups, not just those historically marginalised.

The racial composition of students provides even stronger evidence of redress. Across the full seven-year period, African students formed the clear majority in the LLB ECPs, with the data indicating stable and sustainable representation even as conditions shifted from face-to-face learning (2018–2019) to fully online learning during Covid-19 (2020–2021) and back to face-to-face (2022–2024). The fact that enrolment remained consistently high among African students across all three phases indicates that the LLB ECP is not only opening the door to HE, but also actively correcting historical exclusions entrenched under apartheid. When aggregated into the broader “black” category, the data is even more striking, confirming that extended programmes function as vehicles of redress by redistributing opportunity towards groups that were disadvantaged in the past.

Judging by the headcounts and proportions, the demographic data shows that LLB ECPs go beyond facilitating physical access. They also reveal a commitment to epistemological access, since universities continued to admit underprepared students, even during the pandemic, when online learning posed additional challenges. This continuity underscores that the LLB ECP is not a short-term access mechanism, but a long-term social justice intervention, ensuring that students with lower admission scores are still afforded meaningful access opportunities to study law.

Considering the aim of this thesis, the demographic findings from 2018 to 2024 confirm that the LLB ECPs contribute directly to the realisation of access, redress and equity in HE. The strong representation of African students offers evidence of redress, as it demonstrates the tangible correction of historical racial exclusion and the intentional creation of pathways for those previously marginalised in legal education. The sustained female majority highlights progress in access, reflecting how the LLB ECPs have lowered structural barriers to entry for women and diversified the composition of the legal education sector. However, it also points to potential areas of concern with regard to equity, as equitable participation requires entry-level inclusion as well as academic, financial and other support for *all* students to succeed and graduate at

comparable rates. The resilience of admissions during the pandemic illustrates institutional commitment to the continuity of these social justice goals, revealing how even under adverse conditions, universities upheld the principles of access and redress through adaptive admission.

Overall, the figures and demographic data provide clear, data-driven evidence that the LLB ECP is fulfilling its mandate as an instrument of social justice in South African HE.

## 5.21 DISCUSSION OF THE ADMISSION REQUIREMENTS FOR THE EXTENDED LLB PROGRAMME

**Table 5.2: Admission requirements**

| University | Admission requirements for the LLB ECP                                                                                                                                                                                                                  | Changes to the admission requirements for the LLB ECP since inception                                                                                    | Admission requirements for the mainstream LLB programme                                                                                                                        |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A          | AP score of 30–32. Those with an AP score of 33 or higher who do not meet other entry requirements are admitted to the mainstream. Must have 50 per cent or more for English Home Language or English Additional Language. No mathematical requirement. | Prior to 2021, the AP score requirement for admission to the LLB ECP was 28. The threshold for both the mainstream programme and the LLB ECP was raised. | LLB: AP score of at least 33 points, with a minimum performance mark of 70 per cent (performance level 6) in English Home Language or English First Additional Language, and a |

|   |                                                                                           |      |                                                                                                                                                                                                                                                                                      |
|---|-------------------------------------------------------------------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                                                                           |      | <p>minimum performance mark of 70 per cent (performance level 6) in Mathematical Literacy or a minimum performance mark of 50 per cent (performance level 4) in Mathematics.</p>                                                                                                     |
| B | <p>Implemented the extended LLB programme in 2019 only. AP score for admission is 28.</p> | None | <p>BA in Law: AP score of 28, and 60 per cent in Home Language or 60 per cent in First Additional Language;<br/> BCom in Law: AP score of 30, and 50 per cent in Mathematics and 60 per cent in Home Language or First Additional Language.<br/> LLB: AP score of 30, and 60 per</p> |



|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |      |                                                                                                                                                                                                    |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |      | cent in Home Language or First Additional Language.                                                                                                                                                |
| C | Work on applicant score (AS). If an applicant has NSC Grade 12 Mathematics, they must have an AS of 370. If the applicant has NSC Mathematical Literacy or Technical Mathematics, they must have an AS of 385. Additionally, they must have at least 60 per cent for English Home Language or 65 per cent for English First Additional Language. NSC rating of at least 45 per cent for Mathematics or 70 per cent for Mathematical Literacy or Technical Mathematics. | None | LLB: A minimum AS of 390, and 65 per cent in English Home Language or 70 per cent in First Additional Language, and at least 50 per cent for Mathematics or 70 per cent for Mathematical Literacy. |
| D | AP score of 26, and performance level 5 (minimum 60 per cent) in English Additional Language, or performance level 4 (minimum 50 per cent) in English Home Language.                                                                                                                                                                                                                                                                                                   | None | LLB: AP score of 30, and a minimum of 50 per cent for English Home Language.                                                                                                                       |

|   |                                                                                                                                                                        |                                                                                                          |                                                                                                                                                                                                        |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E | AP score of 37, and above 50 per cent in English (Home and Additional Language), above 40 per cent in Mathematics, and 60 per cent and above in Mathematical Literacy. | Prior to 2020, the AP score requirement was 32, but the specific subject requirements remained the same. | LLB: AP score of 37, and 50 per cent in English (Home and Additional Language).<br>BCom in Law: AP score of 30, with 50 per cent in English.<br>BA in Law: AP score of 37, and 50 per cent in English. |
| F | No information obtained                                                                                                                                                | No information obtained                                                                                  | No information obtained                                                                                                                                                                                |

Although the admission requirements for the LLB ECPs vary significantly across universities, a consistent pattern emerges, namely that most thresholds are deliberately set lower than for the mainstream LLB programme to broaden access to students from disadvantaged educational backgrounds. This aligns with one of the primary aims of the LLB ECP, namely to create opportunities for underprepared students who would otherwise be excluded from HE. For example, University A currently requires an AP score of 30–32 for entry into the LLB ECP, compared to 33 and above for the mainstream programme. University B requires an AP score of 28 for the LLB ECP, and 30 for the mainstream LLB. University C requires an AS of 370 for admission to the LLB ECP, and 390 for the mainstream LLB. University D has the lowest admission criteria, requiring an AP score of 26 for admission to the LLB ECP, and 30 for admission to the mainstream LLB, acknowledging the importance of admitting students who may not meet the mainstream criteria, but show potential to succeed if they receive additional support. University E's AP requirement for admission is 37 for both the extended and mainstream LLB programmes, although additional mathematical requirements apply to ECP students.

The historical changes in admission thresholds further demonstrate institutional efforts to balance access with academic standards. At University A, the AP score for admission to the LLB ECP was raised from 28 to 30–32 in 2021, reflecting an attempt to ensure that students admitted to the programme have a reasonable academic foundation. Likewise, University E increased its AP score requirements from 32 to 37 in 2020, suggesting a move towards tightening entry criteria in the interest of programme effectiveness. These shifts indicate that while institutions are committed to broadening access, they also remain aware of the risks associated with admitting students whose scores are too low to ensure success, even with extended support.

The application of different selection criteria further highlights the tension between access and effectiveness. For example, University C uses an AS system instead of the AP score, considering subjects such as Mathematics, Technical Mathematics and Mathematical Literacy in addition to English proficiency. This system suggests that not only overall performance, but also subject-specific preparation plays a role in student success. By contrast, other universities emphasise lowering the overall AP requirement without adjusting subject-specific requirements, potentially admitting students who may lack the foundational skills needed to thrive in law studies.

Collectively, universities' admission requirements reflect the central tension in LLB ECPs between lowering admission requirements to open the door for disadvantaged and underprepared students, and excessively low requirements, which may undermine the ECP's effectiveness by admitting students without sufficient academic grounding. Analysing these differences provides critical insight into how universities balance the imperative of access and redress with the practical need for equity in outcomes. The data highlights the importance of monitoring not only the number of students who gain access, but also how admission requirements affect the social justice mandate of the LLB ECP. The imperative of access is reflected in the flexible entry requirements that enable students from underresourced schooling backgrounds to enter HE and pursue law degrees. This approach gives practical effect to the constitutional vision of broadening participation in legal education. The imperative of redress requires that these lower requirements be accompanied by intentional academic and developmental support to ensure that historical educational deprivation does not translate into ongoing academic exclusion. The imperative of equity emerges in the balancing of inclusion and capability by ensuring that admission

practices promote fairness at the point of entry as well as in the potential for success. When admission standards are matched with targeted academic support, the principle of equity is fulfilled by enabling diverse students to achieve comparable outcomes. Viewed in this way, the admission policies of the LLB ECPs are not merely administrative gatekeeping tools, but mechanisms through which social justice is negotiated, balanced and realised in South African HE.

## 5.22 DISCUSSION OF THE EXTENDED PROGRAMME MODEL USED BY UNIVERSITIES

**Table 5.3: Type of extended programme model used**

| University | Type of extended programme model                                                                                                                                                                                 |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A          | Model 2: The mainstream/regular first-year curriculum is taken over two years, incorporating substantial foundation provision in both years.                                                                     |
| B          | Model 2: The mainstream/regular first-year curriculum is taken over two years, incorporating substantial foundation provision in both years.                                                                     |
| C          | Model 4: Using “augmented modules”. Like models 2 and 3, model 4 spreads the content of the mainstream first-year curriculum over two years, but incorporates a combination of augmented and mainstream modules. |
| D          | Model 1: Extended curriculum that incorporates a “fully foundational year”. A full year of foundation modules is followed by the mainstream curriculum.                                                          |
| E          | Model 2: The mainstream/regular first-year curriculum is taken over two years, incorporating substantial foundation provision in both years.                                                                     |
| F          | No response received.                                                                                                                                                                                            |

Knowing the model in use at the different universities enables both a descriptive comparison and an evaluative analysis of how these models contribute to the social

justice imperatives of access, redress and equity, as articulated in the theoretical framework.<sup>1105</sup>

Most universities apply model 2, with models 1 and 4 also in the mix. Each has distinct implications for supporting underprepared students. Model 2, implemented by University A, B and E, extends the mainstream first-year curriculum over two years, while integrating substantial foundation provision throughout this period. From a social justice perspective, this model aligns closely with equity of success, as it recognises that underprepared students require both additional time and sustained academic scaffolding to engage meaningfully with the epistemological demands of legal education. By embedding foundational support alongside mainstream content, model 2 reduces the risk of students experiencing developmental provision as remedial or marginal, thereby potentially mitigating stigma and promoting a greater sense of belonging. Model 2 also reflects a substantive approach to redress, deliberately restructuring the curriculum to address historical inequalities in schooling without excluding students from engagement with core disciplinary knowledge.

However, model 2 is not without trade-offs. Its effectiveness depends heavily on institutional capacity, including staff expertise, curriculum coordination and adequate resourcing. Where such capacity is limited, there is a risk that foundation components could become fragmented or insufficiently integrated, thereby weakening the model's potential to deliver equitable outcomes.

University C's adoption of model 4, which utilises augmented modules, reflects a different balance of social justice considerations. Augmented modules provide additional contact time and foundational integration, while maintaining parity with mainstream modules in terms of content and duration. This model aligns strongly with the mainstream cohort, which may enhance inclusion and reduce perceptions of segregation.

At the same time, model 4 has significant resource implications, including increased staff workload and higher notional learning hours. These demands raise questions about sustainability, particularly at institutions facing financial or staffing constraints. While the model may be pedagogically robust, its reliance on additional institutional

---

<sup>1105</sup> See chapter 2.

capacity may make it less viable in some contexts. Therefore, the social justice potential of model 4 is closely tied to the availability of stable funding and institutional commitment.

University D's use of model 1, which incorporates a fully foundational year prior to engagement with the mainstream curriculum, represents the most intensive form of redress of all the models identified. By dedicating an entire year to foundational development, this model directly addresses deep-rooted epistemic and skills-based gaps, thereby enhancing epistemological access for students with very low entry scores. For such students, model 1 may offer the most effective opportunity to acquire the academic literacies necessary for success in legal education.

However, model 1 also presents notable equity-related risks. Delayed entry into the mainstream curriculum may inadvertently reinforce perceptions of deficit or marginalisation, particularly if foundation programmes are spatially or symbolically separated from mainstream cohorts. An extended duration of study may also intensify financial and psychological pressure on students, potentially undermining the very equity outcomes the model seeks to promote. The effectiveness of model 1, therefore, depends on careful programme design, institutional communication, and mechanisms to foster inclusion and belonging.

Overall, the analysis of the programme models implemented at the various universities suggests that no single model offers a universally optimal solution for advancing social justice in LLB ECPs. Model 2 appears to offer the most balanced alignment with access, redress and equity in contexts where sustained curriculum integration and support are feasible. Model 4 provides a strong equity-oriented approach, where institutional capacity enables augmented provision, while model 1 may be most appropriate in contexts where students' levels of underpreparedness necessitate intensive foundational intervention.

The variation in models across institutions underscores that social justice in legal education is not achieved through uniform programme design, but through context-sensitive institutional choices. These findings reinforce the argument that LLB ECPs should be evaluated not only on their formal structure, but on how effectively they balance access with meaningful participation and sustainable success under specific institutional conditions.

Examining these extended programme models provides evidence of how universities practically implement the principles of access, redress and equity. By structuring the programme so as to meet the needs of students admitted with lower admission scores, universities are not only broadening access to HE, but also actively engaging to correct historical educational disadvantage and create equitable opportunities for student success. The imperative of access is embodied in the intentional design of alternative academic routes that remove the structural and procedural barriers that have traditionally excluded students from disadvantaged schooling contexts. Through extended study timeframes, differentiated admission requirements and foundation years, universities operationalise access in a way that offers entry into legal education for more students. The imperative of redress is realised through the inclusion of developmental modules, mentorship and targeted academic support that respond directly to the legacy of unequal schooling. These features are not punitive, but restorative, seeking to correct systemic injustices that limit students' preparedness for university studies. Finally, equity is reflected in the various LLB ECPs' commitment to ensuring that once students have gained access, they receive the necessary support to perform on an equal footing with their peers in the mainstream programme. Ultimately, these models demonstrate that the LLB ECPs serve as a crucial vehicle for advancing social justice in HE.

### **5.23 DISCUSSION OF THE SUPPORT PROVIDED SPECIFICALLY FOR STUDENTS IN THE EXTENDED LLB PROGRAMME**

**Table 5.4: Support provided specifically for students in the extended LLB programme**

| <b>University</b> | <b>Support provided specifically for students in the extended LLB programme</b>                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A                 | Developmental modules are offered exclusively to the LLB ECP students, such as Legal Skills, Mathematical Skills, Introduction to Law, and English Academic Literacy for Law. |

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B | LLB ECP students are offered additional support in the form of extra classes. For example, they would attend two lectures alongside their mainstream peers, but would also have two compulsory classes that cover the same content already covered in the two mainstream lectures.                                                                                                                                                                                                                                                                                                                                                             |
| C | LLB ECP students are compelled to attend weekly tutorials for each of the augmented modules.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| D | Supplemental instruction and tutorials, as well as mentorship by senior students.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| E | Class sizes are significantly smaller. LLB ECP students have increased contact hours with their lecturers: The same course offered at the mainstream level is also available in the ECP, but with double the contact hours. The curriculum is extended to ease students into learning outcomes. Students receive more practicals or tutorials, facilitated by the lecturer, to ensure that they have more opportunities to develop and receive support where they fall short. This occurs over the first two years of study. Foundational support is provided through the Centre for Student Success, the IT Unit, and the university library. |
| F | No response received.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

The data on whether the universities offering LLB ECPs provide additional support to underprepared students shows the extent to which the institutions acknowledge that access to HE requires more than physical entry. The findings confirm that all universities offering LLB ECPs have implemented support structures tailored specifically to LLB ECP students, although the form and intensity of the support vary.

At University A, support is embedded directly into the curriculum through dedicated developmental modules such as Legal Skills, Mathematical Skills, Introduction to Law and Academic Literacy for Law. These modules reflect a clear recognition that underprepared students often require foundational skills beyond standard legal training, thereby responding to their epistemological needs and enhancing equitable participation. University B adopts more of a reinforcement model, where the ECP students attend mainstream lectures, but are also given additional compulsory lectures



on the same content. This approach acknowledges that repetition and scaffolding are necessary for students admitted with lower entry scores to master complex content.

University C offers mandatory weekly tutorials for each augmented module, representing a structured and sustained form of academic support. Similarly, University D supplements formal teaching with tutorials, additional instruction and mentorship from senior students, representing a multi-layered approach that combines academic reinforcement with peer guidance. University E extends their support offering even further by ensuring smaller classes, doubling the contact hours for LLB ECP students compared to their mainstream peers, and offering additional practical or tutorials, facilitated by lecturers. Foundational support is also institutionalised through services offered by different university environments.

On the whole, these practices demonstrate that universities are not only providing physical access, but are actively working to ensure epistemological access for underprepared students. By tailoring support in areas such as language, academic literacy and study skills, and by adjusting teaching delivery through additional classes, smaller class sizes or increased contact hours, these programmes promote redress by addressing the disadvantage many students have suffered due to unequal schooling backgrounds. At the same time, the LLB ECPs enhance equity by ensuring that students who enter with lower admission scores are provided with the necessary tools and resources to engage meaningfully with the curriculum and succeed academically.

Considering the aim of this thesis, the data on the support structures confirms that LLB ECPs are implementing the concepts of access, redress and equity in practical and targeted ways. This is evident in the direct way in which the academic development initiatives, mentoring systems and foundation modules address historical educational disadvantage, thereby realising redress by equipping underprepared students with the skills needed to succeed in HE. The programmes also demonstrate access through flexible admission pathways and inclusive teaching practices that enable students who would otherwise have been excluded, to enter and participate meaningfully in HE. Furthermore, the continuous academic and additional support provided throughout the programmes promotes equity, ensuring that students with different levels of preparedness are given the resources and opportunities necessary to achieve

comparable academic outcomes. Collectively, these measures indicate that the LLB ECPs translate the social justice imperatives from policy into practice and advance transformation in South African HE. The various approaches adopted by the universities, ranging from dedicated modules to additional tutorials and mentorship, indicate that universities recognise the complexity of underpreparedness and are actively implementing measures to ensure that LLB ECP students are not only admitted, but are also supported to thrive.

## 5.24 DISCUSSION OF THE DISTRIBUTION OF FOUNDATION MODULES

**Table 5.5: Distribution of the foundation modules**

| University | Distribution of the foundation modules                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A          | Distributed over the first two years of study, but mainly in the first year.                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| B          | The modules are divided into non-law and law modules. Although they are the same modules, those in the LLB ECP have a different module code from those in the mainstream programme. The substantive content of the modules is the same. Where there is no separate code, students in the ECP attend the same lectures as their peers in the mainstream programme. The first academic year spans two years. The students in the ECP continue with the second year of the LLB curriculum and form part of the mainstream LLB. |
| C          | Mainstream first-year courses are taken over two years, but they include a combination of augmented and mainstream modules.                                                                                                                                                                                                                                                                                                                                                                                                 |
| D          | LLB ECP students take four modules that also form part of the mainstream LLB programme and are presented by the Faculty of Law. The remaining six modules are presented by other faculties as service modules. From their second year, ECP students only do the law module and are fully integrated into the mainstream.                                                                                                                                                                                                    |
| E          | In the first two years of study, the LLB ECP students take only ECP modules. In year three, they integrate fully with the mainstream students.                                                                                                                                                                                                                                                                                                                                                                              |

|   |                       |
|---|-----------------------|
| F | No response received. |
|---|-----------------------|

Analysing the data above helps determine whether the structure and distribution of foundation modules in the LLB ECPs provide adequate support for underprepared students. The findings reveal significant variation across universities in how these modules are distributed, reflecting different approaches to balancing access with the need for academic preparedness.

At University A, foundation modules are concentrated mainly in the first year, though some also extend into the second year of study. Some foundation modules are presented by other faculties. From their third year of study (second year in the mainstream programme), LLB ECP students are fully integrated into the mainstream programme. This approach ensures that students are given immediate support as they transition from high school to HE, addressing underpreparedness early on and enhancing access and equity.

By contrast, University B integrates extended modules into the first two years by using different module codes for the same mainstream content, which allows for tailored pacing without altering the substantive content. The first academic year is effectively spread over two years before the ECP students join the mainstream curriculum in their second year. This distribution reflects redress by providing students with additional time to master foundational concepts, while also integrating them into the mainstream curriculum early enough to promote equity.

University C follows a similar two-year model, but with a combination of mainstream and augmented modules. This distribution reflects an equity-driven approach, as it enables students to keep pace with some aspects of the mainstream curriculum, while still benefiting from extended support in the more challenging areas.

University D divides foundation provision across law and non-law modules, with service modules provided by other faculties, similar to University A. While this ensures a broad base of academic support in the early years, ECP students start engaging exclusively in law modules from the second year onwards, achieving full integration with the mainstream. This model addresses access and redress by initially broadening academic foundations, while also ensuring equity by aligning students with mainstream expectations.

University E takes the most intensive approach. LLB ECP students complete only the ECP foundation modules during the first two years before joining the mainstream in year three. This design reflects a strong redress orientation, recognising that underprepared students may require a longer period of adjustment. However, while this model provides substantial early support, it may raise equity concerns if students feel delayed or segregated from the mainstream.

The distribution of the foundation modules demonstrates that universities acknowledge the need to support underprepared students through structured module composition. By extending the first academic year across two years, embedding augmented modules or foundational support in the early stages of study, universities are implementing varied models that seek to promote access by lowering barriers to entry, addressing historical educational disadvantage, and providing the academic foundations necessary for success. This renders module distribution not merely an administrative choice, but also a deliberate effort to achieve social justice in HE. The variations between universities, such as the differences in the number of foundation modules, the integration of legal writing or academic literacy components, and the sequencing of substantive law modules, illustrate how institutions contextualise their support to meet the specific needs of their student populations. Some universities place greater emphasis on skills-based modules in the first year to strengthen language proficiency and critical thinking skills, while others adopt discipline-integrated augmentation where foundational content runs parallel to mainstream modules. These approaches reflect an understanding that access alone is insufficient without structured learning pathways that build academic confidence and competence. Also, the allocation of extended time for completion recognises the principle of differentiated equity, acknowledging that equal treatment does not yield equal outcomes when students enter with unequal levels of educational preparation. Therefore, the design and distribution of the foundation modules represent an intentional pedagogical and structural intervention aimed at realising access, redress and equity in the context of legal education.

## 5.25 DISCUSSION OF HOW THE LLB EXTENDED CURRICULUM PROGRAMME ADDRESSES THE SOCIAL JUSTICE IMPERATIVES OF ACCESS, REDRESS AND EQUITY

**Table 5.6: Ways in which the LLB extended curriculum programme addresses the social justice imperatives of access, redress and equity**

| University | How the ECP addresses the social justice concepts of a) access, b) redress, and c) equity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A          | <p>a) Access: The LLB ECP allows students to access legal education.</p> <p>b) Both the access measures above and the equity measures below lead to redress of past injustices.</p> <p>c) Equity: The programme promotes equity by providing an extended timeframe and additional academic support. Therefore, a levelling of the playing field enables students to develop the necessary skills to succeed in the law degree. Equity necessitates support that is tailored to individual needs.</p>                                                                                                                                                                                                                                                                                                                          |
| B          | <p>a) Access: The LLB ECP enables students with lower AP scores to enter legal education. The ECP provides foundational support to help students achieve their goals. The programme not only provides physical access, but also epistemological access through the foundation modules that are built into the ECP to enable students to compete at the same level as their peers in the mainstream LLB programme.</p> <p>b) Redress: University B claims to provide a redress platform for all students (both mainstream and ECP) by offering them the same opportunities, without any form of differentiation.<sup>1106</sup> As a result, there is a lower dropout rate among ECP students. In fact, ECP students are the top performers at various stages. The extended programme strives to achieve social justice by</p> |

<sup>1106</sup> This statement by University B cannot be correct, since LLB ECPs are the epitome of differentiated teaching.

|   |                                                                                                                                                                                                                                                                                                                                            |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <p>serving as a stepping stone for those who may have been forgotten or not given the opportunity otherwise.</p> <p>c) Equity: The LLB ECP takes into consideration that not all students who aspire to be lawyers can be admitted to the mainstream programme. The ECP accommodates such students.</p>                                    |
| C | The university's admission policy provides for the recruitment of students from quintile 1, 2 and 3 schools. These students' Life Orientation mark is included when calculating the applicant's admission score. Usually, Life Orientation is excluded. This enables students from very poor and rural areas to access tertiary education. |
| D | The LLB ECP affords access to legal education to candidates who ordinarily would not qualify to study LLB in the mainstream programme due to the AP score requirements. It grants access and redress by empowering such students, and offers them an opportunity to be heard through access to study law.                                  |
| E | The LLB ECP enhances access through flexible entry, and enacts redress by prioritising the inclusion and success of those who have been historically marginalised. The ECP promotes equity by providing the necessary extra support to students in the programme.                                                                          |
| F | No response received.                                                                                                                                                                                                                                                                                                                      |

The universities' responses show that the LLB ECPs are intentionally designed to advance the social justice imperatives of access, redress and equity. In terms of access, all universities emphasise that the ECP lowers traditional entry barriers by admitting students with lower AP scores or alternative admission routes. For example, one institution explicitly recruits students from quintile 1 to 3 schools and includes Life Orientation marks in the admission calculation. This broadens access for students from rural and disadvantaged backgrounds. Another university highlights that ECPs provide not only physical access, but also epistemological access, as students are supported through foundation or developmental modules to succeed at the same level as their mainstream peers. When one considers this, along with the headcounts, which

demonstrate sustained annual enrolments of underprepared students, it becomes clear that the LLB ECPs are central to broadening participation in legal education.

With regard to redress, the LLB ECPs aim to correct historical exclusion by creating pathways for students who would have been denied access under the apartheid-era education structures or current mainstream requirements. Redress is enacted through curriculum structures that extend study duration and support to counterbalance the effects of educational inequality. More than one university explicitly framed their ECPs as a “stepping stone” for students who might otherwise have been left behind. This indicates that the programmes serve as a mechanism to correct and avoid a recurrence of past injustices. The racial headcount data further supports this interpretation, showing that most LLB ECP students are black Africans, confirming that the programmes are directly serving those who were most affected by historical disadvantage.

Regarding equity, the LLB ECPs focus on providing differentiated academic support to level the playing field for students admitted with lower admission scores. This includes extending the study timeframe, offering additional tutorials, and embedding skills-based modules such as language, literacy and academic development. A number of universities highlighted that equity requires more than just admission; students must also be provided with the necessary tools to succeed. This aligns with earlier findings on module composition and student support, which indicate that universities deliberately structure their programmes to provide underprepared students with greater opportunities to engage meaningfully with the curriculum. Equity is also reflected in student outcomes: One university reported that ECP students often perform at the same or a higher level than their mainstream peers, suggesting that with adequate support, equity of outcomes is achievable.

The LLB ECPs are actively implementing access, redress and equity through their admission policies, foundational support and targeted academic structures. While the models and emphasis differ, with some universities prioritising intensive foundational years, while others favour integrated augmented modules, all universities demonstrate a commitment to the broader social justice mandate of HE. By including students who are underprepared and disadvantaged, equipping them with the necessary academic

skills, and addressing past injustices, the LLB ECPs serve as a practical tool to achieve social justice in HE.

The analysis in this section has relied substantially on the respective programme directors' accounts of how their LLB ECPs address the social justice imperatives of access, redress and equity. While these perspectives provide valuable insight into programme intentions, design rationales and institutional priorities, an exclusive reliance on self-reporting does introduce important limitations. Programme directors occupy positions that are both managerial and advocacy-oriented, and therefore, their accounts may emphasise policy alignment, compliance and aspirational objectives rather than the complexities and constraints of implementation.

A critical gap that emerges from the reliance on self-reporting is the potential divergence between stated intentions and lived institutional practice. While programmes may be described as advancing redress through foundational support, mentoring and curriculum differentiation, the realisation of these objectives is often mediated by structural constraints such as staffing shortages, limited funding, high student–staff ratios, and competing institutional demands. As a result, well-designed interventions may be unevenly implemented, inconsistently experienced or insufficiently resourced to achieve their intended impact.

Experience has shown that, in some instances, programmes formally claim to promote equity of success, but the broader institutional environment continues to privilege mainstream pedagogical norms and assessment practices. For example, foundation or developmental modules may coexist with assessment practices that remain rigid, content-heavy and not responsive enough to differentiated learning trajectories. In such contexts, the presence of support mechanisms does not necessarily translate into substantive equity, as students are still required to meet standards and timelines that may not fully accommodate their developmental needs.

Variation in institutional commitment and capacity also plays a significant role in programme effectiveness. While some institutions demonstrate a strong normative commitment to social justice, supported by sustained investment and leadership support, others offer ECPs primarily in response to external policy or funding incentives. In the latter case, programmes may function as compliance-driven interventions rather than integrated components of institutional transformation. This



can result in ECPs that exist in the margins of faculty life, with limited impact on mainstream curriculum reform or teaching culture.

Structural constraints further complicate the realisation of social justice objectives. The LLB ECPs often depend heavily on government funding streams, which are subject to uncertainty and fluctuations. This dependency can limit long-term planning, staff continuity and curriculum development. Even where coordinators express a strong commitment to access, redress and equity, financial precarity may restrict the scope and sustainability of support interventions. Such constraints highlight the distinction between institutional intent and institutional capacity – a distinction that is not always fully captured in coordinators' narratives.

Importantly, however, this critique should not be interpreted as a challenge to the programme coordinators' sincerity or professionalism. Rather, it reflects an acknowledgement of the structural and systemic conditions within which LLB ECPs operate. The reliance on self-reporting tends to foreground what the programmes aim to do, while obscuring the tensions, compromises and unintended consequences that arise in practice. Therefore, without triangulation through student perspectives or longitudinal outcomes data, claims regarding the effectiveness of programmes in advancing access, redress and equity must be interpreted with caution.

This reinforces the need to view the LLB ECPs not as standalone solutions to educational inequality, but as institutionally embedded interventions whose success depends on broader structural alignment. Addressing social justice in legal education requires not only programme-level innovation, but sustained institutional commitment, adequate resourcing and ongoing critical evaluation. Therefore, recognising the limits of self-reported data strengthens rather than undermines the analytical integrity of this thesis.

## **5.26 DISCUSSION OF THE ADDITIONAL SUPPORT PROVIDED EXCLUSIVELY TO STUDENTS IN THE EXTENDED LLB PROGRAMME DURING COVID-19 (2020–2021)**

**Table 5.7: Additional support provided exclusively to students in the extended LLB programme during Covid-19 (2020–2021)**

| University | Additional support provided to students in the extended LLB programme during Covid-19 (2020–2021)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A          | No support was offered exclusively to students in the LLB ECP. Audio recordings and online lectures were provided to all students, including students in the ECP programme. As a result of the pandemic, the decision was made to purchase textbooks in the foundation modules for students. Therefore, from 2022 to 2024, they received their textbooks free of charge.                                                                                                                                                                                                                                                                                                                                             |
| B          | Recorded classes, tutorials, online consultations and network data were provided.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| C          | The faculty made provision for different learning pathways to accommodate students. Additionally, students were granted several assessment opportunities to successfully complete their modules. The faculty also adopted a data-lite approach. Academics drafted detailed notes in MS Word that dealt with the prescribed study material to assist students without textbooks and access to learning materials. Tutorials were offered online, and links to recordings were made available to all students to access afterwards. On the learning management system platform, various self-assessment activities were provided for students to access, to determine whether they understand the prescribed material. |
| D          | Students were provided with laptops to ensure that no one was “unduly” <sup>1107</sup> left behind. The faculty also provided intense training on the use of digital platforms for teaching and learning as well as assessments. Students were enabled to establish education network groups on platforms such as WhatsApp and were also trained in the effective use of Blackboard as a tool for blended learning.                                                                                                                                                                                                                                                                                                  |
| E          | No additional support provided.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| F          | No response received.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

<sup>1107</sup> This was the respondent’s word choice, and what was meant by “unduly” was not clarified.

From the responses, the universities seem to have followed varied approaches to support the LLB ECP students during Covid-19, with some institutions providing extensive interventions, while others offered limited or no additional assistance. This variation is significant for evaluating how effectively the social justice imperatives of access, redress and equity were addressed during the pandemic, which was a period of unprecedented global disruption.

At one end of the spectrum, some universities (A, B, C and D) introduced comprehensive measures that acknowledged the heightened vulnerability of underprepared students. University A and B provided recorded lectures, tutorials, online consultations and network data, ensuring that students could maintain access to teaching despite connectivity issues. University C adopted a multi-layered approach by offering different learning pathways, granting multiple assessment opportunities, providing detailed MS Word study notes to compensate for the lack of textbooks, and ensuring that online tutorials and recordings were accessible. These measures reflect a strong commitment to epistemological access, recognising that underprepared students require flexible, low-data and scaffolded learning opportunities. University D supplied laptops, conducted intensive digital training, and facilitated peer support groups on WhatsApp. This addressed both technological and pedagogical barriers, promoting equity by ensuring that students had the means to participate meaningfully in online learning.

University A and E provided no additional support specifically targeted at LLB ECP students. University A reported that, although no extended programme exclusive measures were implemented, the university purchased textbooks for their foundation modules and distributed them free of charge from 2022 onwards.

It is possible that the lack of ECP-specific measures was not the result of neglect or a lack of prioritising social justice, but rather a reflection of the fact that all students, regardless of their programme, required additional support during the pandemic. Therefore, university resources and interventions may have been directed broadly rather than exclusively towards LLB ECP students.

Where additional measures were introduced, maintaining them could only serve to strengthen redress and equity by ensuring that underprepared students are

consistently provided with the resources and scaffolding they require to succeed in HE. While the pandemic undoubtedly disrupted learning for all students, evidence suggests that treating all students alike during this period did not necessarily amount to fairness when viewed through a social justice lens. LLB ECP students had already entered HE with pre-existing structural disadvantage, including limited digital literacy, constrained access to technology, weaker academic preparedness and greater socioeconomic vulnerability. In this context, equal treatment during the pandemic, i.e. following a uniform institutional response in respect of all students, risked entrenching rather than alleviating inequality. Substantive equality, which lies at the heart of the social justice framework developed in chapter 2, requires differential and responsive support measures that take account of student's unequal starting positions, particularly during periods of crisis that amplify existing disadvantage. From this perspective, the targeted interventions adopted by University A, B, C and D ought not to be understood as preferential treatment, but as necessary mechanisms of redress aimed at ensuring epistemological access and equitable participation in emergency remote learning. Measures such as low-data resources, recorded lectures, scaffolded assessments, extended assessment opportunities and the provision of devices respond directly to the heightened vulnerability of underprepared students and reflect an institutional recognition that access to online teaching does not automatically translate into access to learning. By contrast, institutions that adopted a universalist approach, with no ECP-specific measures, implicitly relied on the formal conception of equality, which may be ill-suited to crisis conditions in deeply unequal educational contexts such as South Africa.

At the same time, it is important to acknowledge the institutional constraints under which universities operated during the pandemic, including financial pressures and the scale of student needs across programmes. However, the experiences reflected in the data suggest that where LLB ECP students were not explicitly prioritised, their distinctive needs risked disappearing in the broader institutional response. This may have implications for equity of success, as the absence of targeted support may have disproportionately affected retention, progression and completion outcomes for underprepared students.

Therefore, the pandemic served as a critical stress test for institutions' commitment to social justice in legal education. It has shown that LLB ECP students should, in

principle, receive additional and differentiated support during periods of disruption, precisely because their vulnerability is structurally produced rather than situational. Maintaining and institutionalising some of the pandemic-era interventions beyond the crisis could strengthen redress and equity by embedding a more responsive and inclusive understanding of fairness – one that prioritises substantive equality over formal sameness in the ongoing design of LLB ECPs.

## **5.27 CONCLUSION**

This research adopted a descriptive multiple-case study approach to explore whether the LLB ECPs at South African universities embed the social justice concepts of access, redress and equity to improve the academic performance of students at risk due to their educational background. By investigating how universities design and implement these programmes, the study examined whether they provide the academic foundations necessary for students to succeed in legal education. The case study approach was particularly valuable, as it allowed for an in-depth analysis of the application of the social justice imperatives in real-life institutional contexts.

Data was collected through a questionnaire distributed to the South African universities that offer the LLB ECP, along with institutional records of student enrolments and demographics. This ensured both qualitative and quantitative insights, providing a comprehensive understanding of the research problem. This triangulated methodology, combining questionnaire responses with institutional data, enhanced the reliability, validity and depth of the findings. Ethical requirements were carefully adhered to through pilot testing of the questionnaire, securing informed consent and gatekeeper's approvals, and ensuring data confidentiality. Delays in receiving institutional data and approvals were the primary limitations encountered, but these were mitigated through persistent follow-up. Although ethical clearance was obtained to obtain all six universities' data, only five universities ultimately provided the data.

The findings show that the LLB ECPs are fulfilling their mandate of broadening access by requiring lower AP scores and offering alternative entry routes. Headcounts and demographic data confirm that most students admitted are African females, demonstrating that the programmes are directly addressing historical disadvantage and gender imbalances. At the same time, the analysis revealed that lowering

admission scores too far may risk undermining the programmes' effectiveness, raising important considerations for how universities balance access with the likelihood of success.

The models and structures of the LLB ECPs also show clear attempts to promote equity. Most universities favour a two-year foundation model, while others use fully foundational or augmented approaches. However, all provide additional academic support through modules, tutorials or smaller class sizes. During Covid-19, some universities offered additional support to LLB ECP students by supplying laptops, data and flexible learning options, while others provided little to no targeted assistance.

Overall, the data confirms that the LLB ECP remains central to HE transformation in South Africa. They provide access to students excluded by mainstream entry requirements, contribute to redress by prioritising historically disadvantaged groups, and advance equity by embedding support structures into the programme and curriculum. To sustain and strengthen their impact, these programmes require ongoing institutional commitment, careful balancing of admission requirements, and continued development of support structures that ensure that underprepared students are not only admitted, but also succeed.

## CHAPTER 6: CONCLUSION

This study set out to investigate how the LLB ECPs offered at South African universities address and promote the social justice principles of access, redress and equity. The research was motivated by the recognition that HE reforms since 1994, while succeeding in broadening physical access, have not necessarily secured equitable outcomes for students whose schooling and socioeconomic contexts left them underprepared for university studies.<sup>1108</sup> The challenges faced by students from disadvantaged backgrounds are well documented, with many students who are underprepared to meet the rigorous requirements of tertiary studies. Granting access without ensuring the conditions for academic success renders such access superficial.<sup>1109</sup> Therefore, this thesis aimed to evaluate whether the LLB ECP, conceptualised as a mechanism of transformation, provides a realistic pathway to both equitable access and equitable success.<sup>1110</sup>

This thesis is grounded in a socio-legal framework, considering that HE structures, curricula and policies are not neutral, but are both shaped by and shaping the broader legal, political and social realities. By analysing the LLB ECP through this lens, the thesis positions legal education as a key area where the constitutional commitment to transformation and social justice is either realised or deferred. Thus, the LLB ECP, with its intention to redress historical disadvantage and create opportunity for students from underrepresented backgrounds and underresourced schooling backgrounds,<sup>1111</sup> becomes the empirical and conceptual focus point for exploring how ideals of access, redress and equity are translated into educational practice.

The main research problem, as articulated in chapter 1,<sup>1112</sup> is the persistent gap between the idea of inclusion and the lived reality of unequal student outcomes in South African legal education. While the policies of the DHET and CHE emphasise broadening access and supporting success, limited research has been done on how these goals materialise in LLB ECPs. In response to this problem, this thesis asked the following question: How do LLB ECPs at South African universities embed the

---

<sup>1108</sup> See par. 2.3.1.

<sup>1109</sup> See par. 1.5.

<sup>1110</sup> See par. 2.5.

<sup>1111</sup> See par. 2.5.2.

<sup>1112</sup> See par. 1.1.

social justice imperatives of access, redress and equity, and give effect to these imperatives in practice, in supporting underprepared students and promoting both equity of access and equity of success? Secondary questions that guided the analysis were as follows:

- a) What do the social justice imperatives of access, redress and equity entail in the context of higher education, with a focus on the application of these concepts in the support offered to students in LLB ECPs?
- b) How did apartheid and its legacy create the need for broadening access to higher education and for redress and equity through the introduction of extended programmes?
- c) How are the social justice imperatives of access, redress and equity addressed in other higher education systems internationally, and what lessons does South Africa stand to learn from this?
- d) What strategies and practices are employed by South African universities offering an LLB ECP to realise the social justice imperatives of access, redress and equity?
- e) To what extent do LLB ECPs provide at-risk students with the necessary academic foundation and support to successfully complete their studies within the prescribed timeframe?

Each subsequent chapter of the thesis responded to these interrelated questions, culminating in a holistic picture of the LLB ECP as a socio-legal intervention. The literature and policy review<sup>1113</sup> traced the conceptual evolution of access, redress and equity in South African HE, locating these principles in the constitutional commitment to equality.<sup>1114</sup> It indicated that access must extend beyond admission figures to encompass the conditions that enable participation and completion. Likewise, redress implies more than compensatory measures, but requires the active dismantling of structural barriers that perpetuate disadvantage. Equity, in turn, demands that students with unequal starting points receive differentiated support to achieve

---

<sup>1113</sup> See chapter 2.

<sup>1114</sup> *Constitution*:sec. 9, 29.



comparable outcomes. Together, these principles constitute the normative framework within which the LLB ECP must be assessed.

The study further recognised that the historical context<sup>1115</sup> of apartheid and post-apartheid educational transformation is crucial for understanding why ECPs exist.<sup>1116</sup> The racially segregated university system entrenched profound inequality in school preparation, language proficiency and socioeconomic opportunities.<sup>1117</sup> Even after 1994, the residual effects of apartheid education have continued to shape student cohorts, producing generational patterns of underpreparedness.<sup>1118</sup> The LLB ECP was conceived as a policy response within the broader transformation agenda, as a mechanism to reconcile the constitutional imperative of inclusion with the academic imperative of maintaining standards. Whether it succeeds in doing so depends on the balance it strikes between broadening participation and sustaining quality.

To situate South Africa's efforts within a broader global discourse, the thesis incorporated an international perspective<sup>1119</sup> of both developed and developing countries that have dealt with broadening-participation initiatives. These comparisons illustrated that while the equity challenge is universal, its manifestations and solutions are context-specific. These different experiences provide valuable insights to South Africa, but also underscore the need to adapt strategies to local socio-historical realities.

The research employed a mixed-methods approach, combining analysis of existing literature, doctrines and policies with a descriptive multiple-case study of the LLB ECP at six South African universities, namely UFS, UWC, NMU, NWU, UL and UFH.<sup>1120</sup> Institutional data on enrolments, demographics, admission criteria, curriculum structure and support mechanisms between 2018 and 2024 was analysed to determine whether the LLB ECPs effectively address access, redress and equity. Data from before, during and after the Covid-19 pandemic was included. By integrating these theoretical, historical, comparative and empirical strands, the thesis contributes to an underresearched area of the South African HE sphere. Very few studies have

---

<sup>1115</sup> See chapter 3.

<sup>1116</sup> See par. 3.5 and 5.4.

<sup>1117</sup> See par. 2.3.1.

<sup>1118</sup> See par. 3.5.

<sup>1119</sup> See chapter 4.

<sup>1120</sup> See chapter 5. Requests for data were sent to all six universities, but only five responded.

examined LLB ECPs specifically, despite their potential to serve as instruments of social justice. Therefore, the research fills a significant knowledge gap, providing evidence-based insights that could inform meaningful university decision-making regarding equity in legal education. It also responds to the call by the CHE and other stakeholders for rigorous evaluation of foundation and extended programmes to ensure that they genuinely promote transformation rather than reproduce stratification.

This chapter brings together these strands to demonstrate how the study, through its socio-legal lens, illuminates both the achievements and limitations of the LLB ECP as a transformative mechanism. It re-engages with the central research question posed at the beginning, namely whether the promise of access, redress and equity is being fulfilled through the LLB ECP, or whether it is an aspirational ideal yet to be realised? The following sections synthesise the conceptual analysis of the social justice imperatives, the historical narrative of apartheid and post-apartheid education, the lessons drawn from international jurisdictions, and the findings on the LLB ECPs offered in South Africa. In doing so, this chapter demonstrates how these elements collectively advance the understanding of what socially just legal education entails in a transforming society.

An important contribution of this theoretical discussion is the reaffirmation of education as both a constitutional and a moral right.<sup>1121</sup> Section 29(1)(b) of the *Constitution* compels the state to make further education progressively available and accessible. LLB ECPs represent one such measure through which the state and its institutions attempt to fulfil the constitutional promise of equitable access. However, this thesis argues that constitutional compliance alone does not guarantee social justice.<sup>1122</sup> The realisation of section 29 depends on the interaction between rights, resources and institutional will. Without sufficient funding, trained academic staff and supportive learning environments, the right to education remains aspirational. Therefore, the theoretical lens of social justice complements legal doctrine by revealing the lived, material conditions necessary for rights to have meaning.

This thesis challenges the assumption that differentiated admission standards compromise academic quality by adopting a capabilities perspective.<sup>1123</sup> This

---

<sup>1121</sup> See par. 2.3.2.

<sup>1122</sup> See par. 2.3.2.

<sup>1123</sup> See par. 2.6.1.

perspective holds that fairness is not achieved by treating unequal circumstances as if they were equal, but by enabling all students to develop the capabilities necessary to perform to their full potential. Merit, therefore, must be understood contextually as achievement relative to opportunity, rather than as a neutral measure for ability. The LLB ECP embodies this philosophical shift. It does not lower standards, but adjusts learning pace, sequencing and pedagogy to ensure that all capable students have a fair opportunity to meet the standards. This alignment between merit and justice is at the core of transformative HE.

In this way, the thesis contributes to Fraser's conceptual model of social justice<sup>1124</sup> in HE as an interactive cycle that encompasses the three dimensions of the recognition of past wrongs and ongoing disadvantage, the redistribution of resources and opportunities to address disadvantage, and representation by ensuring that marginalised voices participate in shaping educational structures.

At the heart of the study lies the conviction that HE is not merely a site of knowledge transmission, but a moral and constitutional space through which societies pursue justice, equality and human flourishing. The *Constitution* envisions education as a means to achieve substantive equity and promote human dignity.<sup>1125</sup> Working from this premise, the inquiry in this thesis is framed around the three interrelated social justice imperatives of access, redress and equity. These concepts, while often used interchangeably in policies, have been deliberately distinguished here to clarify their individual and collective significance in achieving transformation in HE, particularly in the LLB ECP context.

Social justice in HE, as theorised in this thesis,<sup>1126</sup> refers to the creation of educational structures, opportunities and outcomes that dismantle historical patterns of exclusion and ensure that all students, regardless of their background, have a genuine capability to succeed. It entails more than formal equity, in that it involves redistributive, recognitive and participatory dimensions. Drawing on Sen's capability approach and Walker's interpretation of the capability approach in the South African context, the thesis argues that social justice requires not only removing barriers to entry, but also expanding the real freedoms that enable learners to achieve valued educational

---

<sup>1124</sup> See par. 2.2.2.

<sup>1125</sup> *Constitution*:sec. 9, 29.

<sup>1126</sup> See par. 2.2.

outcomes.<sup>1127</sup> This distinction between physical access and epistemological access underpins the theoretical argument throughout the study.<sup>1128</sup>

Legal education represents a particularly important area for this research, as it shapes future custodians of the constitutional democracy. The transformation of law faculties has implications far beyond the pedagogy. It touches the legitimacy of the legal profession and the justice system itself. A socially just legal education system, therefore, must be measured not only by the number of students it admits, but also by whether it cultivates the intellectual and ethical capabilities necessary to serve a diverse society.

Physical access has been one of the most visible achievements of post-apartheid HE reform in South Africa. The expansion of enrolments across universities, particularly among black men and women, represents a major success of the democratic era.<sup>1129</sup> As this research has shown, however, access without success risks becoming a hollow achievement. The concept of equity of access and equity of outcomes,<sup>1130</sup> as adopted by the DHET and CHE, articulates the dual requirement of not only admitting a diverse student body, but also ensuring that those students are enabled to complete their studies successfully.

LLB ECPs were implemented precisely to operationalise this understanding of access. By offering an additional year of study and embedding foundational support in the curriculum, these programmes seek to bridge the transition from underresourced schooling to demanding HE environments.<sup>1131</sup> As this thesis has shown,<sup>1132</sup> true access includes both physical and epistemological access, which depends on the quality of teaching, the relevance of the curriculum, and the inclusivity of the institutional culture. The tension between maintaining academic standards and broadening participation remains a defining challenge of South African HE.

Redress addresses the historical and structural injustices of apartheid that systemically excluded the majority of South Africans from quality education. In the post-1994 era, redress became a constitutional and policy imperative aimed at

---

<sup>1127</sup> See par. 2.6.1.

<sup>1128</sup> See par. 2.5.1.

<sup>1129</sup> See par. 2.5.

<sup>1130</sup> See par. 1.14 and 1.18.

<sup>1131</sup> See par. 2.3.1.

<sup>1132</sup> See par. 2.5.3.

correcting these imbalances.<sup>1133</sup> In HE, redress entails both material and epistemic transformation, which is the redistribution of resources to historically disadvantaged institutions and students. In the context of the LLB ECP, redress operates through admission policies that consider contextual disadvantage, as well as through the provision of additional academic support that intends to level the playing field for students. Funding, or the lack thereof, is another issue of redress.<sup>1134</sup> However, the findings of this thesis revealed that redress in this form remains partial. While structural adjustments have improved representation, and students are no longer physically excluded, the persistence of language barriers, socioeconomic hardship and uneven institutional support indicates that formal redress mechanisms do not always translate into equitable student experiences. True redress requires an ongoing commitment to structural change rather than sporadic interventions.

Equity represents one of the most complex of the social justice imperatives, as it encompasses both fairness in opportunity and fairness in outcome.<sup>1135</sup> While equality denotes a sameness of treatment, equity recognises the difference and allocates support accordingly. The NPHE and subsequent DHET policies define equity as ensuring that demographic diversity is reflected in not only enrolments, but also graduations and academic achievement. In the LLB ECP framework, equity is pursued through differentiated support, including smaller class sizes, mentoring, language development and contextualised pedagogy. The national comparative analysis in this thesis has demonstrated various successes in achieving equity across institutions.<sup>1136</sup> Ultimately, therefore, universities that offer the LLB ECP should not see the provision of support as charity, but as a means to achieve social justice.

The findings of this thesis indicate that while participating universities express a commitment to access, redress and equity, their interpretations of these principles vary.<sup>1137</sup> This divergence emphasises that social justice in HE is not a fixed endpoint, but a dynamic process of negotiation between the competing values of excellence, efficiency, inclusion and transformation. The Covid-19 years (2020–2021) also exposed the fragility of equity gains. Remote learning exacerbated socioeconomic

---

<sup>1133</sup> See par. 2.4.1.

<sup>1134</sup> See par. 2.4.1.2.

<sup>1135</sup> See par. 2.6.

<sup>1136</sup> See chapter 5.

<sup>1137</sup> See par. 5.24.

disparities, with students from rural and poor backgrounds facing connectivity and resource challenges.<sup>1138</sup> These experiences illustrate that the structural inequality that remains deeply rooted in South Africa's social fabric continues to shape educational outcomes despite progressive policy intentions. Therefore, the theoretical framework of this thesis has provided a lens to understand why well-designed programmes may still struggle to deliver equitable results.

The history of South African HE is inextricably linked to the exclusionary ideologies of apartheid. Understanding the LLB ECP and its role in advancing social justice requires a return to this historical foundation to comprehend the legacies that have shaped the present. This thesis has demonstrated that the inequalities addressed through extended programmes are not accidental or temporary, but are the product of decades of deliberate policy, structural neglect and social engineering that fractured access to HE along racial lines.<sup>1139</sup>

Under apartheid, education was weaponised as an instrument of segregation. The *Bantu Education Act*<sup>1140</sup> institutionalised racial hierarchies in schooling, ensuring that black South Africans received an inferior education designed to limit their socioeconomic mobility.<sup>1141</sup> The HE system mirrored this stratification. Universities were racially designated, with historically white institutions that were well-funded, autonomous and academically rigorous, while historically black universities and Bantustan institutions that were underresourced, tightly controlled, and restricted in scope.<sup>1142</sup>

The democratic transition in 1994 marked the advent of a constitutional dispensation. The new dispensation identified education as both a right and a tool for transformation. Foundational policy frameworks included White Paper 3, the NCHE's report and the *Higher Education Act*, which collectively envisioned a unified, equitable and inclusive HE system.<sup>1143</sup> These policies emphasised the principles of access, redress and equity by placing transformation at the centre of educational reform.<sup>1144</sup>

---

<sup>1138</sup> See par. 5.25.

<sup>1139</sup> See par. 3.1.

<sup>1140</sup> 47 of 1953.

<sup>1141</sup> See par. 3.3.

<sup>1142</sup> See par. 3.3.

<sup>1143</sup> See par. 3.4.1.

<sup>1144</sup> See par. 3.4.2.

This thesis has shown that the dismantling of institutional apartheid did not automatically erase educational inequality.<sup>1145</sup> The inherited system was characterised by deep institutional division, with historically white universities having a culture of excellence, and historically black universities struggling with inadequate infrastructure, limited funding and fragile academic capacity.<sup>1146</sup> The apartheid HE system equated excellence with exclusivity, which was a measure of privilege and not of merit. Therefore, the challenge of transformation is not only to broaden access, but also to restructure institutional cultures, redistribute resources and redefine the epistemological foundations of HE. In light of this, the CHE and DHET developed policies to broaden access through extended and foundation programmes.<sup>1147</sup> These initiatives aimed to support students from disadvantaged backgrounds by offering them an additional year of study that integrates academic support with the mainstream curriculum.<sup>1148</sup>

From the historical overview of HE from apartheid into democracy, it is evident that the LLB ECP is more than an academic innovation. It is a structural response to years of exclusion. However, while a deliberate intervention to counteract historical exclusion, the LLB ECP is up against a deep and enduring legacy. The social and economic disparities that determine academic preparedness did not vanish after 1994. They persist to this day in poor schooling quality, unequal access to resources, language barriers, and the intergenerational transmission of disadvantage.<sup>1149</sup> The legacy of apartheid continues to shape who enters HE, how they experience it, and whether they succeed. The success of transformation and reform, therefore, cannot be measured solely by the number of policies produced, but importantly also by the extent to which these have dismantled inherited hierarchies and built a system grounded in dignity, inclusion and opportunity. This thesis has demonstrated that while LLB ECPs embody the values of access, redress and equity, their effectiveness depends on the depth of institutional commitment and the adequacy of resources.<sup>1150</sup>

---

<sup>1145</sup> See par. 2.2.2 and 3.4.2.

<sup>1146</sup> See par. 3.4.

<sup>1147</sup> See par. 5.4.

<sup>1148</sup> See par. 5.4.

<sup>1149</sup> See par. 2.3.1.

<sup>1150</sup> See par. 3.7.1.

Having examined the national and historical narrative, it was also essential to situate it within the international context. For this reason, the thesis examined how other jurisdictions had addressed similar questions of access, redress and equity in order to establish potential lessons that South Africa could apply in its own pursuit of socially just legal education.

Globally, the pursuit of social justice in HE reflects a shared recognition that education is both a human right and a driver of socioeconomic patterns. Yet, while many countries embrace the principles of access, redress and equity, their implementation varies depending on historical legacies, resource capacities and developmental status. The comparison between developed and developing countries has demonstrated that while their goals are similar, their pathways to achieving those goals differ significantly.<sup>1151</sup> These global contrasts illustrated valuable lessons for South Africa's LLB ECP, which operates at the intersection of redress and the pressures of massified HE.

The struggle for equity and inclusion in HE is not confined to South Africa. Across the globe, universities have had to confront questions of fairness, redress and opportunity, reconciling the tension between merit and equality.<sup>1152</sup> Across jurisdictions, the concepts of access, redress and equity have been interpreted through differing historical and social lenses. Internationally, access has evolved from a quantitative focus on enrolment expansion to a qualitative concern with success and completion.<sup>1153</sup> Early widening-participation policies in countries such as the UK and the US prioritised numerical growth, but over time, research demonstrated that access without success reproduced inequality.<sup>1154</sup> Today, access encompasses affordability, preparedness, belonging and institutional responsiveness, making it a multidimensional construct rather than a simple measure of entry. The global understanding of redress, in turn, goes beyond mere compensation for past exclusion to include creating the conditions that prevent future inequality.<sup>1155</sup> In the Global North, redress often focuses on social class, gender and ethnicity, whereas in the Global South, it addresses the enduring consequences of racial hierarchies. There is a shared

---

<sup>1151</sup> See chapter 4.

<sup>1152</sup> See par. 4.1.

<sup>1153</sup> See par. 4.2.

<sup>1154</sup> See par. 4.4.1.1.

<sup>1155</sup> See par. 4.2.



understanding that redress demands proactive intervention.<sup>1156</sup> Finally, equity represents a mature phase in global discussions on social justice. It recognises diversity as a strength, and argues that fairness requires differentiation. Internationally, this shift from equality of opportunity to equality of outcomes marks a profound transformation in HE.<sup>1157</sup> It calls for structural reform that acknowledges the social context of students, which is exactly what the LLB ECP aims to achieve by aligning support and curriculum design with the realities of students' backgrounds.

International instruments such as the UN Declaration of Human Rights, the World Bank's policies and the SDGs recognise that HE is a public good and a human right. The SDGs commit all member states to ensure inclusive and equitable quality education and promote lifelong learning, as well as equal access for all women and men to affordable and quality HE.<sup>1158</sup> This global target resonates with South Africa's constitutional promise of equality and the DHET's vision of expanding access through differentiated pathways such as the LLB ECP.<sup>1159</sup> Other policy frameworks by UNESCO have reaffirmed the necessity of inclusivity, innovation and global cooperation in HE.<sup>1160</sup> Similarly, the World Bank's education strategy and its 2024 assessment of HE emphasised that expanding equitable access is essential for sustainable economic growth. These international instruments provide a normative scaffolding for national transformation policies. They position HE as a means to advance human dignity, social cohesion and democratic participation, which are the same objectives that the LLB ECP seeks to achieve.

A study of how these global commitments are translated into practice, however, reveals stark contrasts between developed countries (the UK, the US and Australia) and developing countries (Brazil, Kenya and Tanzania). Developed countries, while generally free from the structural scarcities that plague developing countries, continue to grapple with persistent inequities of class, culture and representation. Their experiences reveal that even amid abundance, exclusion can be reproduced through institutional culture and subtle hierarchies.<sup>1161</sup>

---

<sup>1156</sup> See par. 4.2.

<sup>1157</sup> See par. 2.3.1 and 4.2.

<sup>1158</sup> See par. 4.3.1.

<sup>1159</sup> See par. 2.5.

<sup>1160</sup> See par. 4.3.2.

<sup>1161</sup> See par. 4.4.1.1 and 4.4.1.2

The UK, which has long been a global benchmark for increasing participation in HE, developed a comprehensive policy framework requiring universities to produce access and participation plans. These plans link institutional funding to demonstrable progress in inclusion and student success.<sup>1162</sup> The UK's model demonstrates a key lesson for South Africa, namely that transformation must be institutionalised through accountability, and not left to goodwill. Every university is compelled to monitor participation, retention and success, especially among underrepresented groups, thereby embedding social justice within governance.

The US's long history with affirmative action policies provides another instructive example.<sup>1163</sup> Programmes designed to enhance racial and socioeconomic diversity have significantly broadened access to elite universities, yet racial and class disparities in graduation rates and professional representation persist.<sup>1164</sup> The US analysis offers the lesson that access must be supported by academic and social integration. Affirmative admission without mentorship, funding and academic support risks producing exclusion within the institution. This is directly relevant to the LLB ECP, where a tailored, scaffolded curriculum has to be provided to underprepared students. The US analysis also warns against the dangers that arise when transformation becomes politically contested, which serves as a reminder that equity gains must be institutionally secured rather than ideologically dependent.<sup>1165</sup>

Australia offers one of the most coherent national approaches to equity in HE. Their policies identify specific equity groups and allocate targeted funding to their participation and success.<sup>1166</sup> Australia's model provides the policy lesson that equity must be data-driven and financially embedded. By requiring universities to report progress and linking funding to measurable outcomes, the Australian system ensures that inclusivity is sustained, even amid changes in leadership and policy.<sup>1167</sup> South Africa could adapt this principle through a national ECP framework that standardises data collection, assessment and funding across universities. At the same time, Australia faces challenges that echo South Africa's own, specifically the persistence

---

<sup>1162</sup> See par. 4.4.1.1.

<sup>1163</sup> See par. 4.4.1.2.

<sup>1164</sup> See par. 4.4.1.2.

<sup>1165</sup> See par. 4.4.1.2.

<sup>1166</sup> See par. 4.4.1.3.

<sup>1167</sup> See par. 4.4.1.3.

of rural disadvantaged and indigenous underrepresentation, despite decades of intervention.<sup>1168</sup> These shared struggles reiterate the fact that equity requires more than just enrolment; it requires a transformation of institutional culture and pedagogy.

The developing countries selected as comparative jurisdictions in this study face conditions similar to those in South Africa, which include systemic inequality, underfunded institutions, and competing demands for access and quality. Their experiences illuminate both the obstacles and possibilities inherent in building equitable systems amid constraints.<sup>1169</sup> These parallels show that, even in resource-limited circumstances, transformation can succeed if driven by institutional will, social commitment and innovation.

Brazil represents redistributive justice in action through their Prouni and quota law of 2012.<sup>1170</sup> These measures reserve 50 per cent of public university seats for students from public schools and marginalised racial groups, explicitly linking redress to both class and race. This dual focus has increased participation among disadvantaged groups and reshaped the demographic profile of Brazilian universities.<sup>1171</sup> South Africa can draw the following lessons from Brazil. First, policy coherence matters. Brazil's success lies in embedding affirmative action in national law rather than relying on institutional discretion. Secondly, complementary investment in student support is essential. Brazil's initial gains were undermined by high dropout rates due to insufficient academic and psychosocial support – a problem similar to that in the South African context.<sup>1172</sup> Both South Africa and Brazil struggle with the quantity–quality balance, i.e. expanding access without diluting academic standards. The Brazilian experience underscores that transformation must integrate equity with excellence through sustained curriculum innovation and faculty development.

Kenya's post-independence expansion of HE sought to democratise opportunity through affirmative admission policies and regional quota systems.<sup>1173</sup> These measures diversified student demographics and promoted national cohesion. However, rapid expansion outpaced resource growth, resulting in overcrowded

---

<sup>1168</sup> See par. 4.4.1.3.

<sup>1169</sup> See par. 4.4.2.

<sup>1170</sup> See par. 4.4.2.1.

<sup>1171</sup> See par. 4.4.2.1.

<sup>1172</sup> See par. 2.5.3.

<sup>1173</sup> See par. 4.4.2.2.

classrooms, limited facilities and declining academic quality. The Kenyan case mirrors South Africa's challenge of massification without sufficient resources. Both contexts reveal that inclusion cannot be sustained without proportional investment in teaching capacity and infrastructure. Kenya's experience also shows that equity policies must remain dynamic and continue to adapt to demographic and economic change.<sup>1174</sup> South Africa can learn from Kenya's mistakes by institutionalising long-term funding for ECPs and aligning transformation with quality assurance mechanisms. Moreover, Kenya's efforts to integrate gender equity into all tertiary policies highlight the importance of inclusion.

Tanzania's early educational philosophy positioned learning as a means to achieve equality and social solidarity.<sup>1175</sup> In its early decades, this ideology gave rise to a strongly egalitarian system characterised by free tertiary education and extensive rural outreach. However, subsequent economic liberalisation and cost-sharing reforms have reversed many of the gains and created new inequalities based on wealth and geography.<sup>1176</sup> South Africa shares Tanzania's moral vision, viewing education as a collective good and a democratic duty, but both systems face the risk of neoliberal drift, where financial pressures erode public education ideals. The Tanzanian experience serves as a warning to South Africa that transformation must be shielded from the constraints of financial logic. Access and redress cannot be treated as discretionary or financially expendable goals. Furthermore, Tanzania's early integration of civic and community engagement into the curriculum offers a model for the LLB ECP.<sup>1177</sup> Embedding social justice values through community service-learning and community-based education can connect legal education more directly with the lived realities of inequality.

Across both developed and developing contexts, the message is clear: Social justice in HE requires both structure and spirit. Policies must institutionalise equity, but transformation must also be lived in classrooms, curricula and community engagements. The LLB ECP embodies the next generation, where there is an ongoing negotiation between access and excellence, redress and merit, inclusion and identity. By learning from the successes and setbacks of other countries, South Africa can

---

<sup>1174</sup> See par. 4.4.2.2.

<sup>1175</sup> See par. 4.4.2.3.

<sup>1176</sup> See par. 4.4.2.3.

<sup>1177</sup> See par. 4.4.2.3.

continue to refine its approach, ensuring that LLB ECPs become more than compensatory mechanisms and serve as true engines of social transformation. These international lessons serve as a vital reminder that the pursuit of social justice in HE remains an unfinished project that demands both vision and vigilance.

The development of ECPs in South Africa is deeply rooted in the country's broader struggle for equity and transformation in education. It began as an instrument of redress, but evolved from small remedial initiatives into a nationally recognised mechanism designed to address the enduring effects of apartheid's unequal schooling system and promote access with success in HE.<sup>1178</sup> Early initiatives, including ASPs and ADPs, appeared in the 1980s at historically white universities to assist black students who entered university with significant academic and linguistic disadvantage.<sup>1179</sup> While these programmes provided much-needed support, they were non-credit-bearing, externally funded, and positioned in the margins of institutional structures.<sup>1180</sup> Their remedial orientation often reinforced deficit perceptions of black students rather than transforming the system that produced inequality.

By the early 1990s, the discourse began to shift from student remediation to institutional transformation. Academic development came to encompass staff training, curriculum reform and inclusive pedagogy, reflecting the broader political transition towards democracy.<sup>1181</sup> White Paper 3 and the NPHE formalised this shift by emphasising that broadened participation must be matched by strategies ensuring student success.<sup>1182</sup> The state identified ECPs as a critical means of achieving both access and equity of outcomes rather than merely expanding enrolments.

In the 2000s, the DHET institutionalised ECPs in its funding framework, with the programmes extending the standard degree by one year to include foundation and developmental modules that build academic literacy, critical thinking and disciplinary competence.<sup>1183</sup> Unlike their predecessors, ECPs are credit-bearing and integrated into the mainstream curriculum. This helps reduce stigma and promote

---

<sup>1178</sup> See par. 5.1.

<sup>1179</sup> See par. 5.3.

<sup>1180</sup> See par. 5.3.

<sup>1181</sup> See par. 5.3.

<sup>1182</sup> See par. 5.3.

<sup>1183</sup> See par. 5.4.

epistemological access. The design of the programmes acknowledges that access without support perpetuates inequality, and that universities must adapt to the educational realities of diverse student populations. The policy rationale behind ECPs rests on the constitutional imperatives of access, redress and equity. The DHET and CHE describe ECPs as transformative mechanisms that expand participation and improve throughput among historically disadvantaged groups.<sup>1184</sup> They embody the state's recognition that social justice in HE requires differentiated support, not uniform treatment. In essence, they operationalise substantive equality, which is a commitment to fairness that accounts for unequal starting points.

The LLB ECP stands as a significant manifestation of South Africa's post-apartheid transformation agenda. Conceived as a structural mechanism to bridge the gap between unequal schooling and the demands of legal education, it was designed to operationalise the principles of access, redress and equity.<sup>1185</sup> By broadening access to legal education and supporting student success, the ECP not only transforms individual lives, but also diversifies the legal profession and strengthens democratic participation.<sup>1186</sup> However, as this thesis's findings reveal, the extent to which this vision has been realised varies significantly across institutions. ECPs were introduced as part of a broader government initiative to promote access and success for underprepared students.<sup>1187</sup> At the policy level, ECPs embody the objectives of the DHET's NPHE and the CHE's quality enhancement project, which explicitly call for both equity of outcomes and access. In law faculties, this has translated into the design of a five-year LLB programme, incorporating foundation modules and tailored support structures.<sup>1188</sup>

This research reveals that LLB ECPs play an important role in South Africa's attempt to reconcile HE transformation with the enduring inequalities of the country's schooling system. Empirical data was gathered from five of the six South African universities that offer the LLB ECP.<sup>1189</sup> While at all these institutions, the programmes were conceived as a mechanism of redress, their implementation and outcomes demonstrate a

---

<sup>1184</sup> See par. 5.4.

<sup>1185</sup> See par. 5.1.

<sup>1186</sup> See par. 5.6.

<sup>1187</sup> See par. 5.4.

<sup>1188</sup> See par. 5.4.

<sup>1189</sup> See par. 1.3.

complex interplay between structural intention, institutional culture and practical realities.<sup>1190</sup> Overall, however, the evidence indicates that the LLB ECPs have made measurable progress in promoting access, redress and equity.<sup>1191</sup>

Access is the most visible achievement of the LLB ECPs. By admitting students who would otherwise have been excluded, these programmes have expanded the demographic profile of South African law faculties, contributing directly to the diversification of the legal profession.<sup>1192</sup> Admission criteria typically include NSC results below the threshold for the mainstream LLB programme, as well as consideration of socioeconomic background and language proficiency.<sup>1193</sup> The analysis in this thesis makes it clear that access must be understood as both entry and success.<sup>1194</sup> While opening the doors is important, the real measure of transformation lies in whether students are able to persist and graduate.

Redress lies at the heart of the LLB ECP's purpose. Historically, access to legal education was stratified along racial and socioeconomic lines, with black students systematically excluded or underprepared due to the inferior quality of schooling.<sup>1195</sup> The LLB ECPs seek to counteract this legacy by providing an alternative route into the legal profession for students who demonstrate potential, but do not meet the mainstream entry requirements.<sup>1196</sup> Across all institutions, LLB ECP cohorts were composed predominantly of black African female students.<sup>1197</sup> This demographic trend reaffirms the programme's role as a redress mechanism, targeting those who have been historically excluded from legal education.

The notion of equity goes beyond opening up opportunities; it also includes the fair distribution of resources, recognition and outcomes. The findings in this thesis reveal that ECPs operationalise equity through different programme models and tailored support.<sup>1198</sup> The slower curriculum pace, contextualised content and integrated skills development create conditions for equitable learning rather than identical treatment. It

---

<sup>1190</sup> See par. 5.17.

<sup>1191</sup> See par. 5.17.

<sup>1192</sup> See par. 5.17.

<sup>1193</sup> See par. 5.20.

<sup>1194</sup> See par. 5.20.

<sup>1195</sup> See par. 5.4.

<sup>1196</sup> See par. 5.6.

<sup>1197</sup> See par. 5.18.

<sup>1198</sup> See par. 5.21 and 5.22.

is essential to recognise that a recurring theme in transformation is the tension between equity and excellence. Some might perceive ECPs as lowering academic standards, while others might argue that they uphold excellence by enabling genuine capability development. Another thread to equity is systemic inequities, specifically the funding model, which provides earmarked grants for foundation provision. This funding remains precarious and vulnerable to shifting policy priorities. Equity also entails addressing non-academic barriers, such as financial hardship, social isolation and digital divides. While HE institutions on their own are often unable to fully address these barriers, the LLB ECPs must remain multidimensional, taking into account these challenges that students face.

The ECP model used varies across the institutions, although most programmes incorporate a foundational year focusing on academic literacy, language development, critical thinking and legal reasoning.<sup>1199</sup> The model chosen by the different institutions is contextualised for the specific university. Incorporating foundation modules into the mainstream LLB fosters confidence and continuity, allowing students to transition smoothly to the mainstream programme.<sup>1200</sup>

The findings of this thesis show that support such as mentoring, tutoring, psychological counselling and financial aid is available to LLB ECP students across universities.<sup>1201</sup> This clearly indicates that universities recognise the complexity of underpreparedness; they are actively implementing measures to ensure that ECP students are supported to achieve success in the programme, and structure their modules so as to support the students.<sup>1202</sup> The Covid-19 pandemic exposed certain vulnerabilities in HE. The shift to remote learning amplified digital inequities, and students who lacked electronic devices, data and stable internet connections struggled disproportionately. Some universities provided targeted support to LLB ECP students; others did not provide targeted support, but rather supported the entire student cohort. Ongoing support strengthens equity and redress, ensuring epistemological access, even in unprecedented circumstances.

---

<sup>1199</sup> See par. 5.21.

<sup>1200</sup> See par. 5.21.

<sup>1201</sup> See par. 5.22.

<sup>1202</sup> See par. 5.22 and 5.23



The impact of the LLB ECP extends beyond student outcomes. It challenges the very identity of legal education in South Africa. With the social justice imperatives of access, redress and equity embedded in its structure, the ECP redefines what it means to train future lawyers in transforming society.

The findings in this thesis indicate that transformation cannot be confined to admissions or curriculum reform. It must permeate institutional values and pedagogical approaches. Graduates of LLB ECPs, once supported and empowered, are uniquely positioned to embody the constitutional ideals of equality and justice in their future legal practice. Their lived experiences bring critical empathy and social awareness to the profession, which are essential qualities for a just and representative legal system. The LLB ECP represents an important step towards democratising legal education. It embodies the constitutional imperative of transformation not as a static policy, but as a living practice that evolves with social and institutional realities. More than expanding access to existing structures, social justice requires the transformation of those structures. In equipping students from disadvantaged backgrounds to enter the legal profession, the LLB ECP helps diversify the structures of justice and governance in South Africa.<sup>1203</sup>

This thesis has examined LLB ECPs as institutional mechanisms for advancing social justice in South African legal education, with specific reference to the interrelated social justice imperatives of access, redress and equity. While the findings indicate that the LLB ECPs play an important role in broadening access to legal education, the extent to which they promote equitable outcomes is neither uniform nor guaranteed. Their effectiveness depends on institutional context, programme design, resourcing and sustained commitment.

This thesis, therefore, does not support an unqualified conclusion that LLB ECPs uniformly promote equity across institutions. Rather, the evidence points to significant institutional variation in how the social justice imperatives are interpreted, operationalised and realised in practice. Some programmes demonstrate strong alignment across all elements, including access-oriented admissions, curriculum differentiation and ongoing academic support; others appear to prioritise access

---

<sup>1203</sup> This might be achieved by other ECPs also, but this thesis focuses on LLB ECPs.

without fully addressing the structural conditions necessary for sustained student success.

Several tensions and trade-offs emerge from the analysis, which complicate any simplistic assessment of programme effectiveness. The first of these concerns the tension between broadening access and maintaining standards. LLB ECPs are often required to reconcile competing imperatives, responding to historical exclusion by admitting students with lower entry scores on the one hand, and maintaining the epistemic and professional standards associated with legal education on the other. The findings suggest that programmes that rely primarily on extended timeframes without substantial curriculum integration may struggle to balance these demands effectively.

A second tension relates to the challenge of providing differentiated academic support without reinforcing stigma. While ECPs are designed to offer targeted assistance to underprepared students, such differentiation can inadvertently label students as deficient or marginal, particularly where programmes are spatially or symbolically separated from the mainstream. Models that integrate foundational support with the mainstream curriculum appear better positioned to mitigate these risks, although such integration requires significant institutional capacity.

This thesis also highlights the dilemma of whether LLB ECPs function as transformative interventions or as compensatory pathways. In certain instances, ECPs appear to operate in the margins of faculty structures, with limited influence on mainstream pedagogy, assessment practices or institutional culture. In these contexts, programmes may succeed in compensating for student disadvantage, though without contributing to broader institutional transformation. This raises important questions about the extent to which social justice is understood as an institutional responsibility rather than a programme-specific obligation.

Finally, the sustainability of LLB ECPs emerges as a critical concern. Many programmes are heavily dependent on government funding, rendering them vulnerable to shifts in policy priorities and financial constraints. Even where strong normative commitment exists, uncertainty regarding long-term funding limits institutional capacity to plan, innovate and retain experienced staff. Therefore,

sustainability is a central yet often underacknowledged dimension of equity and success.

These findings suggest that although LLB ECPs should be understood as necessary mechanisms for advancing social justice in legal education, their capacity to deliver equitable outcomes depends on the extent to which they are embedded in supportive institutional structures, adequately resourced, and aligned with broader pedagogical transformation.

A further limitation of this study concerns the availability of longitudinal data on student outcomes. While this research engages with institutional accounts of progression and completion, the absence of systematic, long-term tracking data limits the strength of conclusions about the equity of success. Without longitudinal evidence that traces students' trajectories beyond initial access, such as completion rates, time to degree, postgraduate study, or professional entry, it is difficult to assess the sustained impact of LLB ECPs.

This limitation underscores the need for future research that follows longitudinal and mixed-methods approaches to evaluate programme effectiveness. Such research could provide more robust evidence on whether ECPs not only facilitate entry into legal education, but also support durable academic and professional success. Until such evidence is available, claims regarding equity of success should be interpreted as provisional and context-dependent rather than definitive.

Further research would also be beneficial to assess the cost-effectiveness of the LLB ECP, and to quantify the number of graduates that it delivers to the legal profession. Such an analysis would enable a clearer evaluation of the programme's measurable impact on advancing access, redress and equity.

The main research question of this thesis was how LLB ECPs at South African universities embed the social justice imperatives of access, redress and equity, and give effect to these imperatives in practice, in supporting underprepared students and promoting both equity of access and equity of success. Having examined the theoretical underpinnings of social justice, the historical trajectory of apartheid and post-apartheid transformation, international comparative experiences, as well as the empirical realities of LLB ECPs, the answer that emerges is that these programmes do promote both equity of access and equity of success. The progress of the

LLB ECPs is undeniable. Yet social justice is not a static end state, but a dynamic and contested process. Universities offering an LLB ECP need to continually negotiate between the aspiration and reality, policy and practice, and inclusion and exclusion. The LLB ECP reconfigures physical access, challenges epistemological access, and empowers students to transcend systemic disadvantage. The programme demonstrates that, with political will, pedagogical innovation and institutional commitment, HE can be a place of genuine redress.

This thesis contributes to South African HE by demonstrating that LLB ECPs, when grounded in the social justice principles of access, redress and equity, represent more than compensatory mechanisms. These programmes are instruments of epistemic, institutional and societal transformation. The thesis integrates theoretical reflection, policy analysis and empirical insights to demonstrate how access, redress and equity can be made practical in the context of legal education. It provides an original framework for understanding and advancing transformation in professional learning contexts. Beyond its immediate findings, the thesis provides a foundation for future scholarly inquiry and policy refinement by highlighting the need for longitudinal studies on the academic and professional trajectories of LLB ECP graduates, comparative research across institutions, and the development of national guidelines to ensure sustainable foundation provision. In doing so, the thesis positions LLB ECPs as a critical policy lever for achieving equity of outcomes and deep transformation in the South African HE sphere.

The LLB ECP stands as a testament to the transformative power of HE. It bridges history and hope, proving that when institutions choose justice as their foundation, they educate not only lawyers, but agents of change. Universities not only change the lives of their students, but also advance the unfinished project of democracy itself.

## BIBLIOGRAPHY

AGOSTI CI & BERNAT E (eds.)

2018. *University Pathway Programs: Local Responses within a Growing Global Trend*. Cham: Springer International Publishing.

AKOOJEE S & NKOMO M

2007. Access and quality in South African higher education: the twin challenges of transformation. *South African Journal of Higher Education* 21(3):385-399.

2011. Widening equity and retaining efficiency: Considerations from the IBSA southern coalface. *International Journal of Educational Development* 31(2):118-125.

ALLEN WR

2005. A forward glance in a mirror: Diversity challenged – access, equity, and success in higher education. *Educational Researcher* 34(7):18-23.

AMUTUHAIRE T

2023. Improving access and equity in East African higher education through internationalization. *Forum for International Research in Education* 8(1):22-39.

ANDERSON J & BYRNE DN (eds.)

2004. *The unfinished agenda of Brown v. Board of Education*. Trade Paper Press.

ARISE OA

2022. *An exploration of different selection criteria of admission into higher learning: Case of Placements in Learner Support Programmes*. In T Mgutshini (ed.) 2022:49-64. Stellenbosch: African Sun Media.

ASTIN AW & ASTIN HS

2015. Achieving equity in higher education: The unfinished agenda. *Journal of College and Character* 16(2):65-74.

ASTIN AW & OSEGUERA L

2004. The declining “equity” of American higher education. *The Review of Higher Education* 27(3):321-341.

BADAT S

2009. Theorising institutional change: Post-1994 South African higher education. *Studies in Higher Education*. 34(4):455-467.

BALES S

2017. *Social Justice and Library Work: A Guide to Theory and Practice*. Chandos Publishing.

BARAK G

2015. *Social justice and social inequalities*. In JD Wright (ed.) 2015:392-396.

BARNES T

2006. Changing discourses and meanings of redress in South African higher education, 1994–2001. *Journal of Asian and African Studies* 41(1-2):149-170.

BASS GH

2011. Social and academic integration in an extended curriculum programme. *The Journal of Independent Teaching and Learning* 6(1):45-54.

BEALE MA

1998. *The evolution of the policy of university apartheid*. [https://sas-space.sas.ac.uk/4228/1/M A Beale -  
The evolution of the policy of university apartheid.pdf](https://sas-space.sas.ac.uk/4228/1/M_A_Beale_-_The_evolution_of_the_policy_of_university_apartheid.pdf) (accessed on 17 November 2025).

BECKMAN J

2008. Aspects of student equity and higher education in South Africa. *South African Journal of Higher Education* 22(4):773-788.

BIRRELL B, CALDERON A, DOBSON IR & SMITH TF

2000. Equity in access to higher education revisited. *People and Place* 8(1):50-61.

BITZER EM (ed.)

2009. *Higher Education in South Africa: A Scholarly Look Behind the Scenes*. Stellenbosch: Sun Media.

BITZER EM

2010. Some myths on equity and success in higher education. *South African Journal of Higher Education* 24(2):298-312.

BOLIVER V

2013. How fair is access to more prestigious UK universities? *The British Journal of Sociology* 64(2):344-364.

BOUGHEY C

2010. *Academic development for improved efficiency in the higher education and training system in South Africa*. [https://www.dbsa.org/sites/default/files/media/documents/2022-11/Academic%20Development%20for%20Improved%20Efficiency%20in%20the%20Higher%20Education%20-%202010\\_0.pdf](https://www.dbsa.org/sites/default/files/media/documents/2022-11/Academic%20Development%20for%20Improved%20Efficiency%20in%20the%20Higher%20Education%20-%202010_0.pdf) (accessed on 17 November 2025).

2011. Institutional difference: A neglected consideration in the scholarship of teaching and learning? *International Journal for the Scholarship of Teaching & Learning* 5(2):1-6.

2012. Social inclusion and exclusion in a changing higher education environment. *Multidisciplinary Journal of Educational Research* 2(2):133-151.

BOULTON G & LUCAS C

2008. *What are universities for?*  
[https://www.researchgate.net/publication/225511003\\_What\\_Are\\_Universities\\_For](https://www.researchgate.net/publication/225511003_What_Are_Universities_For) (accessed on 16 November 2024).

BOURDIEU P

2011. *The forms of capital* 1986. In I Szeman & T Kaposy (eds.) 2011:81-93.

BOURDIEU P & RICHARDSON JG (eds.)

1986. *Handbook of Theory and Research for the Sociology of Education*. New York: Greenwood.

BOZALEK V & BOUGHEY C

2012. (Mis)framing higher education in South Africa. *Social Policy & Administration* 46(6):688-703.

BRAGG DD, KIM E & BARNETT EA

2006. Creating access and success: Academic pathways reaching underserved students. *New Directions for Community Colleges* 2006(135):5-19.

BRAND D

2003. *Rights and democracy in a transformative constitution*. In H Botha, A van der Walt, H van der Walt & J van der Walt (eds.) 2003:33-56.

BRENNER E

2015. Increasing access to higher education: Reflections on a border crossing curriculum designed for an enrichment programme for talented high school learners. *South African Journal of Higher Education* 29(1):313-334.

BRICKHILL J & VAN LEEVE Y

2015. *Transformative constitutionalism – guiding light or empty slogan?* In M Bishop & A Price (eds.) 2015:141-171..



BUCHLER M, CASTLE J, OSMAN R & WALTERS S

2007. *Equity, access and success: Adult learners in public higher education*. In CHE (ed.) 2007:124-156.

BUNTING I

2006. *The higher education landscape under apartheid*. In N Cloete, P Maassen, R Fehnel, T Moja, T Gibbon & H Perold (eds.) 2006:35-52.

CALDERHEAD V

2011. *The right to an 'adequate' and 'equal' education in South Africa*. <https://section27.org.za/2011/04/the-right-to-an-adequate-and-equal-education-in-south-africa/> (accessed on 17 November 2025).

CALITZ E & FOURIE J

2016. The historically high cost of tertiary education in South Africa. *Politikon* 43(1):149-154.

CALLENDER C

2009. *Institutional aid in England*. In J Knight (ed.) 2009:127-148.

CARDAK BA & RYAN C

2009. Participation in higher education in Australia: Equity and access. *Economic Record* 85(271):433-448.

CARNOY M

2005. *Globalization, educational trends, and the open society*. <https://www.opensocietyfoundations.org/publications/globalization-educational-trends-and-open-society> (accessed on 17 November 2025).

CARRIM N & SAYED Y

1993. Civil society, social movements and the National Education Coordinating Committee (NECC). *Perspectives in Education* 14(1):21-34.

CARSON T

2009. A history of equity in higher education in Australia: Making universities more accessible for students from disadvantaged backgrounds. *Widening Participation and Lifelong Learning* 11(1):5-16.

CELE N & BRANDT C

2005. *Extending access and exclusive provision in distance higher education*. <http://www.col.org/pcf2/papers%5Cele.pdf> (accessed on 2 February 2020).

CELE N & MENON K

2006. Social exclusion, access and the restructuring of higher education in South Africa. *South African Journal of Higher Education* 20(3):38-50.

CHESTERS J & WATSON L

2013. Understanding the persistence of inequality in higher education: Evidence from Australia. *Journal of Education Policy* 28(2):198-215.

CHRISTIE P

1992. From crisis to transformation: Education in post-apartheid South Africa. *Australian Journal of Education* 36(1):38-52.

2006. Changing regimes: Governmentality and education policy in post-apartheid South Africa. *International Journal of Educational Development* 26(4):373-381.

CINI L

2019. Disrupting the neoliberal university in South Africa: The #FeesMustFall movement in 2015. *Current Sociology* 67(7):942-959.

CLANCY P & GOASTELLEC G

2007. Exploring access and equity in higher education: Policy and performance in a comparative perspective. *Higher Education Quarterly* 61(2):136-154.

CLARENCE J

2010. *Academic development and the 'language problem'*. In C Hutchings & J Garraway (eds.) 2010:16-20.

CLOETE N, MAASSEN P, FEHNEL R, MOJA T, GIBBON T & PEROLD H (eds.)  
2006. *Transformation in Higher Education: Global Pressures and Local Realities*. Dordrecht: Springer Netherlands.

COATES H & KRAUSE KL

2005. Investigating ten years of equity policy in Australian higher education. *Journal of Higher Education Policy and Management* 27(1):35-46.

COLLIVER JA, CONLEE MJ & VERHULST SJ

2012. From test validity to construct validity ... and back? *Medical Education* 46(4):366-371.

COUGHLAN F

2006. Access for success. *South African Journal of Higher Education* 20(2):209-218.

COUNCIL ON HIGHER EDUCATION (CHE)

2000. *Towards a new higher education landscape. Meeting the equity, quality and social development imperatives of South Africa in the 21<sup>st</sup> century*.  
<https://www.che.ac.za/publications/reports/policy-report-towards-new-higher-education-landscape-meeting-equity-quality> (accessed on 22 November 2022).

2004. *South African higher education in the first decade of democracy*.  
[https://www.che.ac.za/sites/default/files/publications/SA\\_HE\\_10years\\_Nov2004.pdf](https://www.che.ac.za/sites/default/files/publications/SA_HE_10years_Nov2004.pdf) (accessed on 13 February 2021).

2005. *A Framework for Improving Teaching and Learning Project*.  
<https://www.che.ac.za/publications/frameworks/framework-improving-teaching-and-learning-project> (accessed on 22 November 2021).

2013. *A proposal for undergraduate curriculum reform in South Africa: The case for a flexible curriculum structure.*  
[https://www.che.ac.za/sites/default/files/publications/Full\\_Report.pdf](https://www.che.ac.za/sites/default/files/publications/Full_Report.pdf)  
(accessed on 25 April 2021).

2015. *Qualification standard for Bachelor of Laws (LLB).*  
<https://www.che.ac.za/file/7297/download?token=JjuWknW1> (accessed on 25 April 2021).

2018. *The State of the Provision of the Bachelor of Laws (LLB) Qualification in South Africa.* <https://www.che.ac.za/publications/reports/state-provision-bachelor-laws-llb-qualification-south-africa> (accessed on 25 April 2021).

2020. Extended programmes with an integrated foundation phase: Theoretical considerations for curriculum design. *BrieflySpeaking* No. 14.  
<https://www.che.ac.za/publications/monitoring/briefly-speaking> (accessed on 25 April 2021).

#### CROXFORD L & RAFFE D

2015. The iron law of hierarchy? Institutional differentiation in UK higher education. *Studies in Higher Education* 40(9):1625-1640.

#### DAFFUE LA

2008. Career Preparation Programme Report. Unpublished. University of the Free State: Centre for Higher Education Studies and Development.

#### DAVID ME

2009. Diversity, gender and widening participation in global higher education: a feminist perspective. *International Studies in Sociology of Education* 19(1):1-17.

#### DEACON R, OSMAN R & BUCHLER M

2009. Education scholarship in higher education in South Africa, 1995–2006. *South African Journal of Higher Education* 23(6):1072-1085.

DE LUCCA-SILVEIRA MP

2016. The subject of social justice: a defence of the basic structure of society.  
*Brazilian Political Science Review* 10(2):1-26.

DEPARTMENT OF HIGHER EDUCATION AND TRAINING (DHET)

1995. *White Paper on Education and Training*.  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/16312gen1960.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/16312gen1960.pdf) (accessed on 23 April 2021).

1996. *Green Paper on Higher Education Transformation*.  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/green-paper-higher-education-transformation0.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/green-paper-higher-education-transformation0.pdf) (accessed on 23 April 2021).

1997. *Education White Paper 3 – A Programme for Higher Education Transformation*.  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/18207gen11960.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/18207gen11960.pdf) (accessed on 23 April 2021).

2001. *National Plan for Higher Education*.  
<https://www.justice.gov.za/commissions/feeshet/docs/2001-NationalPlanForHigherEducation.pdf> (accessed on 3 August 2022).

2002. *The Transformation and Reconstruction of the Higher Education System*.  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/hetransform0.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/hetransform0.pdf) (accessed on 3 August 2022).

2009. *Report of the ministerial committee on the review of the national student financial aid scheme*.  
<https://www.nsfas.org.za/content/downloads/nsfas-report.pdf> (accessed on 21 July 2020).

2012. *Foundation Provision in Departmentally Approved Programmes.*  
<https://files.su.ac.za/public/documents/2025-09/200318-general-foundation-policypdf.pdf> (accessed on 21 May 2021).

2013a. *Report of the Ministerial Committee for the Review of the Funding of Universities.* <https://www.justice.gov.za/commissions/feeshet/docs/2013-Report-MinisterialCommittee-Review-FundingOfUniversities.pdf> (accessed on 19 October 2025).

2013b. *White Paper for Post-School Education and Training.*  
<https://www.dhet.gov.za/SiteAssets/Latest%20News/White%20paper%20for%20post-school%20education%20and%20training.pdf> (accessed on 19 October 2025).

2015. *Are we making progress with systemic structural transformation of resourcing, access, success, staffing and research in higher education.*  
<https://www.dhet.gov.za/SiteAssets/Latest%20News/Independent%20Thinking%20Second%20Edition/dhetpage4-5.pdf> (accessed on 19 October 2025).

2018. *Frequently Asked Questions: Changes to DHET funding for poor and working class students in public higher education institutions.*  
[https://www.usaf.ac.za/wp-content/uploads/2018/01/DHET\\_FAQs-on-expanded-NSFAS-and-bursary-scheme\\_Final-9-January-2018.pdf](https://www.usaf.ac.za/wp-content/uploads/2018/01/DHET_FAQs-on-expanded-NSFAS-and-bursary-scheme_Final-9-January-2018.pdf) (accessed 14 February 2026).

2019. *Draft Policy Framework for Extended Curriculum Programmes.*

2020. *Language Policy Framework for Public Higher Education Institutions.*  
[https://www.gov.za/sites/default/files/gcis\\_document/202011/43860gon1160.pdf](https://www.gov.za/sites/default/files/gcis_document/202011/43860gon1160.pdf) (accessed on 4 February 2026).

2024a. *Minister Blade Nzimande: Announcement of implementation of first phase of Comprehensive Student Funding Model.*  
<https://www.gov.za/news/media-statements/minister-blade-nzimande->

[announcement-implementation-first-phase-comprehensive](#) (accessed on 14 February 2026).

2024b. *Ministerial Statement on University Funding 2024/2025 to 2026/2027*. <https://www.dhet.gov.za/Institutional%20Funding/Ministerial%20Statement%20on%20University%20funding%20-2024-25%20to%202026-27%20December%202023.pdf> (accessed on 25 May 2025).

DE WET C & WOLHUTER C

2009. A transitiological study of some South African educational issues. *South African Journal of Education* 29(3):359-376.

DE WIT H & JONES E

2017. *Improving access and equity in internationalisation*. <https://www.universityworldnews.com/post.php?story=20171206071138138> (accessed on 12 November 2025).

DLAMINI CR

1992. The law teacher, the law student and legal education in South Africa. *South African Law Journal* 109:595.

DOWNS C

2010. Increasing equity and compensating historically academically disadvantaged students at a tertiary level: benefits of a Science foundation programme as a way of access. *Teaching in Higher Education* 15(1):97-107.

DREIJMANIS J

1988. *The role of the South African government in tertiary education*. South African Institute of Race Relations

DU PLESSIS R

2016. Designing an appropriate and assessable curriculum for clinical legal education. *De Jure* 49(1):1-22.

ENGLE J

2007. Postsecondary access and success for first-generation college students. *American Academic* 3(1):25-48.

EVANS C, REES G, TAYLOR C & WRIGHT C

2019. 'Widening access' to higher education: The reproduction of university hierarchies through policy enactment. *Journal of Education Policy* 34(1):101-116.

FATAAR A

1997. Access to schooling in a post-apartheid South Africa: Linking concepts to context. *International Review of Education* 43(4):331-348.

FIELD F

2005. Demystifying and problematizing the paradigm shift affecting legal education. *Stellenbosch Law Review* 16(2):324-348.

FISKE EB & LADD HF

2004. *Elusive Equity: Education Reform in Post-Apartheid South Africa*. Brookings Institution Press.

FRAENKEL RJ & WALLEN EN

2009. *How to Design and Evaluate Research in Education*. 7<sup>th</sup> Edition. McGraw-Hills: San Francisco.

FRASER N

1999. *Social justice in the age of identity politics: Redistribution, recognition, and participation*. In L Ray & A Sayer (eds.) 1999:25-52.

2009. *Scales of Justice: Reimagining Political Space in a Globalizing World*. Columbia University Press.

GIDLEY J, HAMPSON G, WHEELER L



2010. From access to success: An integrated approach to quality higher education informed by social inclusion theory and practice. *Higher Education Policy* 23:123-147.

GOASTELLEC G

2010. Small world: Access to higher education between methodological nationalism and international organisations. *Globalisation, Societies and Education* 8(2):283-293.

GRANT CA & GIBSON ML

2013. The path of social justice: A human rights history of social justice education. *Equity and Excellence in Education* 46(1):81-99.

GREENBAUM LA

2014. Re-visioning legal education in South Africa: Harmonising the aspirations of transformative constitutionalism with the challenges of our educational legacy. <https://ssrn.com/abstract=2575289> (accessed on 12 November 2025).

GRIESEL H (ed.)

2004. *Curriculum Responsiveness. Case Studies in Higher Education*. Pretoria: South African Universities Vice-Chancellors Association.

GUMEDE W

2022. *The problem of funding SA students can be solved*. <https://www.wits.ac.za/news/latest-news/opinion/2022/2022-05/the-problem-of-funding-sa-students-can-be-solved.html> (accessed on 18 September 2022).

HABIB A

2001. *Structural Disadvantage, Leadership Ineptitude and Stakeholder Complicity: A Study of the Institutional Crisis of the University of the Transkei*. Centre for Higher Education Transformation.

HAGE SM, RING EE & LANTZ MM

2011. *Social Justice Theory*. In RJR Levesque (ed.) 2011:2794-2801.

HAILBRONNER M

2017. Transformative constitutionalism: Not only in the Global South. *The American Journal for Comparative Law*. 65(3):527 – 565.

HALL M & SYMES A

2005. South African higher education in the first decade of democracy: From cooperative governance to conditional autonomy. *Studies in Higher Education* 30(2):199-212.

HARRIS J & SADDINGTON T

1995. *The recognition of prior learning (RPL): International models of assessment and their impact on South African education and training practice*. Department of Adult Education and Extramural Studies: University of Cape Town.

HARVEY D

2007. Neoliberalism as creative destruction. *The Annals of the American Academy of Political and Social Science* 610(2007):22-44.

HAY D & MONNAPULA-MAPESELA M

2009. *South African Higher Education Before and After 1994: A Policy Analysis Perspective*. In E Bitzer (ed.) 2009:3-20.

HAY HR & MARAIS F

2004. Bridging programmes: Gain, pain or all in vain. *South African Journal of Higher Education* 18(2):59-75.

HIGHER EDUCATION FINANCING COUNCIL FOR ENGLAND

2011. *Annual report and accounts 2010/11*.

<https://assets.publishing.service.gov.uk/media/5a74aa7fed915d0e8e39a0a4/0932.pdf> (accessed on 10 June 2024).

HILL LD, BAXEN J, CRAIG AT & NAMAKULA H

2012. Citizenship, social justice, and evolving conceptions of access to education in South Africa: Implications for research. *Review of Research in Education* 36:239-260.

HLATSWAYO MN & FOMUNYA KG

2019. Theorising the #MustFall student movements in contemporary South African higher education: A social justice perspective. *Journal of Student Affairs in Africa* 7(1):61-80.

HOARE A & JOHNSTON R

2011. Widening participation through admissions policy – a British case study of school and university performance. *Studies in Higher Education* 36(1):21-41.

HOFMEYER J & SPENCE R

1989. Bridges to the future. *Optima* 37(1):37-48.

HOLTMAN L, MARSHALL D & LINDER C

2004. *Widening (Epistemological) Access: Two Undergraduate Science Courses*. In H Griesel (ed). 2004:185-216.

HUTCHINGS C & GARRAWAY J (eds.)

2010. *Beyond the university gates: Provision of extended curriculum programmes in South Africa*. Rhodes University.

ISHENGOMA JM

2011. The socio-economic background of students enrolled in private higher education institutions in Tanzania: Implications for equity. *Papers in Education and Development* 30:1-38.

JACKSON B

2005. The conceptual history of social justice. *Political Studies Review* 3:356-373.

JAMES R

2007. *Social equity in a mass, globalised higher education environment: the unresolved issue of widening access to university*. Faculty of Education Dean's lecture series. Australia: University of Melbourne.

JOHNSON AT & HIRT JB

2014. Universities, dependency and the market: Innovative lessons from Kenya. *Compare: A Journal of Comparative and International Education* 44(2):230-251.

JONES JM

2006. From racial inequality to social justice: The legacy of Brown v. Board and lessons from South Africa. *Journal of Social Issues* 62(4):885-909.

JONKER A

2020. *Lifting the barriers to extended degree programme students' success: The role of multilingual technical terminology in creating epistemological access*. In M Rollnick & F Lubben (eds.) 2020:112-127.

KERLINGER FN

1986. *Foundations of Behavioural Research*. 3<sup>rd</sup> Edition. Harcourt Brace Jovanovich College Publishers: Fort Worth.

KIOKO JI

2010. *Foundation provision in South African higher education: A social justice perspective*. In C Hutchings & J Garraway (eds.) 2010:40-49.

KIRBY NF & DEMPSTER ER

2018. *Alternative access to tertiary science study in South Africa: Dealing with 'disadvantage', student diversity, and discrepancies in graduate success*. In CI Agosti & E Bernat 2018:85-106.

KISHUN R

2007. The internationalisation of higher education in South Africa: Progress and challenges. *Journal of Studies in International Education* 11(3-4), pp.455-469.

KLARE KE

1998. Legal culture and transformative constitutionalism. *South African Journal on Human Rights* 14(1):146-188.

KLEIN R

1991. Risks and benefits of comparative studies: Notes from another shore. *The Milbank Quarterly*. 69(2):275-291.

KORAAN R & GEDULD A

2015. "Corrective rape" of lesbians in the era of transformative constitutionalism in South Africa. *Potchefstroom Electronic Law Journal* 18(5):1931-1953.

KRAYNAK RP

2018. The origins of "social justice" in the natural law philosophy of Antonio Rosmini. *The Review of Politics* 80(1):3-29.

LANE L & BIRDS R

2013. Contextual admissions and affirmative action: developments in higher education policy in England. *Perspectives: Policy and Practice in Higher Education* 17(4):135-140.

LANGA JP

2006. Transformative constitutionalism. *Stellenbosch Law Review* 17(3):351-360.

LANGE L

2017. 20 years of higher education curriculum policy in South Africa. *Journal of Education* 68:31-57.

LEACH L

2013. Participation and equity in higher education: Are we going back to the future? *Oxford Review of Education* 39(2):267-286.

LEIBOWITZ B

2009. *Towards a pedagogy of possibility: Teaching and learning from a “social justice” perspective*. In E Bitzer (ed.) 2009:85-101.

LIEBENBERG S

2010. *Socio-Economic Rights: Adjudication under a transformative constitution*. Cape Town: Juta.

LINCOLN YS & GUBA EG

1985. *Naturalistic Inquiry*. Beverley Hills, CA: Sage Publishers.

LOMOFSKY L & LAZARUS S

2001. South Africa: First steps in the development of an inclusive education system. *Cambridge Journal of Education* 31(3):303-317.

MAJEE US & RESS SB

2020. Colonial legacies in internationalisation of higher education: Racial justice and geopolitical redress in South Africa and Brazil. *Compare: A Journal of Comparative and International Education*. 50(4):463-481.

MAPESELA M & HAY HR

2005. Through the magnifying glass: A descriptive theoretical analysis of the possible impact of the South African higher education policies on academic staff and their job satisfaction. *Higher Education* 50(1):111-128.

MAREE K (ed.)

2023. *First steps in research*. Van Schaik Publishers.

MARGINSON S

2011. Equity, status and freedom: A note on higher education. *Cambridge Journal of Education* 41(1):23-36.

MARTINSON K & O'BRIEN C

2015. *Conducting case studies*. In KE Newcomer, HP Hartry & JS Wholey (eds.) 2015:163-181.

MATHEKGA AM

2012. Towards widening access to underrepresented groups in the biological sciences: A case study of the University of Pretoria. Unpublished PhD dissertation. Pretoria: University of Pretoria.

MAZZOLENI G, BARNHURST K, IKEDA K & MAIA H (eds.)

2015. *International Encyclopedia of Political Communications*. John Wiley & Sons.

MBIRIGENDA SK

2021. Reflection on education for self and national reliance: Challenges of access, equity and quality in higher learning institutions in Tanzania. *Tanzania Journal of Development Studies* 18(2):12-26.

McALEAVY G, COLLINS K, ADAMSON G

2006. Adult learning in Northern Ireland: Investigating further education policies for widening participation. *Research in Post-Compulsory Education* 9(1):83-104.

McCONNACHIE C, SKELTON A & McCONNACHIE C

2020. *Basic Education Rights Handbook – Education Rights in South Africa – Chapter 1: The Constitution and the Rights to a Basic Education*. <http://section27.org.za/wp-content/uploads/2017/02/Chapter-1.pdf> (accessed on 3 March 2020).

McCOWAN T

2007. Expansion without equity: An analysis of current policy on access to higher education in Brazil. *Higher Education* 53:579-598.

2016. Three dimensions of equity of access to higher education. *Compare: A Journal of Comparative and International Education* 46(4):645-665.

McCOWAN T, OANDA I & OKETCH M

2018. Towards a national graduate destinations survey in Kenya: an exploratory study of three universities. *Higher Education Policy* 31:97-119.

McKENZIE S

2022. *Access to higher education in Wales: a case study on policy implementation*. Doctoral dissertation. Cardiff University.

McMILLAN J

2008. *Educational Research: Fundamentals of the Consumer*. 5th edition. Virginia Commonwealth University, New York: Pearson Education Inc.

McQUOID-MASON DJ

2015. *Street Law: Practical Law for South Africans*. Cape Town: Juta.

MDEPA A

2022. *Higher education funding crisis and access: Student protests, UWC #FMF, and social movements*. In Z Groener & S Land (eds.) 2022:107-126.

MERRIAM SB

2009. *Qualitative research: A guide to design and implementation*. Jossey-Bass Publishers: San Francisco.

MEYER HD, ST JOHN EP, CHANKSELIANI EP, URIBE L

2013. *Fairness in Access to Higher Education in a Global Perspective: Reconciling Excellence, Efficiency and Justice*. Rotterdam: Sense Publisher.

MGUTSHINI T (ED)

2022. *Extended Curriculum Programmes: Challenges and Opportunities*. Sun Press. Stellenbosch.

MILLER D

1999. *Principles of Social justice*. Cambridge: Harvard University Press.



MKUDE D

2011. Higher education as an instrument of social integration in Tanzania: Challenges and prospects. *Research in Comparative and International Education* 6(4):366-373.

MNCUBE VS

2007. Social justice, policy and parents' understanding of their voice in school governing bodies in South Africa. *Journal of Educational Administration and History* 39(2):129-143.

MODIRI JM

2013. Transformation, tension, and transgression: reflections on the culture and ideology of South African legal education. *Stellenbosch Law Review* 24(3):455-479.

2014. The crisis in legal education. *Acta Academica* 46(3):1-24.

MOJA T & HAYWARD FM

2000. Higher education policy development in contemporary South Africa. *Higher Education Policy* 13(4):335-359.

MOKGANYA G & ZITHA I

2024. Exploring the impact of the Extended Curriculum Programme (ECP) as a crucial motivating landing space: a study on student transition in higher education. *International Journal of Research in Business & Social Science* 13(10):154-160.

MONYAE D

2010. The challenges of access to higher education in the post Polokwane era for the disadvantaged communities in South Africa. *Discourse* 38(1):18-23.

MORROW W

1994. Entitlement and achievement in education. *Studies in Philosophy and Education* 13(1):33-47.

#### MUBANGIZI JC

2004. Towards a human rights culture in South Africa's higher education policy and practice with specific reference to the right to equality. *SA Public Law* 19(1):191-200.

#### MULLEN F

2010. Widening Access to Higher Education: Policy in Scotland. <https://dera.ioe.ac.uk/id/eprint/1271/1/SB10-09.pdf> (Accessed on 10 June 2025)

#### MZANGWA ST

2019. The effects of higher education policy on transformation in post-apartheid South Africa. *Cogent Education* 6(1):1-15.

#### NAIDOO R

2004. Fields and institutional strategy: Bourdieu on the relationship between higher education, inequality and society. *British Journal of Sociology of Education* 25(4):457-471.

#### NATIONAL COMMISSION ON HIGHER EDUCATION (NCHE)

1996. *A Framework for Transformation*  
<https://www.che.ac.za/sites/default/files/publications/Chapter%201.pdf>  
(accessed on 14 February 2026).

#### NATIONAL EDUCATION OPPORTUNITIES NETWORK (NEON)

2021. *Perspectives on the challenges to access and equity in higher education across the world in the context of COVID*.  
<https://worldaccesshe.com/wp-content/uploads/2024/12/SBT2369-National-Education-Opportunities-Network-NEON-Report-Design-v3-Single-Page.pdf>  
(accessed on 17 November 2024).

NATIONAL STUDENT FINANCIAL AID SCHEME (NSFAS)

2025. *NSFAS Eligibility Criteria and Conditions for the NSFAS Student Loan Scheme*.

<https://www.nsfas.org.za/content/downloads/Loan%20Scheme%20Guidelines%202025.pdf> (accessed on 25 February 2026).

NEVES CEB

2009. Using social inclusion policies to enhance access and equity in Brazil's higher education. In J Knight (ed.) 2009:169-188.

NEWCOMER KE, HATRY HP & WHOLEY JS (eds.)

2015. *Handbook of Practical Program Evaluation*. San Francisco: Jossey-Bass & Pfeiffer Imprints, Wiley.

NKOMO M, AKOOJEE S & MOTLHANKE S

2007. Between a rock and a hard place: Understanding the balance between access and efficiency in South African higher education. *Journal of Asian and African Studies* 42(5):399-413.

NTOMBANA L, GWALA A & SIBANDA F

2023. Positioning the #FeesMustFall Movement within the transformative agenda: Reflections on student protests in South Africa. *Education as Change* 27:1-18.

NTSHOE IM

2003. The political economy of access and equitable allocation of resources to higher education. *International Journal of Educational Development* 23(4):381-398.

2010. Realigning visions and missions of universities in a transbinary setting. *Progressio* 32(1):27-41.

NUSSBAUM M

2000. *Woman and human development. The capabilities approach*. Cambridge, MA: Cambridge University Press.

NYONI P & AGBAJE O

2021. Myths surrounding the extended curriculum in South Africa's higher education sector. *Transformative Curricula, Pedagogies and Epistemologies* 2021:239-253.

ODHIAMBO G

2016. Higher education in Kenya: an assessment of current responses to the imperative of widening access. *Journal of Higher Education Policy and Management* 38(2):196-211.

OGUDE NA, MEYER IJ, MWAMBAKANA J & MTHETHWA NE

2019. Can extended curriculum programmes be improved through engagement with students using appreciative inquiry? *South African Journal of Higher Education* 33(4):219-236.

ONSONGO J

2007. The growth of private universities in Kenya: Implications for gender equity in higher education. *Journal of Higher Education in Africa/Revue de l'enseignement supérieur en Afrique* 5(2-3):111-133.

OPEN UNIVERSITY OF TANZANIA (OUT)

2022. *Foundation programmes*. <https://www.out.ac.tz/academic/foundation-programmes> (accessed on 19 October 2025).

OSBORNE RD

2006. Access to and participation in higher education in Northern Ireland: Investigating further education policies for widening participation. *Higher Education Quarterly*. 60(4):333-348.

PIETERSE M

2005. What do we mean when we talk about transformative constitutionalism?  
*South African Public Law Journal*. 20(1):155-166.

PILLAY P

2009. *Challenges and lessons from East and Southern Africa*. In J Knight (ed.)  
2009:19-40.

PILLAY V

2019. Displaced margins and misplaced equity: Challenges for South African  
higher education. *South African Journal of Higher Education* 33(2):142-162.

PYLE A

1999. *Key Philosophers in Conversation. The Cogito Interviews*. London:  
Routledge.

QUINOT G

2012. Transformative legal education. *South African Law Journal* 129(3):411-  
433.

QUINTÃO C, ANDRADE P & ALMEIDA F

2020. How to improve the validity and reliability of a case study approach?  
*Journal of Interdisciplinary Studies in Education* 9(2):264-275.

RAGIN CC

2014. *The comparative method: Moving beyond qualitative and quantitative  
strategies*. University of California Press.

RATANGEE N

2006. *Academic Literacy, the PTEEP, and the prediction of academic success*  
(Doctoral dissertation, University of the Witwatersrand).

RAWLS J

1999. *Theory of Justice*. Revised edition. Harvard University Press.

RAY L & SAYER A (eds.)

1999. *Culture and Economy after the Cultural Turn*. London: Sage Publications.

REDDY T

2004. *Higher education and social transformation: South Africa case study*.

[https://open.uct.ac.za/bitstream/handle/11427/22067/Reddy\\_HigherEducation\\_SocialTransformation\\_2004.pdf?sequence=1&isAllowed=y](https://open.uct.ac.za/bitstream/handle/11427/22067/Reddy_HigherEducation_SocialTransformation_2004.pdf?sequence=1&isAllowed=y) (accessed on 18 September 2023).

REDDY PA and MOORES E

2008. Widening Access to Higher Education: An Evaluative Case Study of a Foundation Year Alternative to Access. *Psychology Teaching Review* 14(1): 51-64.

ROBEYNS I

2017. *Wellbeing, freedom and social justice: The capability approach re-examined*. Open Book Publishers.

ROLLNICK M & LUBBEN F (eds.)

2020. *Proceedings of the 2019 Colloquium on Extended Curriculum Programmes*. University of Pretoria.

ROUX T

2009. Transformative constitutionalism and the best interpretation of the South African Constitution: Distinction without a difference? *Stellenbosch Law Review* 20(2):258-285.

SALEMA V

2020. Access to higher education in Tanzania: Experiences from students who are not beneficiaries of higher education loans. *The Cradle of Knowledge: African Journal of Educational and Social Science Research* 8(3):110-117.

SARKIN J

1998. The development of a human rights culture in South Africa. *Human Rights Quarterly* 20(3):628-665.

SCOTT G & LETSEKA M

2010. *Student inclusion and exclusion at the University of the Witwatersrand*. HSRC Press.

SEHOOLE C & ADEYEMO KS

2016. Access to, and success in, higher education in post-apartheid South Africa: Social justice analysis. *Journal of Higher Education in Africa* 14(1):1-18.

SEHOOLE CT and PHATLANE R

2020. Two Decades of Internationalizing Higher Education in South Africa. *The Bloomsbury Handbook of the Internationalization of Higher Education in the Global South*: 493.

SEN A

1993. *Capability and Wellbeing*. In M Nussbaum & A Sen (Eds.). *The Quality of Life*:30-53. Oxford: Clarendon Press

2009. *The Idea of Justice*. Cambridge, Massachusetts: The Belknap Press of Harvard University Press.

SHAY S

2011. Curriculum formation: A case study from history. *Studies in Higher Education* 36(3):315-329.

SHAY S, WOLFF K & CLARENCE-FINCHAM J

2016. *New Generation Extended Curriculum Programmes: Report to the DHET*. Cape Town: University of Cape Town.

SLABBERT R & FRIEDRICH-NEL H

2015. Extended curriculum programme evolution: a road map to academic success? *South African Journal of Higher Education* 29(1):45-59.

SMITH DM

2005. On the (im)possibility of social justice in South Africa. *Transformation: Critical Perspectives on Southern Africa* 58(1):45-65.

SOLED A & HOFFMAN B

2020. Building bridges: How law schools can better prepare students from historically underserved communities to excel in law school. *Journal of Legal Education* 68:268-296.

SOUDIEN C

2010. *Transformation in higher education: A briefing paper*. Development Bank of Southern Africa.

SPREEN CA & VALLY S

2006. Education rights, education policies and inequality in South Africa. *International Journal of Educational Development* 26(4):352-362.

STEYN AWG

2009. Measuring student participation in the higher education sector in South Africa. Unpublished paper. Stellenbosch University: Division for Institutional Research and Planning.

STRAUSS ME & SMITH GT

2009. Construct validity: Advances in theory and methodology. *Annual Review of Clinical Psychology* 5:1-25.

STRAW W.

2003. Education for all-widening access to higher education. *Education Review* 16(2):34-38.

SZEMAN I & KAPOSY T (eds.)

2011. *Cultural Theory: An Anthology*. Wiley Blackwell.



SZIRMAI A

2005. *The Dynamics of Socio-economic Development: An introduction*. Cambridge University Press.

TANZANIA COMMISSION FOR UNIVERSITIES

2019. *Handbook for Standards and Guidelines for University Education in Tanzania*. [https://tcu.go.tz/sites/default/files/file\\_uploads/2024-01/No.%2001%28a%29%20-%20HANDBOOK%20FOR%20STANDARDS%20AND%20GUIDELINES%20FOR%20UNIVERSITY%20EDUCATION%20IN%20TANZANIA%20%20-%203rd%20Edition.pdf](https://tcu.go.tz/sites/default/files/file_uploads/2024-01/No.%2001%28a%29%20-%20HANDBOOK%20FOR%20STANDARDS%20AND%20GUIDELINES%20FOR%20UNIVERSITY%20EDUCATION%20IN%20TANZANIA%20%20-%203rd%20Edition.pdf) (accessed on 4 June 2024).

TIRIVANGASI HM, RAPANYANE MB & MUGAMBIWA SS

2021. The toxicity of welfare state: discourse analysis of #feesmustfall movement in South Africa. *African Journal of Peace and Conflict Studies* 10(2):7-29.

TONKS D & FARR M

2003. Widening access and participation in UK higher education. *International Journal of Educational Management* 17(1):26-36.

UNITED NATIONS (UN)

2006. *Social Justice in an Open World: The Role of the United Nations*. <https://www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf> (accessed on 17 November 2025).

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION (UNESCO)

2020. *Making Higher Education More Inclusive*. <https://media.unesco.org/sites/default/files/webform/ed3002/Making%2520Higher%2520Education%2520more%2520inclusive.pdf> (accessed on 14 February 2026).

2021. *Reimagining Our Futures Together: A New Social Contract for Education*.  
<https://unesdoc.unesco.org/ark:/48223/pf0000379707> (accessed on  
16 October 2025).

2022. *Beyond Limits: New Ways to Reinvent Higher Education*.  
<https://unesdoc.unesco.org/ark:/48223/pf0000389912> (accessed on  
16 October 2025).

2023. *The Right to Higher Education in Africa: Briefing Note Compendium*.  
<https://unesdoc.unesco.org/ark:/48223/pf0000387576> (accessed on  
16 October 2025).

#### UNITED REPUBLIC OF TANZANIA NATIONAL PLANNING COMMISSION

2000. *The Tanzania Development Vision 2025*.  
[https://www.planning.go.tz/uploads/documents/en-1722495453-  
Tanzania%20Development%20Vision%202025.pdf](https://www.planning.go.tz/uploads/documents/en-1722495453-Tanzania%20Development%20Vision%202025.pdf) (accessed on  
17 November 2025).

#### UNIVERSITY OF THE FREE STATE (UFS)

2022. *Vision 130: Renew and Reimagine for 2034*. [www.ufs.ac.za/docs/default-  
source/ufs-strategic-2023/ufs-vision-130-november-  
2022.pdf?Status=Master&sfvrsn=96e5320\\_3](http://www.ufs.ac.za/docs/default-source/ufs-strategic-2023/ufs-vision-130-november-2022.pdf?Status=Master&sfvrsn=96e5320_3) (accessed on 23 January 2025).

#### VAN DE POL J, VOLMAN M & BEISHUIZEN J

2010. Scaffolding in teacher–student interaction: A decade of research.  
*Educational psychology review* 22(3):271-296

#### VAN DER WENDE MC

2003. Globalisation and access to higher education. *Journal of Studies in  
International Education* 7(2):193-206.

#### VAN DER WESTHUIZEN L

2006. HOS 716: Study guide. Unpublished. Centre for Higher Education  
Studies and Development: University of the Free State.

VAN MARLE K

2009. Transformative constitutionalism as/and critique. *Stellenbosch Law Review*. 20(2):286-301.

VAN NIEKERK L

2013. Investigating the effect of the extended programme on the LLB students' success. Unpublished MA HES thesis. University of the Free State.

VAN PLETZEN E, SITHALDEEN R & NDURU P

2019. *Looking forward, looking back: Informing new extended curriculum policy by examining current models*. In M. Rollnick & F. Lubben (eds.) 2020:6-12.

VAN ROOY T

2002. Recognition of prior learning (RPL): From principle to practice in higher education. *South African Journal of Higher Education* 16(2):75-82.

VARGHESE NV

2013. *Governance reforms in higher education: A study of selected countries in Africa*. <https://unesdoc.unesco.org/ark:/48223/pf0000245404> (accessed on 17 November 2025).

VILAKAZI H & TEMA B

1985. White universities and the black revolution. *ASPECTS: Journal of the Academic Support Programmes at the University of Cape Town, the University of Natal, Rhodes University and the University of the Witwatersrand* 6:18-40.

WAETJEN T

2006. Measures of redress: Defining disadvantage in a university access programme. *South African Review of Sociology* 37(2):200-217.

WAGHID Y

2003. Democracy, higher education transformation and citizenship in South Africa: Perspectives on higher education. *South African Journal of Higher Education* 17(1):91-97.

WALKER L, MATTHEW B & BLACK F

2006. Widening access and student non-completion: an inevitable link? Evaluating the effects of the Top-Up Programme on student completion. *International Journal of Lifelong Education* (23):43-59.

WALKER M

2003. Framing social justice in education: What does the 'capabilities' approach offer? *British Journal of Educational Studies* 51(2):168-187.

2005. Amartya Sen's capability approach and education. *Educational Action Research* 13(1):103-110.

2012. A capital or capabilities education narrative in a world of staggering inequalities? *International Journal of Educational Development* 32(2012):384-393.

2018. Dimensions of higher education and the public good in South Africa. *Higher Education* 76:555-569.

WALKER M & MKWANANZI F

2015. Theorising multiply disadvantaged young people's challenges in accessing higher education. *Perspectives in Education* 33(1):12-25.

WALKER M & UNTERHALTER E (eds.)

2007. *Amartya Sen's Capability Approach and Social Justice in Education*. Springer.

WALTON E, BOWMAN B & OSMAN R

2015. Promoting access to higher education in an unequal society. *South African Journal of Higher Education* 29(1):262-269.

WATT S AND PATERSON LC

2000. Pathways and partnerships: Widening access to higher education. *Journal of Further and Higher Education* 24(1):107-116.

WEBER E

2002. The evolution of equity in the South African government's developmental and education policies, 1990–1999. *Comparative Education Review* 46(3):261-290.

WILSON-STRYDOM M

2011. University access for social justice: A capabilities perspective. *South African Journal of Education* 31(3):407-418.

2015. University access and theories of social justice: Contributions of the capabilities approach. *Higher Education* 69(1):143-155.

WOODS CS, PARK T, HU S & BETRAND JONES T

2018. How high school coursework predicts introductory college-level course success. *Community College Review* 46(2):176-196.

WOOLFREY D

1995. Curriculum development in legal education: Some reflections. *South African Law Journal* 112:151-159.

WORLD BANK

2006. *Equity and Development. World Development Report 2006*.  
<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/435331468127174418/world-development-report-2006-equity-and-development> (accessed on 4 June 2024).

WORLD BANK GROUP (WBG)

2017. *Higher Education for Development: An Evaluation of the World Bank Group's Support*. <https://ieg.worldbankgroup.org/sites/default/files/Data/Evaluation/files/highereducation.pdf> (accessed on 23 September 2024).

#### YIN RK

1994. Discovering the future of the case study. *Method in evaluation research*. *Evaluation practice* 15(3): 283 – 290.

2018. *Case study research and applications: Design and Methods*. 6<sup>th</sup> edition. Sage Publications.

#### YOUNG IM

1990. *Justice and the politics of difference*. Princeton, New Jersey: Princeton University Press.

2006. Education in the context of structural injustice: A symposium response. *Educational Philosophy and Theory* 38(1):93-103.

## ANNEXURES

### ANNEXURE A: Information leaflet and consent form



Research study information leaflet and consent form

**Date**

11 March 2025

**Title of the research project**

An exploratory case study of the application of the social justice concepts of access, redress, and equity in extended LLB programmes at higher education institutions in South Africa.

**Principal researcher's name and contact number:**

Student: Leani van Niekerk

Student number: 2002011498

Cell phone number: 0842998818

Email address: [vniekerkl@ufs.ac.za](mailto:vniekerkl@ufs.ac.za)

**Study leader(s) name and contact number:**

Dr. Marda Horn

University of the Free State

Department of Private Law

Cell phone number: 0835010666

Email address: [hornjg@ufs.ac.za](mailto:hornjg@ufs.ac.za)

**What is the aim/purpose of the study?**

This research explores and describes the implementation of the social justice concepts of access, redress, and equity in the extended LLB programme at higher education institutions in South Africa offering the extended LLB programme.



### **Who is doing the research?**

I am Leani van Niekerk. I have been a lecturer at the University of the Free State for 15 years. Since starting my academic career, I have been involved in the extended curriculum LLB programme. The extended LLB programme and the support of students in this programme have always been a passion of mine, and I have decided to link my passion for the extended LLB programme with a doctorate research study at the University of the Free State.

### **Has the study received ethical approval?**

This study has received approval from the Research Ethics Committee of UFS. The gatekeeper's approval has also been obtained from your institution.

**Approval number: UFS-HSD2024/0041**

### **Why are you invited to take part in this research project?**

I invite you to participate in our study, as your unique perspective and knowledge as the Programme Director at one of the few universities offering an extended LLB programme would significantly contribute to my research on this subject.

### **What is the nature of participation in this study?**

Participating in this study entails the completion of a questionnaire. The questionnaire requests respondents to provide the following information:

- Admission requirements for extended programme (hereafter referred to as EP) students.
- The demographics of all the enrolments of the student population in the extended LLB programme and mainstream LLB programme (to determine whether this programme widened access to higher education regarding race).
- Total headcount enrolments in the extended programmes.
- Which extended programme model is the university applying?
- What support is provided, e.g., additional language skills specifically for the EP students?



- Module composition/how foundational modules are divided over the study years
- How does their programme address the social justice concepts of equity, access and redress?
- Whether they implemented or provided additional support to students in the extended programme during COVID-19.

The questionnaire also asks respondents to comment on questions where appropriate. You will have three weeks to complete the questionnaire from when I sent it out. I will follow up with a telephone consultation to clarify or request further information if necessary.

#### **Can the participant withdraw from the study?**

Participants can withdraw anytime without giving a reason or obtaining a penalty. Participation is voluntary, and there is no penalty or loss of benefit for non-participation. Respondents are under no obligation to consent to participation. Respondents will be requested via email to click on a link to indicate their willingness to participate in the study. They will be diverted to a SurveyMonkey questionnaire once they click on the link. The questionnaire will then be administered via SurveyMonkey to those respondents who provided informed consent to participate in the study. Once you have submitted the completed questionnaire, withdrawing will not be possible.

#### **What are the potential benefits of taking part in this study?**

Since minimal research has been conducted, this research will contribute to the knowledge base on extended programmes in general, but more specifically on the extended LLB programme of the UFS. This research will assist the university, faculty, and departmental administration in the decision-making process regarding improving the extended LLB programme. It will provide a unique and in-depth analysis of an extended LLB programme, which has not been done before. This research will optimise the extended LLB programme by improving not only the programme itself but also the students' success in the programme.

### **What is the anticipated inconvenience of taking part in this study?**

Participation in this study has low inconvenience, risk, harm or discomfort levels. Under the current working conditions, all Faculty members work from home. Consequently, all my interactions with the participants in the study will occur via email. The questionnaire will take approximately one hour of participants' private or working time.

### **Will what I say be kept confidential?**

When reporting the data, every attempt will be made to keep the data confidential. Your institution will be given a pseudonym, and you will be referred to in this way in the data, any publications, or other research reporting methods such as conference proceedings. Although participants will not complete the questionnaire anonymously, I will treat their feedback as confidential. As soon as I have received a completed questionnaire via email, I will give pseudonyms to the participants and institutions' names and responses to my questions. Participants will be referred to in this way in the data, any publications, or other research reporting methods such as conference proceedings. I will record the data obtained from participants in Excel™. Participants' responses may be reviewed by people responsible for ensuring the research is carried out appropriately, including my supervisor, the respective research ethics committees of the University of the Free State, and a qualified statistician. Otherwise, participants' identities will only be available to me. I reserve the right to use participants' anonymous data in journal articles and conference presentations. All other requirements of the *Protection of Personal Information Act* 3 of 2013 (POPI Act) will be adhered to.

### **How will the information be stored and ultimately destroyed?**

I will store electronic copies of the completed questionnaire on a password-protected computer. Future use of the stored data will be subject to further research ethics review and approval if applicable. The data will be deleted after five years.

**Will participants receive payment or any incentives for participating in this study?**

Participants will not be compensated for completing the questionnaire or reimbursed for related costs.

**How will the participant be informed of the findings/results of the study?**

If you want to be informed of the final research findings, please contact me, Mrs Leani van Niekerk, at 0842998818 or email [vniekerkl@ufs.ac.za](mailto:vniekerkl@ufs.ac.za). You are welcome to contact me should you require any further information.

If you have concerns about the research, its risks and benefits or your rights as a research participant in this study, you may contact the General/Human Research Ethics Committee Administrator at the University of the Free State.

**Thank you for taking the time to read this information sheet and for participating in this study.**

Consent to participate in this study

I, the undersigned,

\_\_\_\_\_  
(participant's full names to be included), (the "Participant")

confirm that I voluntarily agree to participate in the research study referred to as the

*An exploratory case study*

\_\_\_\_\_  
"Study") about

*applying the social justice concepts of access, redress, and equity in extended LLB  
programmes at higher education institutions in South Africa.*

\_\_\_\_\_  
and which Study is being conducted by

*Leani van Niekerk*

\_\_\_\_\_  
(insert the name of the researcher), (the "Researcher").

I, the undersigned Participant, further confirm that–

1. The researcher has explained the nature, procedure, potential benefits and anticipated inconvenience of my participation in the Study;
2. I have read (or had explained to me) and understood the Study as described in the attached information sheet;
3. I have had sufficient opportunity to ask questions and am prepared to participate in the Study;
4. I understand that my participation in the Study is entirely voluntary and that I am free to withdraw at any time without penalty (if applicable);
5. I voluntarily provide the UFS and the Researcher with my personal information and consent to the UFS and the Researcher collecting, disclosing and processing my personal data to conduct the Study and any related activities in relation to it;
6. I at this moment acknowledge and confirm that I understand the purpose for which the UFS and the Researcher may collect, store, use, delete, destroy, outsource, transfer or otherwise process, as the context and circumstances may require and as contemplated in terms of POPIA, my personal information as set out herein;
7. I am aware that the findings of the Study will be anonymously processed into a research report, journal publications and/or conference proceedings and that my personal information will be aggregated and deidentified at such stage;
8. I also give the UFS permission to share, without notification, the collected data with other researchers at the UFS or other Higher Education Institutions. This permission is dependent on the same principles of ethical research practices, anonymity/confidentiality, safekeeping of information, and other issues listed above applying.

I, the Participant, agree to the recording of the questionnaire.

Full Name of Participant: \_\_\_\_\_

Signature of Participant: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name(s) of Researcher(s): \_\_\_\_\_

Signature of Researcher: \_\_\_\_\_ Date: \_\_\_\_\_



## ANNEXURE B: Consent to participate in this study



### Consent to participate in this study

I, the undersigned,

\_\_\_\_\_  
(participant's full names to be included), (the "Participant")  
confirm that I voluntarily agree to participate in the research study referred to as the

\_\_\_\_\_ (the "Study") about

\_\_\_\_\_ and which Study is being conducted by  
Leani van Niekerk

\_\_\_\_\_ (insert the name of the researcher), (the "Researcher").

I, the undersigned Participant, further confirm that-

1. The researcher has explained the nature, procedure, potential benefits and anticipated inconvenience of my participation in the Study;
2. I have read (or had explained to me) and understood the Study as described in the attached information sheet;
3. I have had sufficient opportunity to ask questions and am prepared to participate in the Study;
4. I understand that my participation in the Study is entirely voluntary and that I am free to withdraw at any time without penalty (if applicable);
5. I voluntarily provide the UFS and the Researcher with my personal information and consent to the UFS and the Researcher collecting, disclosing and processing my personal data to conduct the Study and any related activities in relation to it;
6. I at this moment acknowledge and confirm that I understand the purpose for which the UFS and the Researcher may collect, store, use, delete, destroy, outsource, transfer or otherwise process, as the context and circumstances may require and as contemplated in terms of POPIA, my personal information as set out herein;
7. I am aware that the findings of the Study will be anonymously processed into a research report, journal publications and/or conference proceedings and that my personal information will be aggregated and deidentified at such stage;
8. I also give the UFS permission to share, without notification, the collected data with other researchers at the UFS or other Higher Education Institutions. This permission is dependent on the same principles of ethical research practices, anonymity/confidentiality, safekeeping of information, and other issues listed above applying.

I, the Participant, agree to the recording of the <insert specific data collection method>.

Full Name of Participant: \_\_\_\_\_

Signature of Participant: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name(s) of Researcher(s): \_\_\_\_\_

Signature of Researcher: \_\_\_\_\_ Date: \_\_\_\_\_



## QUESTIONNAIRE

### PART 1: INFORMED CONSENT

I confirm that the person asking my consent to participate in this research has told me about the nature, procedure, potential benefits, and anticipated inconvenience of participation. I have read and understand the study as explained in the information sheet. I have had sufficient opportunity to ask questions and am prepared to participate in the study. I understand that my participation is voluntary and that I can withdraw at any time without penalty. I voluntarily provide the researcher with my personal information and consent to collect, disclose, and process my personal information to conduct the study and any related activities thereto. I acknowledge and confirm that I understand the purpose for which the researcher may collect, store, use, delete, destroy, outsource, transfer or otherwise process as the context and circumstances may require and as contemplated in terms of the Protection of Personal Information Act 3 of 2013, my personal information as set out herein. The study findings will be anonymously processed into a research report, journal publications and/or conference.

1.1. I agree to participate in this study

YES  
NO

### PART 2: REQUIRED INFORMATION

2.1 What are the admission requirements for your extended LLB programme students? Additionally, please inform me if there have been any changes to these criteria from 2018 to 2023.

---



---

2.2 What extended programme model is your university applying?

---



---



---

2.3 What support is provided exclusively for your extended programme students, e.g., additional language skills?

---



---



---

2.4 What is the module composition, or how are your foundational modules divided over the study years?

---

2.5 How does your extended programme address the social justice concepts of equity, access and redress? It can either be in relation to the students or the programme itself.

---



---

2.6 Did you implement any additional support to students in the extended LLB programme during the COVID-19 period (2020 and 2021)? If the answer is yes, please specify.

---



---



---

2.7 What is the race profile (e.g., black, white, colour or other) of your first-time registration students enrolled in your extended LLB programme from 2018 to 2023? Please provide the data separately per year.

|  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |

2.8 What is the gender profile (e.g., male, female or other) of your first-time registration students enrolled in your extended LLB programme from 2018 to 2023? Please provide the data separately per year.

|  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |

2.9 What is the total enrolment count for your extended LLB programme students? This includes the first-time first-year registrations and total first-year registrations for the year 2018 to 2023.

|  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |

THANK YOU FOR YOUR PARTICIPATION!



## ANNEXURE C: Ethics clearance



### GENERAL/HUMAN RESEARCH ETHICS COMMITTEE (GHREC)

Registration Number: REC-112922-058

09-Oct-2024

Dear Mrs Leani Van Niekerk

#### **Application Approved**

Research Project Title:

**An exploratory case study of the application of the social justice concepts of access, redress, and equity in extended LLB programmes at higher education institutions in South Africa.**

Ethical Clearance number:

**UFS-HSD2024/0041**

We are pleased to inform you that your application for ethical clearance has been approved. Your ethical clearance is valid for twelve (12) months from the date of issue. We request that any changes that may take place during the course of your study/research project be submitted via an Amendment on RIMS to the ethics office to ensure ethical transparency. Furthermore, you are requested to submit a Final Report on RIMS for your study/research project to the ethics office once the project has concluded. Should you require more time than the allotted 12 months to complete this research, please apply for an extension by submitting a Continuation/Report on RIMS. Thank you for submitting your proposal for ethical clearance. We wish you success with your research.

The application is approved. Please obtain official letters of approval from other HEIs before conducting research at those institutions. Also, submit those letters of approval to the RIMS office for recordkeeping.

Yours sincerely,

**Dr Adri Du Plessis**

**Chairperson: General/Human Research Ethics Committee**

Digitally  
signed by Dr  
Adri du Plessis  
Date:  
2024.10.09  
17:38:11  
+02'00'

205 Nelson Mandela P.O. Box 339  
Drive Bloemfontein 9300  
Park West Tel: +27(0)514019337  
Bloemfontein 9301 [duplessis@ufs.ac.za](mailto:duplessis@ufs.ac.za)  
South Africa [www.ufs.ac.za](http://www.ufs.ac.za)



## ANNEXURE D: University of the Free State authorities approval



19-Aug-2024

Dear Mrs Leani Van Niekerk

### **UFS AUTHORITIES APPROVAL**

Research Project Title:

**An exploratory case study of the application of the social justice concepts of access, redress, and equity in extended LLB programmes at higher education institutions in South Africa.**

This letter serves as confirmation that your request to collect data from students and/or staff members at the University of the Free State for your research project has been approved **provided that you also have ethical clearance for the research from the ethics committee at the University of the Free State.**

**Please make sure that you also obtain your ethics clearance letter containing your reference number from the ethics committee after you have received this letter before you conduct your research.**

Kind Regards

A handwritten signature in black ink, appearing to read 'V. Reddy', is written over a light blue horizontal line.

**Prof Vasu Reddy (MASSA)**  
**Deputy Vice Chancellor: Research and Internationalisation**

## ANNEXURE E: University of the Western Cape permission



### UNIVERSITY OF THE WESTERN CAPE PERMISSION TO CONDUCT RESEARCH

DEAR Leani Van Niekerk

This serves as acknowledgement that you have submitted a request for permission to conduct research at the University. **Conditional permission has been granted pending the outcome of your ethics clearance application.**

#### RESEARCH TOPIC

An exploratory case study of the application of the social justice concepts of access, redress, and equity in extended LLB programmes at higher education institutions in South Africa.

**Name of researcher** : Leani Van Niekerk  
**Permission valid till** : 1 September 2025  
**Institution** : University of the Free State  
**Ethics reference** : UFS-HSD2024/0041  
**Permission reference** : UWCRP088702

You are required to submit your finalised ethics approval/clearance letter to [researchperm@uwc.ac.za](mailto:researchperm@uwc.ac.za) and engage this office in advance if there is a need to continue with research outside of the stipulated period. The manner in which you conduct your research must be guided by the conditions set out in the annexed agreement: Conditions to guide research conducted at the University of the Western Cape.

Please be at liberty to contact this office should you require any assistance to conduct your research or require access to either staff or student contact information.

Regards  
Dr Ahmed Shaikjee  
Deputy Registrar Academic Administration

**Approval status:** **CONDITIONAL  
APPROVAL** 20 August 2024

To verify or confirm the authenticity of this document please contact the University at [researchperm@uwc.ac.za](mailto:researchperm@uwc.ac.za).



UNIVERSITY OF THE WESTERN CAPE  
Robert Sobukwe Road, Bellville, 7535, Republic of South Africa

## ANNEXURE F: University of Fort Hare permission



University of Fort Hare  
Together in Excellence

### University of Fort Hare OFFICE OF UNIVERSITY REGISTRAR

**Alice (Main) Campus:** Private Bag X1314, King William's Town Road, Alice, 5700, RSA  
Tel: +27 (0) 40 602 2501 • Fax: +27 (0) 40 602 2577 • Email: akaturura@ufh.ac.za / registrar@ufh.ac.za  
**East London Campus:** Private Bag X9083, 50 Church Street, East London, 5201, RSA

6<sup>th</sup> September 2024

**Researcher: Leani L Van Niekerk**

Faculty of Law  
University of the Free State

**Promoter: Dr. JG Horn**

Dear Leani

#### **RE: Permission to Conduct Research at the University of Fort Hare.**

We have reviewed your request for permission to conduct research at the University of Fort Hare for a PhD in Private Law project titled **An exploratory case study of the application of the social justice concepts of access, redress, and equity in the extended LLB programme of the University of the Free State**

This letter serves to notify you that permission is hereby granted for you to carry out the research and to utilise the data for this project as laid out in

- your request for this gatekeeper's permission,
- your research proposal,
- the written consent form that you submitted, and
- the stipulations under which ethical clearance for the study was issued by the General/Human Research Ethics Committee at the University of the Free State.

Kindly be advised that beyond issuing this permission letter the Office of the Registrar is regrettably not able to assist with identification of and contacting participants, distributing and/or collecting questionnaires or any other related activities in the research process. You may, however, directly approach the identified participants or units.

On behalf of the Registrar:

2024.09.06  
10:11:13  
+02'00'  
—   
Actor Katurura

Executive Operations Manager

Registrar's Office: University of Fort Hare

## ANNEXURE G: Nelson Mandela University permission



PO Box 77000, Nelson Mandela University, Port Elizabeth, 6031, South Africa mandela.ac.za

Chairperson: Research Ethics Committee (Human)  
Tel: +27 (0)41 504 3624  
[Dalray.Gradidge@mandela.ac.za](mailto:Dalray.Gradidge@mandela.ac.za)

NHREC registration nr: RE C-042508-025

Ref: [H24-LAW-JUR-E-AP-001] Approval: 9 October 2024 – 9 October 2025

9 October 2024

Dear Dr Horn

**AN EXPLORATORY CASE STUDY OF THE APPLICATION OF THE SOCIAL JUSTICE CONCEPTS OF ACCESS, REDRESS AND EQUITY IN EXTENDED LLB PROGRAMMES AT HIGHER EDUCATION INSTITUTIONS IN SOUTH AFRICA**

PRP: Dr J Horn  
PI: Ms L van Niekerk

Your application for ethics approval to conduct research at Nelson Mandela University has been considered by the REC-H on the basis that the study has been duly vetted and approved by the University of the Free State, Research Ethics Committee.

Kindly use the following ethics reference number **H24-LAW-JUR-EAP-001** together with your university's ethics clearance number in any correspondence with gatekeepers and participants at the university. Ethics clearance is valid for one year.

Please inform the REC-H, of any changes that may arise during the execution of the study, particularly to the methodology.

It must be noted that the Nelson Mandela University assumes that the Research Ethics Committee responsible for providing the original ethics approval/clearance has undertaken both ethics and scientific review of the protocol according to the National Health Research Ethics Committee (2015) Guidelines and assumes primary responsibility for oversight regarding any ethical issues that may arise in the course of the study. The Nelson Mandela University would also wish to be provided with an executive summary of the findings from the research.

We wish you well with the project.

Yours sincerely

A handwritten signature in black ink, appearing to read "D Gradidge", written over a horizontal line.

**Dr D Gradidge**  
**Chairperson: Research Ethics Committee (Human)**

cc: Department of Research Development



## ANNEXURE H: University of Limpopo permission



**University of Limpopo  
Office of the Registrar**

Private Bag X1106, Sovenga, 0727, South Africa

Tel: (015) 268 2407, Fax: (015) 268 3048, Email: [Kwena.Masha@ul.ac.za](mailto:Kwena.Masha@ul.ac.za)/[Retha.Balie@ul.ac.za](mailto:Retha.Balie@ul.ac.za)

10 March 2025

To: T Mashamba

Email: [VNiekerkL@ufs.ac.za](mailto:VNiekerkL@ufs.ac.za)

### **GATEKEEPER PERMISSION TO CONDUCT RESEARCH**

**TITLE: AN EXPLORATORY CASE STUDY OF THE APPLICATION OF THE SOCIAL JUSTICE CONCEPTS OF ACCESS, REDRESS, AND EQUITY IN THE EXTENDED LLB PROGRAMME OF THE UNIVERSITY OF THE FREE STATE**

**Researcher:** L Van Niekerk  
**Supervisor:** Dr. JG Horn  
**Co-Supervisor/s:** N/A  
**Institution:** University of the Free State  
**Degree:** Doctor of Philosophy (PhD) in Private Law

Kindly be informed that Gatekeeper permission is granted to you to conduct research at the University of Limpopo entitled: **"An exploratory case study of the application of the social justice concepts of access, redress, and equity in the extended LLB programme of the University of the Free State"**.

Regards,

---

**PROF. JK MASHA  
UNIVERSITY REGISTRAR**

Cc: Prof. TM Mothiba: Acting Deputy Vice-Chancellor; Research, Innovation and Partnerships  
Prof. RN Madadzhe: Deputy Vice-Chancellor: Teaching and Learning  
Dr. T Mabila, Director: Research Development and Administration  
Prof. D Maposa – Chairperson: Research and Ethics Committee  
Dr. T Sewapa, Ethics Officer

*Finding solutions for Africa*

## ANNEXURE I: North-West University permission



Private Bag X1290, Potchefstroom  
South Africa 2520  
Tel: 018 299-1111/2222  
Fax: 018 299-4910  
Web: <http://www.nwu.ac.za>  
**Law Research Ethics Committee**  
Tel: 018 299-1932  
Email: [Braam.Klaasen@nwu.ac.za](mailto:Braam.Klaasen@nwu.ac.za)

9 April 2025

### ETHICS APPROVAL LETTER OF STUDY

Based on approval by the **Law Research Ethics Committee (Law-REC)** on 09/04/2025, the Law Research Ethics Committee hereby **approves** your RDGC-study as indicated below. This implies that the North-West University Senate Committee for Research Ethics (NWU-SCRE) grants its permission that, provided the special conditions specified below are met and pending any other authorisation that may be necessary, the study may be initiated, using the ethics number below.

**Study title:** An exploratory case study of the application of the social justice concepts of access, redress, and equity in extended LLB programmes at higher education institutions in South Africa

**Promotor:** Dr M Horn (UFS)

**Student:** Mrs L Van Niekerk (UFS)

|   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| N | W | U | - | 0 | 1 | 4 | 5 | 1 | - | 2 | 5 | - | A | 3 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|

Institution Study Number Year Status

Status: S = Submission; R = Re-Submission; P = Provisional Authorisation; A = Authorisation

**Application Type:** Single Study

**Commencement date:** 09/04/2025

**Risk Category:**

Low

**Expiry date:** 09/04/2026

**Approval of the study is initially provided for a year, after which continuation of the study is dependent on receipt and review of the annual (or as otherwise stipulated) monitoring report and the concomitant issuing of a letter of continuation.**

#### Special in process conditions of the research for approval (if applicable):

- Translation of the informed consent document to the languages applicable to the study participants should be submitted to the Law-REC (if applicable).
- Any research at governmental or private institutions, permission must still be obtained from relevant authorities and provided to the Law-REC. Ethics approval is required BEFORE approval can be obtained from these authorities.  
Please answer the following by email:
  - How many Universities will be approached for the research?
  - The inclusion criteria for participants are unclear.
  - It is unclear how the participants will be identified, how informed consent will be obtained, and by whom. The researcher will be told to contact someone from the Faculty of Law for help. The researcher must identify and contact such a person by themselves.
  - The researcher will be informed that LAWRec does not assist in the research or identify persons to assist with it.
  - The storage of data must be expanded upon.

**General conditions:**

*While this ethics approval is subject to all declarations, undertakings and agreements incorporated and signed in the application form, the following general terms and conditions will apply:*

- *The study leader/supervisor (principle investigator)/researcher must report in the prescribed format to the Law-REC:*
    - *annually (or as otherwise requested) on the monitoring of the study, whereby a letter of continuation will be provided, and upon completion of the study; and*
    - *without any delay in case of any adverse event or incident (or any matter that interrupts sound ethical principles) during the course of the study.*
  - *The approval applies strictly to the proposal as stipulated in the application form. Should any amendments to the proposal be deemed necessary during the course of the study, the study leader/researcher must apply for approval of these amendments at the Law-REC, prior to implementation. Should there be any deviations from the study proposal without the necessary approval of such amendments, the ethics approval is immediately and automatically forfeited.*
- 
- *Annually a number of studies may be randomly selected for an external audit.*
  - *The date of approval indicates the first date that the study may be started.*
  - *In the interest of ethical responsibility, the NWU-SCRE and Law-REC reserve the right to:*
    - *request access to any information or data at any time during the course or after completion of the study;*
    - *to ask further questions, seek additional information, require further modification or monitor the conduct of your research or the informed consent process;*
    - *withdraw or postpone approval if:*
      - *any unethical principles or practices of the study are revealed or suspected;*
      - *it becomes apparent that any relevant information was withheld from the Law-REC or that information has been false or misrepresented;*
      - *submission of the annual (or otherwise stipulated) monitoring report, the required amendments, or reporting of adverse events or incidents was not done in a timely manner and accurately; and/or*
      - *new institutional rules, national legislation or international conventions deem it necessary.*
  - *Law-REC can be contacted for further information or any report templates via [Riette.Venter@nwu.ac.za](mailto:Riette.Venter@nwu.ac.za) or 018 299 1996.*

The Law-REC would like to remain at your service as a scientist and researcher and wishes you well with your study. Please do not hesitate to contact the Law-REC or the NWU-SCRE for any further inquiries or requests for assistance.

Yours sincerely

Abraham Klaasen  
Dr Braam Klaasen  
Chairperson NWU Law Research Ethics Committee

Original details: (22351930) C:\Users\22351930\Desktop\ETHICS APPROVAL LETTER OF STUDY.docm  
8 November 2018

File reference: 9.1.5.4.2