



SAHRC REPORT



Transformation at Public Universities in South Africa

"...inequalities of a class, 'race', gender, institutional and spatial nature profoundly shaped South African Higher education, establishing patterns of systemic inclusion, exclusion and marginalisation of particular social classes and groups."

“

...issues of transformation
are not only the concern of
previously white universities, but
equally concern previously black
universities...

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ACKNOWLEDGMENTS

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LIST OF ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
ARNHE	Anti-Racism Network in Higher Education
CANRAD	Centre for the Advancement of Non-Racialism and Democracy
CESCR	Committee on Economic, Social and Cultural Rights
CHP	Complaints Handling Procedures
CoGTA	Department of Cooperative Governance and Traditional Affairs
DBE	Department of Basic Education
DBSA	Development Bank of South Africa
DHET	Department of Higher Education and Training
DISHCO	Discrimination and Harassment Office
DPME	Department of Performance Monitoring and Evaluation
DoJ&CD	Department of Justice and Constitutional Development
DSD	Department of Social Development
ERP	Emerging Researcher's Programme
FFC	Financial and Fiscal Commission
FTE	Funding per full-time equivalent
GDP	Gross Domestic Product
GER	Gross Enrolment Ratio
GFYC	Gateway First Years College
HESA	Higher Education South Africa
HETN	Higher Education Transformation Network
HRD	Human Rights Desk
ICCPR	International Covenant on Civil and Political Rights
ICEP	Institutional Culture Enlivening Process
ICP	Institutional Culture Plan
ICESCR	International Covenant on Economic, Social and Cultural Rights
ITP	Integrated Transformation Plan
KPI	Key Performance Indicators
LGBTI	Lesbian, Gays, Bisexual, Transgender and Intersex
MTEF	Medium Term Expenditure Framework
“NAP” or “National Action Plan”	National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerances

LIST OF ACRONYMS AND ABBREVIATIONS

NAPP	New Academic Practitioner's Programme
NDP	National Development Plan
NEHAWU	National Education, Health and Allied Workers Union
NMMU	Nelson Mandela Metropolitan University
NRF	National Research Foundation
NSFAS	National Student Financial Aid Scheme
NWU	North West University
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PAL	Programme for Academic Leadership
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
R&I programme	Reception and Introduction programme
SAHRC Act	South African Human Rights Commission Act
SARS	South African Revenue Service
SOPE Protocol	Solving Our Problems Equitably Protocol
SRC	Student Representative Council
TOC	Transformation Oversight Committee
TSG	Transformation Strategy Group
TSO	Transformation Service Office
VAT	Value Added Tax
UCT	University of Cape Town
UFH	University of Fort Hare
UFS	University of the Free State
UJ	University of Johannesburg
UKZN	University of KwaZulu-Natal
UL	University of Limpopo
UP	University of Pretoria
UNIVEN	University of Venda
USAF	Universities South Africa
UWC	University of the Western Cape
Wits	University of the Witwatersrand

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*The Report encompasses a record of
the systemic challenges that hinder the
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FOREWORD

In the exercise of its Constitutional mandate, in 2014, the Commission convened a National Hearing on transformation in institutions of higher learning in South Africa. The decision was taken following the receipt of a number of complaints on transformation issues in universities, which in the Commission's view, necessitated a holistic examination of transformation in institutions of higher learning in South Africa.

While the Commission recognises that a number of key developments have transpired since the conclusion of the National Hearing, including the “Rhodes Must Fall”, “Fees Must Fall”, “Afrikaans Must Fall” and the “Outsourcing Must Fall” protests, and the setting up of the Fees Commission of Inquiry, this Report remains relevant. The Report encompasses a record of the systemic challenges that hinder the attainment of substantive transformation in higher education and therefore constitutes an important tool for assessing progress in attaining substantive transformation in this sector. Moreover, the recommendations contained in this Report may be used to contribute to the transformation processes currently underway in many of our public universities. For this reason, therefore, it is hoped that despite the delay in the finalisation of the Report, it will receive due consideration from all stakeholders involved in the transformation project.

Furthermore, it must be noted that whilst the Report does refer, albeit in passing, to some of the developments that transpired after the conclusion of the National Hearing, the Commission does not deal with these developments in any comprehensive way in this Report. Given the nature of these developments and their significance, the Commission may need to engage with all relevant stakeholders further to address these matters in a separate report at a later stage.

It should be noted that the Report does not purport to contain a full record of all the transformation issues in the higher education sector. In addition, it should be noted that the examples of positive and negative practices referred to in this Report are not intended at demonising or praising particular universities, but are recorded merely to illustrate the state of transformation in the sector.

EXECUTIVE SUMMARY

More than 20 years into the country's democracy, South Africa continues to face deeply entrenched inequalities in all spheres of our society, including our public universities. Despite notable progress made in addressing historical inequalities in public universities, patterns of systemic exclusion, marginalisation and discrimination persist.

Over the years, these patterns of systemic exclusion and discrimination have manifested themselves in a number of incidents in our public universities. Incidents such as that which occurred at the University of the Free State (UFS) where four black members of the University's support staff were subjected to inhumane treatment at the hands of white students (commonly referred to as the "*Reitz Four*" incident); the death of a student at Stellenbosch University during an initiation event; and the death of another student at the North West University, allegedly at the hands of white students, during a freshman ceremony; are a manifestation of the abiding impact of systemic exclusion, prejudice and inequality which plague many institutions in our country.

Against the above backdrop, the Commission decided to undertake a public National Hearing to investigate more broadly, the issues regarding racial integration and transformation at South Africa's public universities. In particular, the Commission sought to determine whether institutions of higher learning have sufficiently transformed in the last 20 years with regard to race, gender, language, culture, disability and sexual orientation amongst others; and the factors, if any, that have hindered transformation in institutions of higher learning in the last 20 years.

In essence, the Report finds that our public universities have not sufficiently transformed in the past 20 years and that discrimination remains prevalent in public universities in South Africa, particularly on the ground of race, gender, disability and socio-economic class. The Report also finds that despite the relative gains, transformation in the higher education sector has been relatively slow.

Factors that have contributed to the slow progress in transformation include:

- a) The lack of a uniform understanding of what transformation means;
- b) The lack of institutional will to transform university cultures in some universities; poor integration of the transformation project at all levels of institutional life;
- c) The persisting disparities between racial groups inherited from our Apartheid past, as well as the persisting disparities between former white and former black universities;
- d) The lack of commitment to multilingualism in institutions of higher learning, as well as the lack of real commitment to the development of indigenous languages as academic and scientific languages that can be used as mediums of instruction;
- e) The insufficient attention being paid to the role of sport in the transformation agenda;
- f) The slow progress in changing student demographics in some universities and the failure of some universities to diversify the student demographics on its campuses;
- g) The slow progress in changing the demographics of academic staff (particularly senior management staff) and university management in some universities toward more representivity and progression programs for identified staff;
- h) The persisting subcultures of discrimination and domination within universities;
- i) The insufficient supply of adequate university accommodation and ineffective residence placement policies which hinder racial integration at university residences;
- j) The inadequate governance structures in some universities;
- k) The under- funding of the system of higher education by the state;
- l) The insufficient collaboration between various actors within the higher education sector;

- m) The ineffective complaints handling mechanisms in some universities which result in festering tensions, which at times manifest themselves in destructive forms;
- n) The lack of adequate oversight by the Department of Higher Education and Training (DHET) to ensure that institutions of higher learning do in fact transform; and
- o) A myriad of persisting social challenges, resulting in inequitable access to and success within the higher education system.

In view of these persisting challenges, the Report makes a number of recommendations to stakeholders which are aimed at accelerating substantive transformation in the sector.

Some of these recommendations include:

- a) Calling on the DHET to take a leading role in the transformation of the higher education system and for it to use its powers to hold universities who fail to transform to account;
- b) The DHET developing guidelines on appropriate transformation goals and strategies within the higher education sector;
- c) Universities developing human resources policies that prioritise the recruitment of under-represented and/or previously disadvantaged persons, particularly academics and leaders in senior posts;
- d) Universities putting in place early warning systems to identify students who require additional support with the view to improving success rates at universities;
- e) Improving the quality of our basic education system;
- f) Universities reviewing current language policies to determine appropriateness, practicality and impact on the university culture;
- g) The holding of debates and dialogues around teaching and learning methods;
- h) The redesigning of public universities' curricula to ensure its social responsiveness (both locally as well as regionally);
- i) The redress of historical inequalities between historically white and historically black universities;
- j) Addressing the funding challenges faced by poor and middle-income students;
- k) Designing programmes that not only promote tolerance, but also promote an understanding of diversity, while giving recognition to the inherent dignity and equal worth of all persons; and
- l) Introducing human rights education in public universities.

It is hoped that these recommendations will be heeded by all relevant stakeholders in order to ensure that meaningful transformation in higher education is realised.

1 INTRODUCTION



“

...since the dawn of democracy in 1994,
there have been persistent calls from
students, academic staff and civil society
for our institutions of higher learning to
transform.

”

1. INTRODUCTION

Pre-1994, institutions of higher learning, as with all other institutions of learning, were formally divided along racial and language groups. As noted by Universities South Africa (USAF (previously HESA)), “...inequalities of a class, ‘race’, gender, institutional and spatial nature profoundly shaped South African Higher education, establishing patterns of systemic inclusion, exclusion and marginalisation of particular social classes and groups.”¹ It is for this reason therefore, that since the dawn of democracy in 1994, there have been persistent calls from students, academic staff and civil society for our institutions of higher learning to transform.

A lot has been done to respond to the call for the transformation of our institutions of higher learning. In this regard, the Higher Education Act² was promulgated to try and redress the disparities of the past. Institutional restructuring was also initiated through mergers and incorporations of institutions of higher learning. Efforts were made to diversify courses offered by institutions of higher learning, to ensure that the education system is responsive to the needs of a democratic and transforming South Africa. As more fully set out below, the purpose of the National Hearing was to assess the effectiveness of these initiatives and efforts and to critically examine whether, in view of the imperative of transformation, our universities have sufficiently transformed in the last 20 years.

The Report structure has six primary sections. Section 2 sets out the background and the rationale for the National Hearing, following on an introduction. Section 3 records the legal and conceptual framework for the National Hearing; section 4 sets out the scope and methodology for the National Hearing; section 5 identifies the key questions that the National Hearing Panel set out to probe; section 6 provides a synthesis of submissions, and sections 7 and 8 contain the key findings and recommendations of the Commission.

¹ HESA “South African Higher Education in the 20th Year of Democracy: Context, Achievements and Key Challenges” (2014), p 9.

² 101 of 1997.

2 BACKGROUND AND RATIONALE



“

The Ministerial Committee established that there was a disjuncture between institutional policies and real-life experiences of staff and students, with recommendations directed at overcoming these challenges.⁶

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2. BACKGROUND AND RATIONALE FOR THE NATIONAL HEARING

Over the years, a number of efforts and initiatives have been undertaken to identify and address the challenges pertaining to transformation in institutions of higher learning in South Africa. Recommendations following on these efforts have been made for transformation of these institutions to ensure that they are in sync with the human rights ethos that South Africa aspires to.

Some of these efforts and initiatives include the Commission's investigation of initiation practices at public universities. This investigation took place following the death of a student at Stellenbosch University during an initiation event. The Minister of Education at the time, Professor Kadar Asmal, requested that the Commission conduct an investigation into initiation practices at universities and sought recommendations on how such practices could be regulated in future.³

In 2008, an incident at the UFS (commonly referred to as the “*Reitz Four*” incident) again brought to the fore the issue of transformation in universities.⁴ As a result of this incident, DHET established a Ministerial Committee to investigate transformation, social cohesion and the elimination of discrimination in institutions of higher learning.⁵ The focus of the investigation was racism. The Ministerial Committee established that there was a disjuncture between institutional policies and real-life experiences of staff and students, with recommendations directed at overcoming these challenges.⁶

In April 2010, the Minister of DHET, Dr Blade Nzimande, hosted a Summit of Higher Education Transformation.⁷ The Summit sought to revisit the issue of transformation with specific focus on, *inter alia*, equitable access to higher education, quality of higher education, and the role of higher education in national development.⁸

In 2012, the Commission was also called upon by the Higher Education Transformation Network (HETN) to investigate alleged racism and unfair discrimination at the NWU, following the tragic death of a first-year student during an orientation programme at the University.⁹ The Commission was also requested by the Minister of DHET to investigate whether the death was caused by initiation practices and whether discrimination on the basis of race and language played any role in the death of the student.¹⁰

3 Development Bank of South Africa (DBSA) (2010) “The challenges of transforming higher education and training institutions in South Africa”, pg. 3.

4 In 2007, four students at the University of the Free State recorded a video in which five black employees re-enacted initiation practices for students, including being made to drink full bottles of beer, perform athletic tasks, and lastly, to eat food on which a white male had allegedly urinated. Although the five black employees participated in the video voluntarily and the purpose of the video was meant as a satirical slant on the issue of racial integration at the university hostels, the video sparked outrage and led to protest action and widespread debate over the extent of racial reconciliation in South Africa.

5 The Ministerial Committee on Progress Towards Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions.

6 Page 9.

7 22 – 23 April 2010.

8 Department of Higher Education & Training (2010) “Report on the Stakeholder Summit on Higher Education Transformation – called by the Minister of Higher Education and Training, Dr Blade Nzimande”, 22-23 April 2010.

9 North West University (2012) “Report on the Investigation into the Drowning of the Late Thabang Godwin Makhoang and Related Matters” p. 12.

10 The Commission has taken note of the report from the NWU which concluded that the event at which Mr Makhoang died was not an initiation programme but rather a reception and introduction programme at the NWU. Moreover, the Commission has taken note of the report's findings that the death of Mr Makhoang was not as a result of unfair discrimination on the basis of Mr Makhoang's race and language. See North West University (2012) “Report on the Investigation into the Drowning of the Late Thabang Godwin Makhoang and Related Matters” p. 12.

Later, in 2012, the Commission conducted a number of interviews and surveys in all 23 public universities and established that transformation policies had placed an emphasis on numbers of enrolment and not integration. Moreover, in 2014, further allegations of racism and unfair discrimination at our institutions of higher learning came to the fore following a racially motivated incident in which two white students from the UFS drove over a black student and assaulted him.¹¹

In view of these reports of racism and racial discrimination in some institutions of higher learning, the Commission decided to undertake a public National Hearing to investigate more broadly the issues regarding racial integration and transformation at South Africa's public universities.

Whilst most of the incidents related to racism and race-based discrimination, the Commission was of the view that besides race, deeply entrenched discriminatory practices extended, to among others, gender, language, culture, sexual orientation and disability. Accordingly, the National Hearing sought to examine the extent to which our institutions of higher learning have sufficiently transformed not only in terms of race, but also in terms of gender, language, culture, disability and related grounds of discrimination.

¹¹ Times Live (2014) "Another race attack at top university", available at: <http://www.timeslive.co.za/thetimes/2014/02/20/another-race-attack-at-top-university>.

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Section 9 of the constitution on Equality

9(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.

9(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.

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3 LEGAL AND CONCEPTUAL FRAMEWORK



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...a transformed system of higher education is one that is free from all forms of unfair discrimination (whether direct or indirect) and artificial barriers to access and success, as well as one that is built on the principles of social inclusivity, mutual respect and acceptance.

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3. LEGAL AND CONCEPTUAL FRAMEWORK FOR THE NATIONAL HEARING

3.1 LEGAL AND POLICY FRAMEWORK

3.1.1 POWERS OF THE COMMISSION TO CONVENE THE NATIONAL HEARING

In terms of section 184(1) of the Constitution, the Commission is specifically mandated to promote the protection, development and attainment of human rights, and to monitor and assess the observance of human rights in South Africa. In order to execute its mandate, section 184(2)(a) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.

The SAHRC Act further supplements the powers of the Commission. In this regard, sections 15(1)(c) and 15(1)(d) of the SAHRC Act confer powers on the Commission to carry out investigations related to the observance of human rights in South Africa. It is on the basis of this constitutional and statutory mandate that the National Hearing on transformation in public universities was convened.

In terms of Article 20 of the Commission's Complaint's Handling Procedures (CHP), the Commission may conduct public Hearings under the following circumstances:

- i. If a complaint cannot be resolved by way of conciliation, negotiation or mediation;
- ii. If a Hearing will offer an appropriate solution regarding the complaint;
- iii. If it is in the public interest to do so;
- iv. If the complaint cannot be fairly decided upon on the basis of documentary evidence or written statements submitted by the parties or any other person having information relevant to the complaint only; or
- v. If a party requesting a Hearing supplies reasonable grounds.

In light of the public interest involved in ensuring that our institutions of higher learning are transformed, the Commission resolved to convene a National Hearing into the issues of transformation in institutions of higher learning.

3.1.2 COMPOSITION OF THE NATIONAL HEARING PANEL

Article 21 of the CHP states the following:

- "(1) A Panel, representing the Commission, must preside over Hearings.*
- (2) The Panel must consist of the following persons:*
 - (a) The Chairperson or any Commissioner designated by him or her, who must be designated as the Chairperson of the Panel;*
 - (b) At least one additional Commissioner; and*
 - (c) At least one natural person appointed by the Commission, which may include any member of staff of the Commission".*

In accordance with the provisions of Article 21 of the CHP, the following persons constituted the Panel for the National Hearing:

- a) Former **Commissioner Adv Mabedle Lourence Mushwana**, the former Chairperson of the Commission, who was also responsible for the portfolio on the right to equality at the Commission;
- b) Former **Commissioner Ms Lindiwe Mokate**, as the Commissioner who was responsible for the portfolio on access to basic education at the Commission; and
- c) **Advocate Tembeka Ngcukaitobi**, a member of the Johannesburg Bar of Advocates, with extensive experience in public interest litigation.

The Panel consulted Prof Ihron Rensburg, Vice Chancellor for the University of Johannesburg, who added valuable insights throughout the process.

3.1.3 LEGAL BASIS FOR THE TRANSFORMATION AGENDA

3.1.3.1 International and Regional Standards

At the international and regional levels, as a state party to a number of key human rights instruments, South Africa has committed itself to observe the principles of equality and non-discrimination. Some of the instruments advancing the principles of equality and non-discrimination include the following:

- i. The Universal Declaration of Human Rights;¹²
- ii. The International Covenant on Economic, Social and Cultural Rights;¹³
- iii. The International Covenant on Civil and Political Rights;¹⁴
- iv. The International Convention on the Elimination of All Forms of Racial Discrimination;¹⁵
- v. The International Convention on the Elimination of All Forms of Discrimination Against Women;¹⁶ and
- vi. African Charter on Human and Peoples' Rights.¹⁷

The principles of equality and non-discrimination are central pillars in the enjoyment of other human rights including that of access to education; evident from the instruments above. These principles have therefore gained the status of *ius cogens* in international law. In the South African context, particularly in light of the country's recent history of racism and discrimination; the principles bear a special significance.

According to General Comment 18 of the Human Rights Committee,¹⁸ the term "discrimination" has been defined as any distinction, exclusion, restriction or preference on any ground "*which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*"¹⁹ This, however, does not mean identical treatment in every instance, as "*the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination...*"²⁰

Insofar as the right to education is concerned, international human rights recognises the importance and need for education²¹ and in this regard, the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that "*education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms*".²²

12 See specifically Articles 1 and 7 of the Universal Declaration of Human Rights, 1948.

13 See specifically Article 3 of the International Covenant on Economic, Social and Cultural Rights, 1966.

14 See specifically Article 3 of the International Covenant on Civil and Political Rights, 1966.

15 See specifically Articles 2 and 3 of the International Convention on the Elimination of all forms of Racial Discrimination, 1966.

16 See specifically Articles 2, 5 and 10 of the International Convention on the Elimination of all forms of Discrimination against Women, 1979.

17 See specifically Articles 2 and 3 of the African Charter on Human and Peoples' Rights, 1981.

18 UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989.

19 Para 7 of General Comment 18.

20 Para 10 of General Comment 18.

21 General Assembly resolution 2200A (XXI) of 16 December 1966.

22 Article 13(1).

The ICESCR further provides that “*education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*”.²³ With regard to higher education, the ICESCR states that it should be “*made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education*”.²⁴

General Comment 13²⁵ of the CESCR recognises that education is both a human right in itself and an indispensable means of realising other human rights, stating that “[a]s an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities”.²⁶ The General Comment further states the essential elements of the right to education as being:

- a) **Availability** (sufficient quantity and infrastructure);
- b) **Accessibility** (non-discrimination; physical accessibility and economic accessibility);
- c) **Acceptability** (form and substance of education, including curricula and teaching methods); and
- d) **Adaptability** (flexible to adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings).²⁷

3.1.3.2 Constitution of the Republic of South Africa, 1996

The Constitution sets out the principles of human dignity, equality, freedom, non-racialism and non-sexism as its founding values. The right to equality is further guaranteed under Section 9 of the Constitution, which provides that no person may be unfairly discriminated against by the State or any person on among other grounds, race, gender, sex, ethnic or social origin, sexual orientation, disability, culture, and language.

The right to further education is also guaranteed in terms of the Constitution and the State must, through reasonable measures, progressively ensure that it is available and accessible to all.²⁸ Another important feature of the Constitutional right to education is the right for people to access education in public educational institutions in the language of their choice, where this is reasonably practicable, having regard to the principle of equity and the need to redress the results of past racially discriminatory laws and practices.²⁹

3.1.3.3 Higher Education Act³⁰

Some of the stated objectives of the Act are to redress past discrimination and ensure representivity and equal access to higher education. As such, the Act empowers the Minister to determine policies on funding, with a view to redressing past inequalities.³¹ It is therefore clear that, although the Act does not directly deal with the issue of transformation, the intention of the Act was to ensure adequate reform within institutions of higher learning.

23 Article 13(1) of the ICESCR.

24 Article 13(2)(c) of the ICESCR.

25 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10.

26 Para 1 of General Comment 13.

27 Paras 6 and 17 of General Comment 13.

28 Section 29(1)(b) of the Constitution.

29 Section 29(2) of the Constitution.

30 101 of 1997.

31 Section 39(1).

3.1.3.4 Education White Paper 3: A Programme for the Transformation of Higher Education³²

The Education White Paper 3 – A programme for the Transformation of Higher Education (“White Paper 3”) recognised that the system of higher education at the time was limited in its ability to meet the moral, political, social and economic demands of the new South Africa. In order to address these shortcomings, the White Paper outlined a comprehensive set of initiatives for the transformation of higher education through the development of a single co-ordinated system with new planning, governance and funding arrangements.

Some of the deficiencies outlined by the White Paper included inequitable distribution and access to opportunities by both staff and students, discrepancies in participation of different population groups, disparities between historically black and white institutions, a mismatch between the output of universities and the needs of a developing and reforming South Africa, and governance at institutions of higher learning.³³ In essence, all these challenges related directly to the issue of institutional reform.

The White Paper recognised the need for diversity and flexibility as important aspects of institutional responses to varying needs and circumstances. It also recognised the necessity of transformation cascading to structures, values and governance cultures of institutions. Moreover, while bemoaning the prevalence of institutionalised forms of racism and sexism, as well as the growing incidents of violent behaviour in many institutions of higher learning, the White Paper noted the importance of institutions of higher education in bringing about societal change. In light of the above observations and findings, institutions of higher learning were required to develop mechanisms to:

- a) *Create a secure and safe campus environment that discourages harassment or any other hostile behaviour directed towards persons or groups on any grounds whatsoever, but particularly on grounds of age, colour, creed, disability, gender, marital status, national origin, race, language, or sexual orientation;*
- b) *Set standards of expected behaviour for the entire campus community, including but not limited to administrators, faculty, staff, students, security personnel and contractors;*
- c) *Promote a campus environment that is sensitive to racial and cultural diversity, through extracurricular activities that expose students to cultures and traditions other than their own, and scholarly activities that work towards this goal; and*
- d) *Assign competent personnel to monitor progress in the above mentioned areas.*³⁴

The White Paper captured the need for transformation by stating that:

*“...an enabling environment must be created throughout the system to uproot deep-seated racist and sexist ideologies and practices that inflame relationships, inflict emotional scars and create barriers to successful participation in learning and campus life. Only a multi-faceted approach can provide a sound foundation of knowledge, concepts, academic, social and personal skills, and create the culture of respect, support and challenge on which self-confidence, real learning and enquiry can thrive.”*³⁵

32 Notice 1196 of 1997.

33 Para 1.4.

34 Para 3.42.

35 Para 2.32.

3.1.3.5 Language Policy for Higher Education³⁶

In recognition of the reality that language continues to be a barrier to access and success in higher education,³⁷ the Language Policy for Higher Education (“Language Policy”) emphasised that language and access to language skills is “critical to ensure the right of individuals to realise their full potential to participate in and contribute to the social, cultural, intellectual, economic and political life of South African society.”³⁸

...the Language Policy for Higher Education (“Language Policy”) emphasised that language and access to language skills is “critical to ensure the right of individuals to realise their full potential to participate in and contribute to the social, cultural, intellectual, economic and political life of South African society.”³⁵

The Language Policy noted that the failure of most institutions to promote multilingualism hampers the creation of an inclusive institutional environment which advances tolerance and respect for diversity. In the circumstances, the Language Policy required all public higher education institutions to develop 3-year rolling plans to promote multilingualism and report on progress in this regard.

The Language Policy also recognised that English and Afrikaans are the dominant languages of instruction in higher education. The Policy encouraged the development of other languages for use in instruction and noted that this would require, amongst other things, the development of dictionaries and teaching and learning materials.³⁹ The DHET undertook to work closely with the Department of Arts and Culture in undertaking these tasks.⁴⁰

3.1.3.6 White Paper for Post-School Education and Training⁴¹

The White Paper for Post-School Education and Training (“Paper on Post-School Education”) provides an examination of the state of higher education in South Africa, and identifies several factors negatively impacting on higher education. These include persisting inequalities based on race and a fragmented post-schooling system. The Paper on Post-School Education also emphasised the need to improve accessibility of higher education, particularly with regard to affordability, institutional culture, a strengthened secondary schooling system, partnerships, and diversity. It also emphasised that transformation is not only an option, but a necessity.⁴²

36 November 2002.

37 Both in the sense that African and other languages have not been developed as academic/scientific languages and the majority of students entering higher education are not proficient in English and Afrikaans.

38 Para 4.

39 Para 15.2.1.

40 Para 15.2.1.

41 20 November 2013.

42 Page 28.

3.1.3.7 The Draft Social Inclusion Policy Framework for Public Post-School Education and Training Institutions⁴³

At the time of the National Hearing, there was a Social Inclusion Policy Framework for Public Post-School Education and Training Institutions (“Draft Framework”) being developed. Social inclusion was identified as one of the issues that needed to be attended to. The social inclusion policy that universities were to develop was intended to promote substantive equality and ensure non-discrimination.

Some of the areas where attention would be focussed included ensuring among others, the promotion of culturally and racially mixed residences, student funding mechanisms targeted at students from disadvantaged rural backgrounds, attending to issues of discrimination against sexual minorities, and policies aimed at addressing gender-based violence.

3.1.3.8 Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)⁴⁴

PEPUDA advances equality and non-discrimination and requires that measures be taken to ensure that systemic discrimination does not take place in South Africa. It also provides for redress where discrimination has occurred.

3.2 CONCEPTUAL FRAMEWORK FOR THE NATIONAL HEARING

As indicated above, the overarching purpose of the National Hearing was to critically examine and interrogate the extent to which institutions of higher learning have sufficiently transformed in the last 20 years. In the circumstances therefore, it becomes imperative for the Commission to define at the outset what “transformation” envisages. This need was made apparent during the National Hearing where it emerged that there was no standard agreement on the meaning of the term “transformation”.

According to the Oxford Dictionary, the word “transformation” refers to “a **marked** change in form, nature, or appearance”. Equally, according to the Merriam-Webster Dictionary, the word “transformation” refers to “**a complete or major change** in someone’s or something’s appearance, form, etc.” Insofar as organisational transformation is concerned, according to Black’s Law Dictionary, transformation refers to a “process of **radical changes** that takes the company [organisation] in a new direction and effectiveness level.” From the above definitions, it is apparent that the process of transformation refers to the process of radical, decisive, marked, complete or major change from an undesired state to a more desirable one.

In the case of higher education, the state from which there must be a marked or complete change is the iniquitous and unequal system of higher education, which continues to reflect historical patterns of domination and subordination on the basis of race, gender, sexual orientation, disability and economic class. In the Commission’s view, in the context of higher education, transformation is a movement toward change which more closely aligns the system and practice in higher education with the preamble of the Constitution, as well as the founding provisions and section 9 of the Constitution. In this regard, in the preamble of the Constitution, South Africa commits itself to the healing of divisions of the past and to the establishment of a society based on democratic values, social justice and fundamental rights. In the founding provisions of the Constitution, South Africa commits itself to the democratic values of dignity, achievement of equality, and the advancement of human rights and freedoms, as well as to the building of a non-racial and non-sexist society.

⁴³ Government Gazette, No. 37928, 21 August 2014.

⁴⁴ 4 of 2000 (or Equality Act No 4 of 2000)

On the other hand, section 9 of the Constitution prohibits unfair discrimination on any ground that impugns the human dignity of any group of persons, which includes race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

In light of the above, therefore, in the Commission's view, a transformed system of higher education is one that is free from all forms of unfair discrimination (whether direct or indirect) and artificial barriers to access and success, as well as one that is built on the principles of social inclusivity, mutual respect and acceptance. It is against these values and norms that the Commission examines whether institutions of higher education have sufficiently transformed in the last 20 years.

4 SCOPE AND LIMITATIONS



“

The scope of the National Hearing covered the examination of the extent to which transformation in institutions of higher learning has taken place with regards to race, gender, disability, culture, language and sexual orientation since 1994.

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4. SCOPE AND LIMITATIONS OF THE NATIONAL HEARING AND METHODOLOGY USED TO CONDUCT THE NATIONAL HEARING

4.1 SCOPE AND LIMITATIONS OF THE NATIONAL HEARING

The scope of the National Hearing covered the examination of the extent to which transformation in institutions of higher learning has taken place with regards to race, gender, disability, culture, language and sexual orientation since 1994. While the Commission recognises that a number of other independent committees have been established by government and universities to investigate aspects that fell within the scope of the National Hearing, it is hoped that the recommendations of the Commission would make a contribution to the transformation project.

In addition, the Commission acknowledges that a number of significant developments have taken place since the conclusion of the National Hearing, which include the “Rhodes Must Fall”, “Fees Must Fall”, “Afrikaans Must Fall” and the “Outsourcing Must Fall” protests, which also expose the need for genuine reform in universities and the need for greater attention to be paid to transformation issues in institutions of higher learning. These developments occur outside of the time bound confines of the National Hearing. This Report will therefore, in the main, be confined to submissions made to the National Hearing Panel in 2014. In due course, the Commission plans to address with the requisite attention warranted by these developments, a follow-up report to consider these developments more fully.

4.2 METHODOLOGY USED FOR THE NATIONAL HEARING

In order to obtain a broad view of the state of transformation in the sector, the Commission identified a random sample of institutions of higher learning to take part in the National Hearing. The selected categories that would provide a representative perspective on the extent of transformation in South Africa were the representatives from former white universities and representatives from former black universities. These institutions were invited to make submissions before the National Hearing Panel and to share their perspectives on the state of transformation in their respective institutions, as well as the higher education sector as a whole. Other respondents and stakeholders who took part in the National Hearing were invited on the basis of their involvement in the transformation agenda at public universities and/or their ability to provide insights into matters related to transformation in general. The list of the respondents and stakeholders who took part in the National Hearing is set out in **Annexure “A”** to this Report.

4.3 APPROACH

The National Hearing was inquisitorial in nature. Respondents and stakeholders provided written submissions to the National Hearing Panel but also appeared under oath before the Panel to make oral submissions and provide clarity. Other than the submissions made by the various respondents and stakeholders, additional desktop research was undertaken by the Commission to inform this Report.

In undertaking its task, the National Hearing Panel was guided by the following terms of reference:

- a) To receive information and to hear evidence from the respondents and other relevant parties relating to the transformation of public universities in South Africa;
- b) To analyse evidence brought before the National Hearing Panel; and
- c) To make findings and recommendations.

5 KEY QUESTIONS



“

*...a transformed system of higher education
is one that is free from all forms of unfair
discrimination...*

”

5. KEY QUESTIONS SOUGHT TO BE ADDRESSED DURING THE NATIONAL HEARING

The following are the key questions and issues that the Commission sought to address during the National Hearing:

QUESTION/ISSUE	Whether institutions of higher learning have sufficiently transformed in the last 20 years with regard to race, gender, language, culture and disability and sexual orientation, amongst others;
QUESTION/ISSUE	The factors, if any, that have hindered transformation in institutions of higher learning in the last 20 years; and
QUESTION/ISSUE	What steps the Commission recommends be taken by government and other stakeholders to ensure that institutions of higher learning adequately transform.

6 SUBMISSIONS OF PARTIES AND DISCUSSION THEREOF



“

...issues of transformation are not only the concern of previously white universities, but equally concern previously black universities, which are confronted by other forms of prejudices and discrimination based on ethnicity, disability, nationality, language, culture, gender and sexual orientation, amongst others.

”

6. SUBMISSIONS OF PARTIES AND DISCUSSION THEREOF

During the National Hearing, a number of areas were identified as vital for transformation to occur. These areas formed the main enquiry points during the National Hearing. These areas are also relevant for purposes of seeking answers to the key questions raised in section 5. Key themes relevant to transformation and which formed the focus of discussion are:

- a) Understanding the term “transformation”;
- b) Historical legacy of higher education in South Africa and progress in transformation;
- c) University culture, including issues of language, sport, demographics, initiation and orientation, curriculum, transformation policies, as well as the impact of privatisation;
- d) Accommodation and residences;
- e) Governance and role players in transformation in higher education;
- f) Complaints handling;
- g) Funding;
- h) Collaboration between government departments and universities, as well as with the private sector; and
- i) Social issues impacting on transformation.

A summary of the participants’ submissions on the above issues and the discussion thereof follows below.

6.1 UNDERSTANDING THE TERM TRANSFORMATION

During the National Hearing, it was apparent that there was no standard agreement on the meaning of the term “transformation”. In this regard, the Transformation Strategy Group (TSG) explained that while all institutions use the term, institutions have different understandings of the meaning of the term. Some institutions have a very narrow interpretation of the term “transformation”, limiting themselves to demographic changes only. Other institutions understand the term to be more expansive, extending to institutional culture and a general reform of the institution.

In this regard, the UFS submitted that the term “transformation” has been widely used in the South African political discourse since the 1990s and generally referred to the need for society to change and to make a clear break from its Apartheid past.⁴⁵ The UFS further submitted that the institutionalisation of the term has, however, oversimplified and reduced the transformation agenda to the attainment of “racial equality”.⁴⁶ Given the reduction of the transformation agenda to the attainment of racial equality, the Transformation Oversight Committee (TOC) submitted that debates around transformation issues in previously black universities were absent.

The UFS’ Student Representative Council (SRC) was of the view that transformation should be broader and not focus on race only, as reducing the transformation agenda to racial equality ignored the broader transformational challenges in previously black universities. The University of the Witwatersrand (Wits), also had a similar view, emphasising that different forms of oppression reflect and reinforce each other and should, therefore, be addressed holistically, rather than prioritising particular issues, without taking cognisance of their intersectionality.⁴⁷ The TSG was also of the view that racism cannot be divorced from other forms of domination and exclusion, including gender and patriarchy, class, xenophobia, sexism and sexual orientation, amongst others. On the other hand, the National Education, Health and Allied Workers Union (NEHAWU) was of the view that transformation needed to address historical symbols of the colonial and apartheid eras, such as statues that remained on campuses.

45 UFS “Institutional Transformation as Leadership Transformation” (2013).

46 *Ibid* at p 1.

47 The University of the Witwatersrand “Governance and the Management of Transformation” p 11.

Having regard to the above submissions, it is apparent that the lack of a common understanding of what transformation means has resulted in discrepancies and sometimes seemingly contradictory approaches to transformation amongst different institutions. In the circumstances, the Commission considers the development of a comprehensive definition of the term transformation to be an important first step in dealing with issues of transformation in institutions of higher learning.

As indicated above, in the Commission's view, a conception of transformation that more closely aligns with the preamble of the Constitution, as well as the founding provisions and section 9 of the Constitution, should be preferred. So understood, transformation in the higher education sector will entail the creation of a system of higher education which is free from all forms of unfair discrimination and artificial barriers to access and success, as well as one that is built on the principles of social inclusivity, mutual respect and acceptance.

If the above position is accepted as correct, it becomes apparent that issues of transformation are not only the concern of previously white universities, but equally concern previously black universities, which are confronted by other forms of prejudices and discrimination based on ethnicity, disability, nationality, language, culture, gender and sexual orientation, amongst others. Moreover, it becomes apparent that the transformation agenda must transcend beyond the preoccupation with demographics and must instigate changes in the cultures of institutions of higher learning.

6.2 HISTORICAL LEGACY OF HIGHER EDUCATION IN SOUTH AFRICA AND TRANSFORMATION PROGRESS

According to NEHAWU, racial discrimination remains widespread in most South African universities, despite the development and implementation of a number of policies aimed at redressing the Apartheid legacy. NEHAWU submitted that racial discrimination at historically white universities continues and that transformation has been slow. In its view, only three universities were in fact transforming, namely the University of KwaZulu-Natal (UKZN); University of the Western Cape (UWC) and the University of Fort Hare (UFH). NEHAWU's submission was based on a controversial study commissioned by the Ministerial Oversight Committee (the University Transformation Index), which utilised an Equity Index to interpret the demographic student and academic staff profile at universities compared to their per capita research output. NEHAWU further advised the Panel that in terms of infrastructure, white universities historically had access to greater resources, the effect of which is still apparent in the higher education system today. According to NEHAWU, the structural consequences of the special distribution and allocation of resources is closely linked to recent incidents of racism, predominantly occurring at historically white Afrikaans universities.

...historically white institutions still have an exaggerated concentration of resources for infrastructural development to the peril of historically black universities.

It was further submitted that, "*...historically white institutions still have an exaggerated concentration of resources for infrastructural development to the peril of historically black universities*", and that this infrastructural disadvantage continues to hamper transformation and the achievement of equality. This historical context, NEHAWU emphasised, must be borne in mind in seeking to transform the higher education sector going forward.

The TSG submitted that all institutions carry remnants of particular social histories dating back to our collective past. Dominant subcultures in institutions prevent willing leaders from moving their institutions forward.

In addition, following the mergers which took place in a number of universities, several of the merged universities have submitted that it was difficult to promote a unitary institutional culture as a result of the unique history each campus brings with it.

In the case of the University of Limpopo (UL), it was submitted that although the merger of this university resulted in improved pass rates and research outputs, the merger also directly resulted in high academic staff turnover. The accreditation of the University was also negatively impacted, with students preferring to enrol at universities such as University of Pretoria (UP) or the University of the Witwatersrand (Wits).

The TSG advised the Panel that in light of the historical legacy of higher education in South Africa, the two priorities in transformation should be: (1) changing the demographic profiles of institutions to foster new cultures and ideas; and, (2) understanding and addressing the challenges of distinct institutional cultures.

The submissions revealed an almost exclusive focus on racism and demographics insofar as the transformation discourse is concerned. However, as indicated in the Commission's definition of transformation above, transformation concerns should go beyond racial discrimination and extend to other forms of prejudice and discrimination based on gender, ethnicity, language, culture, disability, sexual orientation and social origins, amongst others. Moreover, transformation must not be limited to the issue of demographics alone, which in some universities seems to be the case. There is a need to address deep-seated cultures within universities. Transformation should, therefore, be understood as a multi-layered process, which seeks to challenge and transform traditional and structural forms of discrimination.

Some submissions revealed that there is resistance to change in certain institutions. Indeed, the perception by some that transformation is "*being forced down the throats of many institutions*" was palpable. This resistance illustrates deep-seated issues around social cohesion and the prevalence of racial, cultural and, in all likelihood, socio-economic bias. This resistance is, amongst others, caused by the fear that inclusive social change may result in the loss of employment, especially by white males. In other circles, the resistance to change was under the guise that change will lower standards. However, as the University of Johannesburg (UJ) example has demonstrated as set out in paragraph 6.3.4 below, this fear is unfounded. Transformation and excellence are not mutually exclusive endeavours. In order to achieve such successful outcomes, it is important that transformation measures are coupled with programmes and interventions aimed at developing the skills and the capacity of previously disadvantaged groups.

6.3 UNIVERSITY CULTURE

According to Wits, the term "institutional culture" is contested.⁴⁸ Wits' 5-Year Institutional Cultural Plan (ICP) defines institutional culture as "*[t]he lived experience of the university by all those who inhabit it, including students, academic staff, management, support staff, workers and members of the public who come into contact with the institution. Institutional culture should be understood to encompass the policies and practices (tangible and intangible) that mark the daily and long-term academic, social, cultural and personal experiences of those who share and pass through the university's everyday practices and spaces.*"⁴⁹

On the other hand, Suransky and van der Merwe have defined "institutional culture" as "*deeply embedded patterns of organizational behaviour and the shared values, assumptions, beliefs or ideologies that members have about their organization or its work.*"⁵⁰ The Commission agrees with this definition. Indeed, institutional culture is not only concerned with external behaviour and practices but the ideological beliefs and assumption that inform such behaviour and practices.

48 University of the Witwatersrand "5 Year Institutional Culture Plan" (2014), p 2.

49 *Ibid* at p 6.

50 Suransky and van der Merwe "Transcending apartheid in higher education: transforming an institutional culture" (2014) at p 3.

Insofar as universities' institutional cultures are concerned, the TOC submitted that racism at universities is still pervasive today and referred to a report on Wits, which found that 70% of black staff members felt that the climate of the University was alienating, and compounded with racism, hampered advancement. Additionally, it submitted that racism was closely linked with the slow progress of transformation. Furthermore, the TOC submitted that the lack of will to transform impacts on the culture of universities, giving rise to deprivation of access and alienation.

The TOC also submitted that a 2012 Climate Survey conducted at the University of Cape Town (UCT), revealed that the culture and climate was alienating to black students and staff members, which highlighted the need to implement measures to promote inclusivity. Measures such as the development of transformation programmes and induction and leadership training have been undertaken to ensure a supportive and welcoming climate.

The NWU SRC submitted that issues pertaining to social inclusion on campuses remain. In this regard, it submitted that some of the issues that contribute to social exclusion include issues of language (including the language used in lectures), differences in recreational activities, differences in musical preferences, and differences in culture.

According to NEHAWU, students from the black working class that are able to access higher education, find themselves in an environment where the needs and values of their own communities are ignored. To compound their sense of alienation, NEHAWU submitted that students from the black working class enrolled at historically white universities, find themselves feeling unwelcome at those institutions.

NEHAWU further submitted that a more covert form of racism is emerging in post-apartheid South Africa. This form of racism often evades racial terminology, while remaining solidly imbedded in the day-to-day operations of many institutions. According to NEHAWU, it is this form of racism which drives institutional culture. To further expand on this point, referring to an article produced by Vernellia Randall, NEHAWU highlighted that the danger in institutional racism is that it is often *"overtly and covertly imbedded in the institution's culture, systemic policies and practices"* and that such cultures, policies and practices are in fact often not racially motivated, but are motivated by reasons such as efficiency, productivity and meritocracy. In such circumstances, the greatest danger may lie in the fact that individuals and/or institutions may not be aware of the embedded forms of racism.

...NEHAWU highlighted that the danger in institutional racism is that it is often *"overtly and covertly imbedded in the institution's culture, systemic policies and practices"*...

On the other hand, Professor Pitika Ntuli submitted that in his experience, issues which relate primarily to language and culture can inevitably transform into issues of racism. In addressing issues of latent racism, which often arise from a lack of understanding of different cultures, he recommended that an analysis of university curricula needs to be undertaken to ensure that what is being taught is appropriate. Secondly, he recommended that issues of language need to be emphasised as this has the effect of excluding many people, and of perpetuating racism in the long term.

Against this background, the Report discusses and considers some of the factors that were identified as influencing or driving institutional culture during the National Hearing. These factors include language and sport; demographic profiles of students and academic staff; orientation and initiation practices; university curriculum; and transformation policies. These factors are in turn discussed in more detail below.

6.3.1 LANGUAGE AS A CENTRAL COMPONENT OF CULTURE AND THE ROLE OF SPORT

Prof Pitika Ntuli submitted that the exclusive use of dominant languages has an exclusionary effect and may further contribute to the perpetuation of racism, and as such needs to be urgently addressed. Similar views were shared by UJ, which submitted that the Afrikaans language was used at some historically white institutions to exclude non-Afrikaans speakers, the majority of which are black students.

UJ further submitted that the consequence of this has been that the student bodies of the campuses of merged institutions are almost entirely White or Black.

On the other hand, Trade Union Solidarity, raised concern about the gradual exclusion of Afrikaans as an academic language and called for provision to be made for teaching in all official languages, to ensure that students are taught in their home languages. Wits, however, cautioned that although multiculturalism is protected and promoted in the Constitution, care should be taken to ensure that the interpretation and implementation of language and cultural rights does not inadvertently result in the entrenchment of racial discrimination and exclusion.

One of the main challenges raised by the NWU is the challenge of reconciling the aspiration of students to be taught in their mother tongue, with the need to ensure that language does not act as a barrier to access. In this regard, the NWU indicated that issues of language and initiation have been prevalent in its campuses, and that in order to address this, a multi-lingual language policy was adopted, which allows for simultaneous translation in lectures. The language policy at the NWU, which has been described by the University as “flexible, functional and multilingual”, is aimed at promoting accessibility, integration and a sense of belonging. The fact that all students attend the same lectures, which are translated simultaneously through headphones utilised by the students, ensure that students are not segregated according to race and language, thus promoting integration. The language services, which began in 2004, are used in more than 1,500 lecturing periods per week in addition to other teaching activities and meetings. Although services are closely monitored, research on the efficacy of the simultaneous translation services is on-going.

It was further submitted that each campus of the NWU has its own language plan in which the language needs of the students and the linguistic realities on the ground are taken into consideration, thus aligning the plan with the demands of the macro-environment in which the institution functions. According to a submission received by the NWU, the application of this policy also makes measureable contributions towards the use of these languages as languages of higher education. At the Potchefstroom Campus of the NWU, Afrikaans, English, and Setswana enjoy official status, while Sesotho is the working language at the Vaal Triangle Campus. No submission was made on the official languages utilised at the Mafikeng Campus. A report of the Department of Interpreting Services of the NWU, dated 14 October 2014, was submitted to the Commission. The report commends the NWU for being a leader in offering educational interpretation services and for its willingness to share knowledge and experience with other institutions. It further emphasises the contribution that the language policy and the interpreting services make to multilingualism and to the promotion of indigenous languages in South Africa. The report finds that the policy is in line with the Constitution and the Language Policy for Higher Education and is aimed at serving transformation at the University and “*not at serving the interests of one group only or of creating a back door for them to remain exclusively Afrikaans.*” Rather than implement a system of double- and parallel-medium classes (where classes are held separately in different languages), the simultaneous translation services allow for students to receive the same message and share the same experiences. It was therefore submitted that the model was based on “*sound educational principles*”. However, reference is also made in the report to the fact that educational interpreting at the Potchefstroom campus is mainly done from Afrikaans to English, and that the foundation phase courses in the Faculty of Educational Sciences also use some translation for Setswana, but mainly for bridging purposes and to enable students to teach in Setswana.

The report further sets out that only four Setswana interpreters are available on the Potchefstroom Campus and five on the Mafikeng campus. Interpreting is done in classes that are predetermined and interpreters are allocated to classes selectively. Problems were identified particularly with regard to the Mafikeng Campus, where the Department has struggled to convince lecturers of the need for interpreting. A perceived negative attitude from “certain senior managers” was identified towards interpreting on the Vaal Triangle Campus, where a system of parallel-medium classes is still applied. The report recommends that the situation at these campuses should be attended to with a view to implementing educational interpreting and making the benefits available to students on those campuses as well. The report further recommended that an overall effort should be made to move beyond Afrikaans and English and to focus on multilingualism in general. In addition to this, recommendations were also made that the University should attend to the promotion of indigenous languages as languages of teaching, or at least of academic support.

A further issue raised in the report is the fact that the NWU makes extensive use of temporary staff for interpreting services, and in many instances, makes use of students enrolled in the modules they have to interpret. An observation is further made that this detracts student interpreters from learning, and could have a detrimental impact on their learning experience. This has been disputed by the NWU in a subsequent submission made to the Commission. In this regard, the NWU has averred that the perception regarding the use of temporary staff and students as interpreters is incorrect. It submitted that most of the interpreters employed by the University are permanent professional interpreters and that student interpreters employed are mostly postgraduate students, with a very small number of students interpreting their own classes.

The NWU further submitted, following the National Hearing, that the Educational Interpreting Services were suspended at the Mafikeng and Vaal Triangle campuses, in light of some of the issues raised in the report above. The NWU, however, submitted that various steps are being taken to rectify this situation as part of the overall language management at the NWU. Steps taken include the revision of the NWU language plan to promote the use of locally dominant African languages as academic languages, by utilising these languages as mediums of instruction.

The UFS on the other hand, explained that in terms of its Language Policy (2003), the University aims to foster institutional functional multilingualism and respect for language rights. In doing so, it aims to improve access, equity and success in higher education and contribute to language and cultural tolerance. In line with the Language Policy for Higher Education, English and Afrikaans remain the main languages of tuition at the University, and education is offered on a parallel-medium basis. In addition to this, the Policy makes space for the phasing in and the development of Sesotho as an academic and scientific language and provides for simultaneous interpreting services for academic debates or discussions. The Policy also makes accommodation for deaf, partially sighted and blind persons where the need arises and where this is reasonably practicably possible.

Other submissions provided to the Commission, however, referred to the fact that an unforeseen and unintended consequence of the parallel-medium language policy of the UFS (together with the hostel placement policy of the University which allowed students to choose the hostel they wanted to live in), was the creation of “two campuses” on the main campus: one White and one Black. Thus there is separation in the classrooms and the residences.⁵¹ Student representative stakeholders also perceived the prevalence of dual medium language policies at some campuses as regressive to the transformation objectives.

Only one submission was received about sport and the role it can play in institutional transformation. In this regard, UJ submitted that sporting activities, as well as other things, also have strong racialised historical traditions whose perpetuation may lead to race-based exclusion and alienation.

From the submissions above, it would appear that universities currently apply two forms of multilingualism. The first being a system based on simultaneous interpretation, as utilised by the NWU, whilst the other

51 UFS “Increasing Diversity in the UFS Main Campus Residences: A New Policy and Role for Residences” (2007) p 2.

is a dual / parallel system which provides separate classes in different languages. The latter is the model applied in most universities, and is largely limited to English and Afrikaans teaching. While this model may be in line with the current Language Policy of the Department of Higher Education, it tends to result in the creation of two separate systems of education, one attended largely by white Afrikaans students, and the other attended by white English students and other racial groups. As a result, this model may contribute to the preservation of social divisions based on language and race.

In the Commission's view, the model which allows for all students to attend the same lectures and receive simultaneous interpretation, when properly implemented, is preferable as it has the potential to promote social cohesion more effectively. However, as demonstrated by the NWU example, the success of this model is largely dependent on ensuring that the provision of the interpreting services is professionalised and quality assured, to ensure the accuracy of the interpretation and to ensure that education standards are not compromised by such interpretation. There is also a need to increase the interpretation offerings to ensure that the provision of these services is not limited to the provision of English and Afrikaans interpretation.

Greater attention also needs to be paid to the language needs of people living with disabilities. From the submissions made at the National Hearing, it appears that, at the time of the National Hearing, only UFS had incorporated the needs of deaf, partially sighted and blind persons into the language policy of the University. While it is acknowledged that such accommodation may be included in the disability policies of other institutions, the Commission is of the view that in order to mainstream disability issues and to promote equality for persons with disabilities at universities, the incorporation of the language needs of people with disabilities into the language policies of universities should be encouraged.

**Greater attention also needs to be paid to the language
needs of people living with disabilities.**

The Commission also notes that whilst there were many submissions regarding the promotion of multilingualism and the development of African languages as academic and scientific languages, detailed information on how institutions were giving effect to these stated objectives was lacking. The inescapable inference is that despite explicit commitments to these goals and objectives, not much progress has been made in many universities in this regard. The Commission is, however, encouraged by the findings in the Soudien Report⁵², which reflected many positive initiatives, such as the compulsory African language courses for staff at some institutions and intentions to require students to take African language courses during undergraduate studies. While the information before the Commission does not enable it to make a determination on the effectiveness of these initiatives, the Commission welcomes the implementation of compulsory language courses aimed at promoting a multilingual society at large and as such, narrowing racial and language barriers.

Insofar as sport is concerned, according to Black and Nauright, "*[i]n South Africa, sport was central in a geography of exclusion and division, [and] became a central factor in the emergence of diverging sporting cultures among spatially divided groups.*"⁵³ The country applied racial segregation as one of the central organising principles in sport, and as such, sport such as cricket and rugby became dominated by whites, and ultimately became a central symbol of white supremacy under Apartheid.⁵⁴ However, the culture of sport also has important gender and socio-economic class aspects, with a strong association between sport and masculinity, and the resultant prevailing gender inequalities in sporting structures in South Africa as a whole.

52 Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions, 30 November 2008.

53 Black and Nauright "Rugby and the South African Nation: Sport, Cultures, Politics, and Power in the Old and New South Africans" (1998), Manchester University Press, p 24.

54 *Ibid* at p 45.

This societal reality has been mirrored in public universities, with historically white universities continuing to focus on those sporting activities that were dominated by white males during Apartheid, especially rugby, resulting in the social exclusion of other racial groups and women. That said, however, while sport has been used, and continues to be used, to perpetuate segregation, sport has been recognised as an equally effective tool to promote unity.⁵⁵ Accordingly, public universities have an opportunity to use sport as a galvanising mechanism to promote social cohesion in their institutions, as opposed to using sport as a tool for social segregation and division. Moreover, universities have an opportunity to use sport to contribute to the transformation of society as a whole. UP is a good example in this regard, having developed a comprehensive sport programme, which includes the identification of talent from communities across South Africa. It particularly identifies athletes from disadvantaged communities, offering them bursaries, thereby contributing to the professionalization of sport in South Africa and the alleviation of poverty in these communities. However, the success of projects of this nature will require political will from all involved to change the *status quo*.

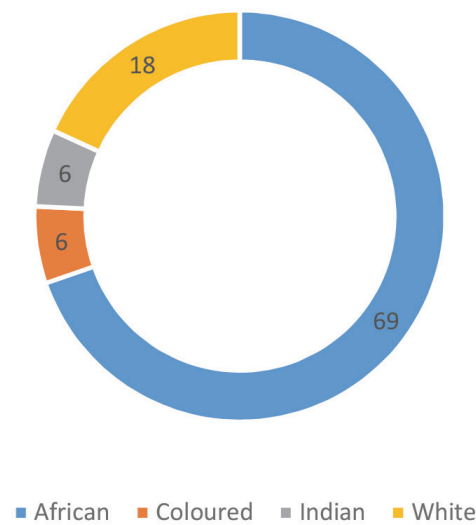
6.3.2 STUDENT DEMOGRAPHICS

According to the UFS, while demographic changes *per se* will not bring about the necessary change, lack of demographic change is a “*fundamental obstacle to cultural, epistemological and pedagogic change*”. This view was shared by the TSG, which expressed the view that changing the demographics of students and staff was a good starting point in transforming universities, as these changes had the potential to foster new cultures and ideas within institutions of higher learning.

In light of the concerns regarding demographic changes, the DHET provided statistics on the demographics of enrolments for 2012, as the latest finalised statistics available at the time the National Hearing was conducted. In this regard, the following demographics were outlined:

- a) 69% of students enrolled in public universities were Black Africans;
- b) 6% of students enrolled in public universities were Coloured;
- c) 6% of students enrolled in public universities were Indian; and
- d) 18% of students enrolled in public universities were White.⁵⁶

Demographics of enrolments for 2012



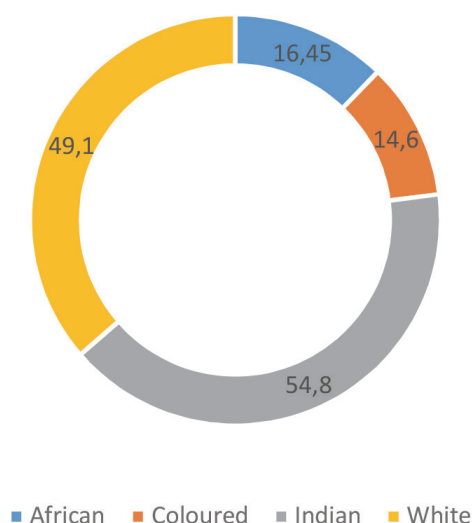
55 Keim "Nation Building at Play: Sport as a Tool for Social Integration in Post-apartheid South Africa", Meyer & Meyer Verlag (2003).
56 The racial demographics of enrolments remain the same when distinguishing between contact-based and distance learning.

The DHET also submitted data demonstrating the Gross Enrolment Ratio (GER) of persons of tertiary school-going age (18 to 24 years) in institutions of higher learning. The purpose of the data was to illustrate the proportion of persons between the ages of 18 to 24 that are enrolled in universities.

According to the data provided by the DHET for 2013, the GER by race at public universities was as follows:

- a) African - 16.45%;
- b) Coloured - 14.6%;
- c) White - 49.1%; and
- d) Indian - 54.8%.

GER by race at public universities for 2013



The submissions overall, revealed that while the demographics of students were changing generally, some universities have been more successful in diversifying than others. Submissions also indicated that although the overall demographic representation appears to be changing, some university campuses still largely reflect historical demographics. In this regard, the NWU submitted that although an overall proportion of 50% of students enrolled at the University were Black, 97% of students at the Mafikeng Campus were Black, 74% of students at the Potchefstroom Campus were White, and 75% of students at the Vaal Triangle Campus were Black.

The submission received from the UFS similarly indicated that the Bloemfontein Campus was 53% Black, and 39% White, while the QwaQwa Campus was 99.7% Black, and the South Campus was 87.7% Black. This compares to the overall percentage of 64.9% of the University's students being Black.

The Panel also noted that the proportion of black students at UP is significantly lower than other universities, and enquired from the University whether it applied a cap on the number of black students allowed to enrol. UP advised that the University does not apply any cap on the number of black students allowed to enrol, and indicated that although the proportion of black students is lower than in other universities, the demographic target set for 2015 was 55% for the enrolment of black students. It further emphasised that transformation entails more than just a change in demographics and includes the necessity of creating inclusive environments.

It was further submitted that at UP, the student admission, selection and enrolment policies are aimed at achieving transformation. While applicants are required to comply with entry requirements of a particular programme which are primarily academic, programmes often include different categories of applicants in

order to make provision for applicants from designated groups. In this way, the policies ensure that students from previously disadvantaged groups are admitted to programmes with limited enrolments in order to align the demographic profile of programme enrolments. This is mostly done in respect of programmes required to address national skills shortages, for example in Engineering, Health and Veterinary Sciences. It was further advised that, at the time of the National Hearing, 47% of engineering students at UP were Black.

In responding to similar concerns relating to the low proportion of black students enrolled at NWU, the submission from the University emphasised the fact that universities face difficulties in attracting and funding black students, and that although the Potchefstroom Campus tends to attract Afrikaans speaking people, it aims to ensure that this does not limit access to non-Afrikaans speaking individuals.

Wits, on the other hand, submitted that policies which potentially restrict the number of enrolments of certain racial groups are not only unconstitutional, but result in implicit segregation. It was further submitted, however, that while many believe that the demographics of universities should be the same as national demographics in society, this was not seen anywhere in the world as there was a need to make space for international students. It was emphasised, however, that this does not mean that transformation should not be achieved, but rather that the correct balance must be struck.

UJ also raised concern over the fact that a number of universities struggled to attract a higher percentage of black students when the demographics of the country as a whole were changing. The UWC, on the other hand, submitted that formerly white universities should not be applauded for accepting a greater number of black students as this is expected. According to the UWC therefore, the focus should be on changing the culture of universities, rather than on the issue of demographics.

...transformation is a complex, multi-layered and dynamic process which not only encompasses the need to change demographics, but encompasses the need to promote substantive change in the culture of institutions of higher learning, as well as the attitudes and perceptions within institutions of higher learning.

In light of the above submissions, it is apparent that transformation is a complex, multi-layered and dynamic process which not only encompasses the need to change demographics, but encompasses the need to promote substantive change in the culture of institutions of higher learning, as well as the attitudes and perceptions within institutions of higher learning. These changes are only possible if the culture of an institution is open and welcoming to new ideas, and does not ultimately seek to transform individual identity into one of conformism.

While demographic changes are not the sole determinative of transformation, their importance in the transformation agenda cannot be discounted altogether. As aptly articulated in the submissions made, a change in demographics allows for the entrance of new ideas and values, which serves as a catalyst for the overall change in the culture and the social fabric of previously untransformed institutions.

The submissions referred to above indicate that overall, the demographics of universities appear to be changing, with levels of progress differing from university to university. In this regard, the submissions received revealed that while most historically white universities have witnessed significant change in the demographic profiles, there are some which continue to reflect a majority of white students and staff members. On the other hand, historically black universities have undergone little change in their demographic composition.⁵⁷

⁵⁷ DHET "Second National Higher Education Summit: Annexure 2: Addressing Systemic Higher Education Transformation" (2015).

Notwithstanding some progress being noted in the demographics of most universities, it was apparent at the National Hearing, that the current measures and programmes have not been completely successful in promoting equitable access for all racial groups. This appears to be largely due to the limited funding available to previously disadvantaged students, who continue to suffer disadvantage due to their poor socio-economic backgrounds. The participation rate of these students is unlikely to significantly change unless additional funding is made available, or the socio-economic profile in South Africa begins a marked and rapid transformation.

6.3.3 STUDENT PERFORMANCE

In order to provide a national context within which the submissions can be better understood, the White Paper on Post-School Training and Education stated that:

“South African universities are characterised by relatively low success rates – 74 per cent in 2011, compared to a desired national norm of 80 per cent. This results in a graduation rate of 15 per cent – well below the international norm of 25 per cent for students in three-year degree programmes in contact education.”⁵⁸

In its submission relating to the drop-out rates of students, the DHET raised concerns by illustrating the fact that 33% of students drop out after the first year and 50% drop out prior to completion. According to the submission made by representatives from Wits, high drop-out rates of black students can be attributed to three main reasons, namely:

- a) A lack of funding, noting that many students do not qualify for National Student Funding Aid Scheme (NSFAS) funding, but cannot afford the cost of tertiary education without a loan;
- b) Poor performance, attributed to the fact that the secondary schooling system is not functioning adequately; and
- c) Institutional culture which may be alienating to certain groups.

The Wits SRC representative submitted additional reasons for the high failure and drop-out rate of black students, namely:

- a) The failure of and the racialised nature of the system of education as a whole in failing to provide for the needs of poorer students;
- b) The challenges that students coming from outside of Johannesburg face in adapting to city life;
- c) The fact that the academic year is too compressed for the amount of work needed to be completed; and
- d) That universities allegedly maintain a set number of graduates, and where the number of graduates exceeds this limit, students are failed.

In addition, UFS submitted that the different pass rates between different racial groups may be attributable to differences in culture, language, teaching and learning styles.

The UWC SRC further raised concern regarding examination policies and/or practices which require students to include their names on the answer scripts. In the representative's view, these policies and/or practices were prejudicial to students, particularly black students, and students who are involved in politics, who are allegedly often marked down by lecturers. In response to this perceived prejudice, the UWC SRC embarked on a “do not mark my surname, mark my script” campaign.

58 White Paper on Post-School Education and Training, p 32.

In light of the above submissions, it is apparent that barriers to success at institutions of higher learning persist for many students. The Commission does, however, acknowledge that a number of initiatives have been adopted by universities to address the issues identified above, with a view to providing additional support to students to improve performance rates. Several universities have introduced new teaching methods, mentorship programmes and learning programmes designed to provide support. In the latter respect, the UFS offers a number of preparatory programmes for students without university admission.

UJ submitted that it has the most extensive tutor programme on the continent, comprising of 3,500 tutors, resulting in an improved graduate output of black graduates. In addition to the tutorship programme, UJ submitted that it provides students with additional support systems through *inter alia* the Centre for Psychological Services and Career Development ("PsyCaD").

At Wits, measures have also been put in place to improve student performance, particularly the performance of previously disadvantaged students. These measures include the establishment of a committee to analyse institutional culture and engagements between the Vice Chancellor and students at Wits. UWC, on the other hand, submitted that in addition to tutoring and mentorship programmes, the Student Affairs office was renamed as 'Student Development and Support', in an attempt to establish a programme that would offer support to students and to assist them in developing skills which will contribute to their success as students and graduates.

Other information provided showed that although the performance rates of all racial groups have been improving in many universities, black and coloured students tended to perform more poorly in most faculties, particularly in undergraduate programmes.

Other information provided showed that although the performance rates of all racial groups have been improving in many universities, black and coloured students tended to perform more poorly in most faculties, particularly in undergraduate programmes. Notwithstanding the generality of the above statement, it must be noted that the performance rates between racial groups vary across campuses. Moreover, the performance rates between racial groups vary across programmes. For example, figures provided by the Nelson Mandela Metropolitan University (NMMU) have reflected larger differences in performance rates between racial groups in areas such as Architecture, Environmental Science (particularly in Botany, Geosciences and Zoology), Accounting; Engineering, Law, Biomolecular and Chemical Sciences, and Arts (particularly in the School of Language, Media and Culture), with black and coloured students showing on average, lower success rates in these disciplines. Another issue of concern is that according to NEHAWU, black students from working class backgrounds who access higher education are steered into the humanities or trained at a technical skills level.

Notwithstanding the progress made in improving the performance and success rates of all students (particularly for black and coloured students), the Commission remains concerned that student performance continues to be stratified along racial lines.⁵⁹ In the Commission's view, this points to the need for more to be done to support black and coloured students to adjust to university life, and to cope with the demands of their programmes. Whilst the introduction of tutorship, mentorship and bridging programmes in many universities is commendable, the fact that these programmes are largely reliant on students initiating or seeking help is a concern, as not all students have the confidence to seek out such help. Accordingly, universities should consider introducing a referral system, in terms of which students who have been observed to be struggling with their studies are referred to the support programme relevant to them. Care should be taken, however, to ensure that this system is not used to victimise students.

59 *Ibid* at fn 114, p 55.

The table below provides a snapshot of undergraduate student success rates disaggregated by population group. The information was provided to the DHET by universities for the 2014 year. The statistics reflect only undergraduate success rates for both contact- and distance-based education. This level of information demonstrates continued differences between success rates for both contact- and distance-based learning, with white students faring markedly better than their African counterparts in both categories.⁶⁰

Undergraduate success rates of students in public HEIs by attendance mode, population group and institution, in 2014

Institution	Contact (%)					Distance (%)				
	African	Coloured	Indian/ Asian	White	Average	African	Coloured	Indian/ Asian	White	Average
Cape Peninsula University of Technology	76	85	84	89	80	68	58	87	72	70
University of Cape Town	82	87	88	94	88	n.a.	n.a.	n.a.	n.a.	n.a.
Central University of Technology, Free State	74	76	62	80	75	84	84	100	95	84
Durban University of Technology	82	83	83	89	83	n.a.	n.a.	n.a.	n.a.	n.a.
University of Fort hare	84	85	86	89	84	n.a.	n.a.	n.a.	n.a.	n.a.
University of the Free State	79	78	85	90	83	80	70	68	73	77
University of Johannesburg	84	83	87	88	85	n.a.	n.a.	n.a.	n.a.	n.a.
University of KwaZulu-Natal	80	83	86	90	82	84	84	90	81	84
University of Limpopo	87	90	95	95	87	n.a.	n.a.	n.a.	n.a.	n.a.
Mangosuthu University of Technology	83	93	66	100	83	n.a.	n.a.	n.a.	n.a.	n.a.
University of Mpumalanga	94	79	94	n.a.	94	n.a.	n.a.	n.a.	n.a.	n.a.
Nelson Mandela Metropolitan University	76	80	82	87	79	92	100	50	100	92
North West University	84	83	89	89	86	86	88	98	96	86
University of Pretoria	78	80	81	87	83	72	83	80	75	73
Rhodes University	83	85	90	89	86	n.a.	n.a.	n.a.	n.a.	n.a.
University of South Africa	n.a.	n.a.	n.a.	n.a.	n.a.	65	66	69	74	67
University of Stellenbosch	78	80	85	89	86	n.a.	n.a.	n.a.	n.a.	n.a.
Sol Plaatje University, Northern Cape	88	93	n.a.	100	90	n.a.	n.a.	n.a.	n.a.	n.a.
Tshwane University of Technology	75	73	83	84	75	77	83	90	74	79
University of Venda	84	100	98	75	84	n.a.	n.a.	n.a.	n.a.	n.a.
Vaal University of Technology	74	70	67	75	74	87	n.a.	n.a.	n.a.	87
Walter Sisulu University	82	82	95	85	82	n.a.	n.a.	n.a.	n.a.	n.a.
University of the Western Cape	78	81	89	91	81	n.a.	n.a.	n.a.	n.a.	n.a.
University of the Witwatersrand	81	85	86	91	84	n.a.	n.a.	n.a.	n.a.	n.a.
University of Zululand	84	75	81	79	84	n.a.	n.a.	n.a.	n.a.	n.a.
Average percentage	80	82	85	89	82	67	68	70	74	68

Source: 2014 HEMIS database, extracted in August 2015

6.3.4 DEMOGRAPHICS OF ACADEMIC STAFF

A number of submissions made at the National Hearing revealed that transformation in the demographics of academic staff at universities remains a significant challenge. A number of reasons were cited for the failure of transformation at this level, including the fact that there is an insufficient pool of black and coloured professors, resulting in universities having to compete for the small pool of black and coloured academic staff.

⁶⁰ Department of Higher Education and Training; Statistics: Post-School Education and Training in South Africa:2014; 2016.

UCT cited, as the reason for the slow progress made in transforming the demographics of its academic staff, the fact that it had not merged with any historically black universities, noting further the existence of the so-called “glass ceiling” as a result of the time it takes to become a professor, combined with the non-retirement of existing professors at the University. In addition to this, in line with the internationalisation goals of the University, UCT submitted that the internationalisation project further slows down transformation at the University, in that the internationalisation project requires the University to host academic staff from other African countries. In aiming to address this shortcoming, the University has introduced a number of programmes aimed at enhancing the professional development of new lecturers at UCT.

UP also submitted that it was in the process of implementing corrective measures to enhance transformation at an academic staff level. These measures include an order of preference for candidates from designated groups for all new appointments; the earmarking of posts for black candidates; preferential interviews arranged for identified black candidates with demonstrated potential without advertising vacant posts; strategic appointments made through the creation of new posts for the specific purpose of achieving employment equity; that all non-employment equity appointments must be approved by the Executive Director: Human Capital and Transformation; and reflecting the implementation of transformation objectives as Key Performance Indicators (KPIs) in the performance agreements of all managers and supervisors.

On the other hand, NWU submitted that the University is aware of the need to appoint new staff members who are reflective of the race and gender profile of the country, and of the need to change the composition of its Council. Notwithstanding this awareness, figures provided to the Panel revealed that the demographic profile of the academic staff at Potchefstroom Campus had not changed between 2007 and 2013. In this regard, the figures revealed that the demographic profile of the academic staff in the Potchefstroom Campus was predominantly white and Afrikaans. There was an undertaking from the University to address this issue, with the University having set for itself a target of 30% black academic staff by 2020.

While the UFH did not provide figures for the racial demographics of its academic staff, it did indicate that 667 of its academic staff at the time of the National Hearing were non-nationals – a significantly higher number than at other universities. The reason provided for this was that UFH experiences difficulties in attracting South African academics due to its location and the salaries offered.

Figures provided in a submission made by NEHAWU reflected the dominance of white males, especially in higher ranking positions. In this regard, the figures revealed that the majority of academics employed by universities in South Africa were White (approximately 56% in 2012), whereas in 2012, only 29.7% of academic staff were Black; 7.6% were Indians and 5.4% were Coloureds. The overall statistics, however, illustrate changing racial demographics in entry level positions, with the majority of junior lecturers in the country being Black (approximately 52.8% in 2012). White academics, however, remain dominant at more senior levels.

In terms of gender demographics, according to the submission from NEHAWU, more male academics are employed in universities (55.2% in 2012). Although there is on average more female academics employed in the lower rank of junior lecturer and lecturer positions, the majority of senior positions are held by males. The data also suggests that of all academics employed by universities, more males have doctoral and master's degrees (62.7% and 51.2% in 2012) compared to females (37.3% and 48.8% in 2012).

The table below reveals that while trends are changing, by 2014 almost 98% of service staff were black, but that instruction and research staff for example, at the UP, UFS and Stellenbosch University, were under 25% black.⁶¹ The table below also reveals that with the exception of UP, UNISA and UWC, in 2014, female instruction and research staff in public universities constituted less than 50% of the overall instruction and research staff of universities.

61 A number of our findings.

Number and percentage of permanent staff in public HEIs, by population group, gender, personnel categories and institution, in 2014

Institution	Total Permanent Staff			% of Black Staff in Total			% of Female Staff in Total		
	Instruction and Research Staff	Administrative Staff	Service Staff	Instruction and Research Staff	Administrative Staff	Service Staff	Instruction and Research Staff	Administrative Staff	Service Staff
Cape Peninsula University of Technology	774	1 015	149	61	85	99	42	60	26
University of Cape Town	1 149	2 287	63	29	72	97	45	64	62
Central University of Technology, Free State	295	383	87	45	69	98	40	57	53
Durban University of Technology	579	766	67	73	92	100	47	53	16
University of Fort hare	334	557	28	46	84	100	37	58	7
University of the Free State	986	1 240	286	22	39	98	49	67	49
University of Johannesburg	1 104	1 895	249	46	70	99	46	53	35
University of KwaZulu-Natal	1 348	1 873	388	59	85	97	47	60	50
University of Limpopo	941	752	255	86	85	100	43	58	45
Mangosuthu University of Technology	190	275	76	92	96	100	34	52	45
University of Mpumalanga	41	50	69	80	86	100	34	36	43
Nelson Mandela Metropolitan University	604	1 034	72	28	59	92	45	62	32
North West University	1 342	1 966	378	28	34	95	47	66	46
University of Pretoria	1 176	1 866	364	23	48	91	50	65	34
Rhodes University	351	537	463	25	58	99	43	62	53
University of South Africa	1 718	3 158	77	52	74	99	50	59	23
University of Stellenbosch	1 035	1 921	237	22	49	100	43	64	42
Sol Plaatje University, Northern Cape	17	12	0	59	50	0	41	67	0
Tshwane University of Technology	951	1 549	141	59	75	99	42	54	38
University of Venda	372	342	136	94	99	100	35	49	57
Vaal University of Technology	378	463	217	61	76	99	43	62	61
Walter Sisulu University	591	659	152	88	96	100	44	57	52
University of the Western Cape	615	952	29	53	93	100	50	59	7
University of the Witwatersrand	1 057	1 199	277	38	73	100	47	64	30
University of Zululand	285	391	196	81	93	100	42	50	38
Total	18 233	27 142	4 456	48	69	98	46	60	43

Source: 2014 HEMIS database, extracted in August 2015

Note 1: A permanent staff member is defined as an employee who contributes to an institutional pension or retirement fund.

Note 2: Instruction/research staff (also referred to as academic staff) are those who spend more than 50% of their official time on duty on instruction and research activities.

Note 3: The category "administrative staff" includes all executive and professional staff who spend less than 50% of their official time on duty on instruction and research activities, as well as all technical and office staff.

Note 4: The category "service staff" includes all staff, such as cleaners, gardeners, security guards and messengers, who are not engaged in supervisory or administrative functions linked to an office.

Note 5: Black staff, for the purpose of this summary table, includes all African, Coloured and Indian/Asian staff employed on a permanent contract.

Note 6: As a result of rounding off, numbers and percentages may not necessarily add up.

In 2014, the public HEIs employed approximately 50 000 persons, of whom 27 142 were employed as administrative staff and 18 233 as instruction and research staff, while services staff made up the significantly lesser proportion (4 456) of the total permanent staff.

Solidarity expressed the view that, as a result of affirmative action, white lecturers and administrative staff were unable to find jobs. While it was emphasised that Solidarity was not opposed to affirmative action in principle, it was pointed out that it is difficult for all places of work to reflect the national demographics of the country, and that racial targets should not be the only consideration taken into account. Solidarity further raised the concern that, as a result of racial targets, classes of persons not included in the designated groups find it difficult to develop in their careers. This results in the poaching of trained professionals by foreign countries, resulting in a loss of skills and expertise.

UJ submitted that in the first decade after its merger, the University's black (African, Coloured and Indian) academic staff component had, through a deliberate recruitment programme, improved from 140 staff members (or 16% of total academic staff) at the point of merger to 420 (or 37% of the total academic staff). Moreover, the University's black student body had grown from 26,460 students (or 63% of the total student body) to 40,420 (or 86% of the total student body). During this period, the University's first-year enrolment of 10,500 students saw a significant growth in students registered from Quintile 1 and 2 schools (that serve the poorest in the nation) from 8% at the point of merger to 25%. In addition, during this 10-year period, graduate output improved from a baseline of 8,840 graduates at the point of the merger to 11,874. Research publications output tripled from a baseline of 325 units to 1,075 units. UJ submitted that while much remains to be done at the University, these accomplishments demonstrated that with the right level of commitment, combined with clear strategic action plans, it was possible to simultaneously advance transformation and academic excellence.

In addition to concerns raised relating to the demographics of academic staff, submissions revealed a lack of progress in diversifying the managing bodies of public universities. In this regard, UFS advised that its Senate consists of full professors, which currently reflects a majority of white males. UFS further advised the Panel that in order to address this issue, a proposal has been developed to review the composition of the Senate. UFS further submitted a general recommendation that all public universities review governance structures with a view to achieving transformation. On the other hand, the UWC SRC highlighted the challenges to transformation in the University's Executive Council which consists of five Coloureds, one Indian and one White (two of which are women), while the Dean level consists of one Coloured, one Indian and three Whites, all of whom are men.

As indicated above, in order for substantive transformation to be realised, it is imperative that the demographic profile of academic staff is transformed.

6.3.5 INITIATION PRACTICES

As a result of the country's colonial past, South Africa has inherited a culture of racism and there is therefore a need to be aware of the subtle forms of racism that are still present in our society today. These subtle forms of racism can at times manifest themselves in initiation practices.

Initiation practices, as aptly defined in UCT's Orientation Policy includes "*voluntary, nominally-voluntary, or compulsory and/or coercive and/or subtle and/or unauthorized activities that target first-year students to undertake demeaning tasks or that involve rituals for membership of and/or affiliation to a student activity or residence.*" These must be distinguished from university orientation programmes, which are aimed at assisting students to acclimatise to their new environment.

Initiation practices, as aptly defined in UCT's Orientation Policy includes "*voluntary, nominally-voluntary, or compulsory and/or coercive and/or subtle and/or unauthorized activities that target first-year students to undertake demeaning tasks or that involve rituals for membership of and/or affiliation to a student activity or residence.*"

While initiation practices are prohibited in most, if not all public universities, a number of submissions indicated that initiation practices do still take place, albeit in a clandestine manner and at times, off campuses. In this regard, the UFS SRC submitted that initiation practices are prevalent on the Bloemfontein Campus. It was further submitted that these practices are based on the premise of tradition and culture, and that on-going conversations are undertaken on the prevalence of such practices. The Wits SRC also submitted that initiation practices have been conducted at Wits for 80 to 90 years and have become a culture at the University. Examples of some of these practices were provided.

In responding to a question on whether the NWU has a policy in place to deal with racism and initiation practices, the NWU advised that the University has a set of values, derived from the Constitution, and that it runs a human rights-based programme at the University. The NWU further advised that it forbids any form of initiation practice and has adopted a zero-tolerance approach to any conduct which is in contravention to these values, which causes emotional and physical trauma to students, and which violates the human rights of students. Further, the NWU advised that disciplinary action is instituted if these values are contravened.

Over the past five years in its Potchefstroom Campus, the NWU has also been engaging student leaders, with the view to persuading them to abandon initiation practices, and pursue good human rights practices. The purpose of these engagements is therefore broader than simple prohibition: the engagements are also aimed at inculcating in students, an awareness that such behaviour is inappropriate and unacceptable.

Notwithstanding the explicit prohibition and strategy aimed at preventing the occurrence of such practices, it was conceded by NWU that it became evident at the beginning of 2014, that initiation practices were being conducted on campuses. During February 2014, a number of complaints were lodged by first-year students in two residences regarding verbal abuse against first-year students; pushing and shoving of first-year students; and, the barring of facilities for use by first-year students. Upon receipt of the complaints, house committee members were immediately suspended, after which disciplinary action was instituted. In addition to this, the *Beeld* newspaper published an article on 21 February 2014, depicting the alleged use of Nazi-style salutes at the Potchefstroom Campus.

Following the occurrence of these incidents, the NWU Council instituted an investigation into cultural induction, orientation, initiation and demeaning practices, including acts of fascism and Nazism that seemed to exist on campus under the tacit approval of university management. In this regard, the Council appointed an independent Investigative Task Team consisting of Dr Leon Wessels, Dr Somadoda Fikeni, Adv Rehana Rawat and Dr Bismark Tyobeka. The Task Team Report found that incidents of human rights violations were taking place during the reception and induction period. The NWU Council believes that this finding requires urgent attention. In this regard, the NWU indicated that it intended implementing "decisive measures", including the urgent intervention of management through the implementation of pro-active and preventative strategies and measures to prevent the recurrence of such activities, and to actively promote a culture of human rights. Further intended measures include the establishment of a Council Standing Committee and a Student Oversight Committee with a mandate to oversee and review a number of interventions in line with the Task Team's recommendations. While racism has been found to be a driver of some initiation practices, the NWU emphasised that, in its view, racism was not a driver of the above incidents of initiation at the University.

The Commission reiterates that a culture which is premised on notions of superiority, promoting exclusionary and humiliating practices, cannot under any circumstances be tolerated in a society based on the principles of freedom, equality and human dignity.

The Commission reiterates that a culture which is premised on notions of superiority, promoting exclusionary and humiliating practices, cannot under any circumstances be tolerated in a society based on the principles of freedom, equality and human dignity. For this reason, the Commission welcomes the positive measures that have been introduced or identified for implementation in some universities, in order to prevent the occurrence of initiation practices in universities. These measures include the conduct of human rights workshops at residences dealing with race, culture, gender-based violence and other forms of discrimination. Other measures include conducting specific workshops for senior students who will be engaging with first-year students. In the Commission's view, these workshops should be expanded to include all senior students, as well as House-Masters, to ensure that all persons are effectively sensitised to the detrimental impacts of initiation practices. The Commission is also of the view that a combination of some of these measures should be adopted by all universities, in order to ensure an effective ban of initiation practices on campuses.

6.3.6 ORIENTATION PROGRAMMES

University stakeholders made submissions detailing the orientation programmes conducted at their respective universities. These generally aim to welcome first-year students to the university and introduce them to all aspects of university life, including academic matters and social aspects. While the content of programmes differs from university to university, stakeholder submissions widely stated that the programmes aim to create a welcoming and inclusive environment. With the exception of UP, at most universities, orientation programmes are not compulsory. Students are encouraged to participate though as the orientation programmes are regarded as important mechanisms for promoting academic and social integration. In addition to the university-wide programmes, student residences often conduct their own orientation programmes for first-year students.

According to the submissions made at the National Hearing, areas dealt with during the orientation programmes include: academic, financial, general information about the university and refresher courses in select subjects such as mathematics. Students were also advised about bursaries and other financial support that exists. The new students were also oriented with regards to sport and student life. Universities indicated that orientation programmes are neutral activities wherein persons from diverse backgrounds are expected to participate.

As indicated above, university orientation programmes must be distinguished from initiation practices. Unlike initiation practices, orientation programmes are positive and important in the integration of new students into the system of higher education. Orientation programmes can also be potent tools for positively changing and influencing institutional cultures. Given their importance, all universities should consider adopting the example of UP and making attendance at orientation programmes (or part thereof) compulsory for all first-year students. Universities should also consider making human rights education an integral component of such programmes.

6.3.7 UNIVERSITY CURRICULUM

The content of university curricula taught at universities plays a significant role, not only in influencing the culture of a university, but in influencing social and political perceptions which have the potential to either reinforce or breakdown stereotypes.

In this regard, the NMMU submitted that in the development of a responsive curriculum at the University, there is need for the curriculum to respond to issues of human rights and diversity. For this reason, at the time of the National Hearing, efforts were being made at NMMU to infuse gender issues into the curriculum. Moreover, there were teaching development programmes being run at the NMMU which are aimed at countering assumptions, perceptions and discourses that reinforce stereotypes. Also, the induction programme for newly appointed academics includes topics on the culture of teaching and learning. This induction programme analyses the ideology, values and perceptions of students by academics and how these perceptions impact learning.

Also, at the time of the National Hearing, UFS was in the process of implementing a new module (UFS101), which covers a variety of topics including politics, philosophy, transformation, and understanding history, amongst other things. According to the UFS submission, this course is unique in the sense that no other South African university offers a similar course on a comparably large scale. The module was first rolled out to 200 students in 2011 as a pilot project, but has since become compulsory for all first-year students, forming a pre-requisite for the completion of a qualification on campus at the University.

The module aims to foster cooperation and social cohesion, amongst others, by providing for group work and forcing students out of their comfort zones with a view to changing mind-sets. Surveys conducted by the University reflect that a majority of students felt that the module challenged them to examine difficult issues from different perspectives and to think in new ways, while the majority of students also felt that they had experienced social cohesion with people from diverse ethnicities, backgrounds, disciplines and religion. A majority of students further indicated that they had learned to respect the views of others and had learned to reason above emotion and to consider both sides of an argument.

The Commission concurs with some of the submissions made that universities, particularly universities in developing countries, have a broader role than merely the contribution towards economic development and global competitiveness. In recognising our country's history of oppression and segregation, higher education must be responsive to the greater social needs of a fractured and unequal society. Accordingly, university curricula must contribute to the development of a participatory, democratic, politically aware and critical citizenship in order to promote a culture founded on the respect for diversity and human rights.

Katarina Tomasevski, United Nations' Special Rapporteur on the right to education, further states that education can be a means to retain as well as to eliminate inequality, and that although a school or university "*reflects its surroundings and tends to reinforce prejudicial portrayals of victims of discrimination*", education can contribute towards the creation of new values and attitudes.⁶² In this regard, she advocates for the integration of human rights into learning and teaching in order to address racial prejudice and intolerance, as well as foster change in society.⁶³ Accordingly, in order to foster real transformation in universities, universities should seek to incorporate human rights values into their curricula.

The diversification of staff and student profiles, as well as the promotion and development of African languages as scientific and academic languages, have been suggested as necessary components for the realisation of this objective.

62 OHCHR "Dimensions of Racism: Proceedings of a Workshop to commemorate the end of the United Nations Third Decade to Combat Racism and Racial Discrimination" (2003) Page 49 (as accessed at <http://www.ohchr.org/Documents/Publications/DimensionsRacismen.pdf>).

63 *Ibid* at p 39 – 49.

Diversity will ensure that a range of different perspectives, beliefs and experiences are incorporated and enable students to analyse situations and problems from multiple perspectives.

As noted by USAF “[a]ppreciation of diversity facilitates democratic citizenship and is vital to forging greater social cohesion in deeply fractured societies.”⁶⁴

The Commission notes that academics at many universities are already engaged in the design of curricula that are responsive to the context in which their institutions are located and encourages all universities to undertake this important task. In this process, while remaining aware of the greater social responsibilities of universities, the institutional autonomy and academic freedom of universities must be respected in order to give universities the necessary flexibility to evaluate and adopt their preferred epistemological approaches. It must also be noted that curricula design is an on-going process, and therefore, universities and academics should continue to engage in critical and robust debates around curricula design, and to re-evaluate the relevance of their curricula and the methods of delivery on a regular basis.

6.3.8 TRANSFORMATION POLICIES AT UNIVERSITIES AND STRUCTURES TO DEAL WITH TRANSFORMATION AT UNIVERSITIES

UFS submitted that it had several structures in place to deal with transformation. With regard to monitoring implementation of transformation, UFS submitted that student and staff feedback mechanisms exist, and that these include media and social media, complaints handling procedures, and observations by the various structures. Committees, which include the Anti-Racism Network in Higher Education (ARNHE), have also been set up to deal with transformation issues.

In 2010, UCT initiated the Khuluma Project to give people an opportunity to voice their experiences of racism. On the other hand, the UFH developed a charter of ethical principles and values which is aimed at dealing with human rights issues at the University. There are, however, no stand-alone policies that deal with racism and transformation at the University. A transformation unit has, however, been established to deal with transformation.

According to UP, transformation at the University is an on-going process and forms an integral part of the University’s strategic plan (UP 2025 Strategic Vision and Plan) and embraces diversity (including academic disciplines, gender, nationality, race, and sexual identity) as a necessary condition for improving the quality, relevance and impact of the University. Initiatives being undertaken by the University include focus on changing the demographic profiles of staff and students and on creating a more enabling and inclusive institutional culture. UP further submitted that it did not have a Transformation Charter in place, but rather has a set of values that require all policies to reflect transformation principles.

UP further submitted that it has carried out dialogues to promote transformation, and has carried out diversity sensitisation training for staff and students. Before 2012, UP did not have a portfolio singularly responsible for transformation. Transformation matters and projects were dealt with by the Vice Principal: Teaching and Learning. In 2011, a position of Executive Director: Human Capital and Transformation was created and filled in 2012. The Executive Director is now responsible for leading human resources and transformation at the University and reports to the Vice-Chancellor and Principal. In addition, Transformation Committees have been established within each faculty at the University, which allows for a range of transformation discussions to take place at these levels.

⁶⁴ Higher Education South Africa (HESA) presentation to the Portfolio Committee on Higher Education and Training, 5 March 2014, a p 5.

Other universities had developed transformation charters in order to deal with the issue of transformation. In this regard, the UL submitted that it had a Transformation Charter to deal with transformation and equality. Flowing from the Charter, UL has implemented an accelerated equity programme aimed at fast-tracking the promotion of women to professorial positions. Racism is, however, not included in the Charter as UL does not consider racism to be an issue at the University. However, following student strike action at the Medunsa Campus in August 2014, it became apparent that there were issues of racism at the University.

The DHET indicated that all universities were in the process of developing transformation charters, and that each university campus has established a transformation office. The location of Transformation Offices has been a contentious issue within USAF, with the dominant view being that they should be based in the Vice Chancellor's Office.⁶⁵ It was noted that Council has been weak in its management of transformation and there is a need for improved accountability measures.⁶⁶

Insofar as Wits is concerned, while recognising that transformation should occur at all levels within the University, it indicated that the following bodies are principally responsible for the transformation at the University: Vice Chancellor's Office, University Forum, Transformation and Employment Equity Office; Institutional Culture Committee; deans and faculty transformation chairs. According to the "Governance and the Management of Transformation" document produced by the University, whilst these bodies were operational, there was a need to have their terms of reference clarified and aligned.

NMMU submitted that it has introduced a number of initiatives in order to engender a deep social justice transformation approach. These measures include:

- a) **Institutional Culture Enlivening Process** which involves conversations with Senior Management about race; working with internalised dominance and oppression; challenging invisible white privileges, as well as other forms of possible discrimination.
- b) **Living the Values programme** which consists of a wide variety of events relating to issues of diversity, human rights, democracy, racism/non-racialism and culture.
- c) **Meetings of the Gender Forum** which aim to mainstream gender issues within the institution.
- d) **Various arts and culture initiatives** aimed at expressing ideas on contemporary social issues.

In its transformation policies, UKZN prioritised the representivity of Blacks, women and young academic staff. Unlike other universities, however, UKZN does not have a Transformation Office or Manager, as it views transformation as being everyone's responsibility. The University's submission indicated that transformation at universities can be achieved with leadership, commitment and dedication at all levels, and that transformation can be measured through identifiable indicators. While reiterating that transformation must be broader than demographics, it also submitted that diversity and equity are strengths and not weaknesses in transformation.

The submission from the NWU was that at a structural level, the NWU has made considerable progress in terms of the alignment of its policies and procedures to ensure that discrimination does not occur at the University. In this regard, the NWU Council adopted a Human Rights Policy in 2006 which aims to, among others, develop awareness of human rights and promote a culture of human rights both within the University community, as well as in the external environment. In order to monitor the observance of human rights and to investigate alleged rights violations, the NWU Human Rights Committee was established.

UFS submitted that it had adopted its Strategic Plan 2012-2016 which sets out the strategic initiatives of the University and has an Employment Equity Policy and an Employment Equity Office, which is responsible for assessing the status of transformation at the University.

65 At page 10.
66 *Ibid.*

The Employment Equity Office is involved in the shortlisting of candidates during the recruitment process, and in instances where a particular recruitment is not made from a designated group, a motivation must be made to the Office.

Other initiatives at UFS aimed at advancing transformation include: ⁶⁷

- a) The **Diversity Integration Policy**, which focuses on student and staff needs and experiences;
- b) The **UFS Strategic Plan 2012-2016**, which seeks to ensure the transformation of the University through the creation of shared understandings, reconciliation and confronting prejudice;
- c) The **Institute of Reconciliation and Social Justice**, which was established following the “Reitz 4” incident, and runs a programme of research, teaching and intervention to help in the transformation of human relations on campus;
- d) A **Trauma, Forgiveness and Reconciliation Studies Programme** is also run in gender reconciliation workshops;
- e) The **Five-Year Plan**, in terms of which the University aims to be transformed by building a humane and inclusive academic environment;
- f) **Student Anti-Prejudice Programmes**, which consist of three components, namely the Cultural Awareness Programme;⁶⁸ events within Residence Committee portfolios; and the Human Rights Awareness Campaign (led by the Institute of Reconciliation and Social Justice);
- g) The **Transformation of Symbols Programme**, which is aimed at promoting institutional and social transformation, including the changes to the University’s logo;
- h) Various **research projects and programmes**, including a project investigating how staff perceptions of students influence the manner in which students are taught; and
- i) **Structural transformation** through *inter alia* the establishment of the School for Open Learning to broaden access to tertiary education; the reconfiguration of management; new academic initiatives; programmes to improve learning and teaching; and new academic leadership at the QwaQwa Campus.

From the above, it is apparent that universities’ approaches to transformation differ greatly from university to university with varying results. Some of these differences include the fact that while other universities have chosen to address the issue of transformation through the development of transformation charters, other universities have chosen not to adopt transformation charters. Further, while some universities have developed separate and detailed institutional transformation plans, others have incorporated these plans into the general institutional strategic plan. Moreover, in respect of those institutions that have developed transformation charters, some of the transformation charters serve as a mere expression of transformation objectives without clearly indicating targets, timelines, monitoring mechanisms and responsible parties, while others include important themes that should be the focus of transformation. Some of the themes covered in these transformation charters include aspects such as diversity, the desire for excellence and for advancing African scholarship, good governance, the achievement of social justice, the importance of social relevance of teaching and learning, the recognition of the importance of indigenous knowledge systems, academic freedom, multilingualism, infrastructure development, financial sustainability, race and gender diversity, xenophobia, sexual orientation and disability.

⁶⁷ Other initiatives include professional staff development programmes; specific departmental strategies; the development of interdepartmental partnerships; the design of a co-curriculum; the establishment of inclusive social infrastructure for out-of-class student engagement; governance development programmes and policy development; targeted support to student governance structures; a strategy; values portfolio and inclusive management protocols; and the promotion of a free and open student media. Information on all the initiatives will be available to the public upon request.

⁶⁸ The Programme involves discussions of values, behaviours and social infrastructure of inclusivity and takes place at least twice a year in every campus and day residence. Various sub-programmes are run aimed at deconstructing prejudice.

Whilst the Commission accepts that approaches to transformation will differ between universities, the Commission is of the view that for these approaches to be effective, they should be premised on institutional transformation plans or charters which, at the very least, commit to the following:

- a) The institution's transformation goals and objectives. These goals and objectives should be reasonably capable of driving real transformation in the institution concerned, having regard to the particular internal and external environment of the institution;
- b) How the institution intends to achieve those goals and objectives;
- c) Clear time frames for the realisation of the identified transformation goals and objectives;
- d) The persons who will be responsible for carrying out the institution's transformation plans in the institution's various structures;
- e) The role of each of the identified persons in the implementation of the institution's transformation plan or charter;
- f) The person or body within the institution who will be ultimately responsible for driving the transformation project of the institution concerned. The identified person or body must have the powers to ensure that the institution's transformation plan is carried out in all the identified structures of the institution; and take accountability for the project, and;
- g) Mechanisms to measure, monitor and report on transformation in the institution concerned.

6.3.9 THE AUTONOMY OF UNIVERSITIES

Another issue of concern raised during the National Hearing is the issue of some individual universities using their autonomy to undermine the national project of transformation in institutions of higher learning. In this regard, TOC submitted that one of the issues impacting negatively on transformation was the issue of institutional autonomy, in that through such autonomy, institutions could override policies that may be intended to achieve transformation. The TOC, in discussing institutional autonomy, was of the view that sometimes this autonomy is abused to entrench racism and protect privileges or dominant groups. The TOC advised that since transformation was a national imperative that is informed by the Constitution of the Republic, a multi-stakeholder framework for transformation needs to be established, and that this framework needs to be developed at a national level, rather than at the level of Vice Chancellors. This submission found some support with Wits acknowledging that achieving transformation cannot be solved by universities alone, but that a society-wide intervention was required. Elaborating on the issue of autonomy, UJ also submitted that universities advocate for institutional autonomy and academic freedom, but that these concepts are often invoked without adequate consideration.

...in light of the constitutional imperative of transformation, and the national importance of this matter, the transformation of institutions of higher learning cannot remain the sole preserve of the institutions of higher learning themselves.⁶⁹ Decisive leadership is required from the DHET to ensure that real transformation occurs in our public universities and to ensure that those universities who fail to reform, are held accountable for their failure in this regard.

Whilst the Commission notes the views expressed by NWU, that only those who do not understand the relationship between autonomy and accountability would use institutional autonomy to resist transformation, the Commission remains concerned in light of some of the submissions received on this issue. While the Commission makes no pronouncements regarding proposed legislation on this matter, it concurs with the view that in light of the constitutional imperative of transformation, and the national importance of this matter, the transformation of institutions of higher learning cannot remain the sole preserve of the institutions of higher learning themselves⁶⁹. Decisive leadership is required from the DHET to ensure that real transformation occurs in our public universities and to ensure that those universities who fail to reform, are held accountable for their failure in this regard. The DHET should also take an active role in the setting of norms and standards for transformation. It should ensure that transformation initiatives being implemented at institutions of higher learning are directed and are reasonably capable of achieving the desired outcomes.

6.4 ACCOMMODATION AND RESIDENCES

The provision of decent, accessible, affordable and safe student accommodation is crucial in ensuring the quality and accessibility of higher education. University residences are viewed as being much more than bricks and mortar according to a report produced by the Ministerial Committee for the Review of the Provision of Student Housing at South African Universities.⁷⁰ The report emphasised the fact that student accommodation and residences are *“living social communities that can either advance or detract from our shared university or societal goals.*

*These communities can also reflect and contest the diverse range of social and economic class paradoxes that exist in our society, including racism and gender-based and sexual orientation related violence.”*⁷¹

A shortage of adequate student residences at universities has been cited as a barrier to transformation, as such shortages have a disproportionate impact on poorer students due to the high costs of private accommodation, which is compounded by additional costs for travel and food. Long distances travelled also pose a security risk and limit the ability of the affected students to participate in the life of an institution. Moreover, the shortage of adequate student residences denies other students the opportunity of learning from the life experiences of those students who are not in residences.

69 Submissions made at the National Higher Education Summit, Durban, October 2015.

70 Department of Higher Education and Training “Report on the Ministerial Committee for the Review of the Provision of Student Housing at South African Universities” (2011).

71 *Ibid* p xiv.

6.4.1 AVAILABILITY

The Report of the Ministerial Committee for the Review of the Provision of Student Housing at South African Universities⁷² found that in general, the need for student housing far exceeds supply, with just under 19% of full-time contact students housed in university student accommodation and residences.⁷³ These findings were echoed by the many submissions received, which lamented the insufficient supply of student residences, particularly at some previously disadvantaged universities where no residences are available at all on certain campuses. While this is generally in line with global trends,⁷⁴ it nevertheless significantly impacts on the accessibility of higher education in South Africa, particularly for poor students, who are unable to afford the additional costs associated with private accommodation.

...in general, the need for student housing far exceeds supply, with just under 19% of full-time contact students housed in university student accommodation and residences.

Notwithstanding the challenges with private accommodation, it was acknowledged that in order to meet the growing demand of student accommodation, the private sector remains an important stakeholder in the provision of student accommodation. Partnerships and collaborations between the private sector, government and universities will, however, be necessary in order to ensure the financial accessibility and adequacy of private accommodation.

6.4.2 INTEGRATION

Another issue raised at the National Hearing was the issue of lack of social cohesion within universities' residences. In this regard, it was acknowledged that discrimination and social tensions will most frequently manifest in student residences due to the number of students of different races, ethnicities and nationalities, as well as the social, economic, religious and educational backgrounds of those students. It became apparent during the National Hearing that residential placement policies also play a role in either fostering or inhibiting social integration at universities' residences.

Insofar as residence placement policies are concerned, the NWU submitted that it allocates residential placement using criteria such as academic performance, participation in sport, culture and leadership. In order to address transformation, 23% of residential accommodation is reserved for black students at every level of study.

UFS also has a residence placement policy, in terms of which 50% of the available accommodation is reserved for transformation purposes. However, the UFS SRC representative submitted that, at the time of the National Hearing, the policy was ineffective as residences are still either predominantly Black or predominantly White, limiting interaction between the different races. Further, the representative raised concern regarding private accommodation reservation policies, which allegedly give special treatment to white students, thereby hindering social integration and the achievement of equality. Moreover, the representative identified the improvement of social cohesion spaces at the University as a prerequisite to transformation.

72 Department of Higher Education and Training "Report on the Ministerial Committee for the Review of the Provision of Student Housing at South African Universities" (2011).

73 *Ibid*, p 13.

74 Most universities in Western Europe are able to provide accommodation for 10% of students; with Australian universities providing for 5% of students; 16.8% in Canada and 10% in the United States of America.

UP, on the other hand, submitted that its Residence Placement Policies govern the placement of students at all levels in university-controlled residences. In order to ensure demographic diversity, the policies set the minimum quota for both black and white students at 40%. At the time of the National Hearing, a total of 53.15% of residences (excluding UP private accommodation) were occupied by black students, and overall (including UP private accommodation), 55.16% of residences were occupied by black students. At UFH, all students in residences were Black, while at Wits, white students constituted less than 1% of residence occupants.

The Commission recognises the importance of effective, integrated, accessible residence placement policies in promoting social cohesion at residences. However, an analysis of some of the submissions made at the National Hearing suggests that existing residence placement policies have been largely inadequate, as many residences continue to be populated either by black or white students. The accommodation allocation criteria (which form part of the policies) also appear to be problematic in a number of respects.

Firstly, the allocation of students at residences is broadly based on two considerations, namely academic merit (which also includes participation in extra mural activities) and a quota system (where a portion of placements are reserved for certain racial groups in order to promote diversity). While these considerations are not intrinsically problematic in and of themselves, their application may have unintended consequences. In this regard, racial quotas may inadvertently act as a cap on the number of different racial groups that can be allocated places at university residences, thereby undermining the very objective they seek to promote. On the other hand, in light of the fact that academic performance at universities largely remains stratified according to race, academic performance can inadvertently hinder the access of black and coloured students, who predominantly perform more poorly on average, to university accommodation. Moreover, given the link between student accommodation on campus and performance rates,⁷⁵ it would appear to be counterintuitive to deny poor performing students (who require university facilities the most in order to improve their performance) university accommodation.

Secondly, most universities' allocation criteria do not appear to give sufficient consideration to the financial need of students when allocating placements. This is of serious concern as students from poor socio-economic backgrounds may not be able to afford private accommodation with its added costs. Accordingly, the failure to take the financial need of students into account when allocating placements is prejudicial to poor students.

In light of the above, there is a need for universities to reconsider their residence placement policies and their residence allocation criteria if social integration at universities is to be realised. In this regard, the Commission is of the view that while the consideration of academic merit should not necessarily be completely excluded, this factor should not be of primary importance. Further, universities should reconsider their current allocation policies and criteria to take special account of financial need and the availability of other adequate residential options to students. Special consideration should also be given to persons with disabilities in allocating residential placements.

The Commission further notes that while "forced integration" through the allocation of residences and rooms on the basis of race may be met with resistance or scepticism, it should be encouraged, as exposing students to different cultures and backgrounds may provide a basis on which socially constructed divisions and prejudices may be broken down. This, however, must be accompanied by relevant educational programmes as already indicated above, in order to cultivate a genuine multicultural and non-racist environment.

⁷⁵ Department of Higher Education and Training "Report on the Ministerial Committee for the Review of the Provision of Student Housing at South African Universities" (2011), p 73.

6.4.3 CULTURE OF RESIDENCES

It was submitted on behalf of UJ that residences, amongst other things, have strong historical traditions which may lead to alienation. The UFS SRC also submitted that life at residences present a culture shock for new students, and that despite the development of placement policies aimed at achieving diversity, residences remain dominated by “one” particular cultural group.

This submission points to the need for universities to intervene in residences, to ensure that residential cultures transform in order to create more inclusive and diverse residence cultures. Indeed, the protection of entrenched traditions, many of which were formed during a period in the country’s history where values and rights were not equally protected, and many of which assert dominant prejudicial and discriminatory characteristics, cannot be promoted or condoned in our democracy. The task of ridding residences of repugnant subcultures and practices founded on ideologies of cultural superiority and discrimination will not be easy, however, as some of these ideologies and practices may not be overt. Whilst ridding residences of repugnant cultures, the establishment of new traditions and cultures on the basis of a new and transforming social reality should be encouraged. In developing these new residence cultures, care must be taken to ensure that individual personalities, preferences and cultures are not stifled. It is only through the achievement of this balance that a society which is truly accepting of diverse views and cultures can be created.

6.4.4 INFLUENCE OF ALUMNI ON THE CULTURE OF RESIDENCES

In the case of UFS, it was submitted that alumni students and staff members were quite involved and sometimes consulted on decisions impacting the residences. These decisions included proposals on name changes. It was further submitted that alumni also took part in residence meetings, at which meetings some opposed transformation initiatives, which suggests that some mind-sets have not shifted.

Despite the above submission from the UFS, a submission made by the UFS SRC claimed that generally, residence alumni have little involvement in the residences, although their involvement varies between residences. It was, however, conceded by the UFS SRC that certain alumni do pose a risk to transformation, particularly on the Bloemfontein Campus. Accordingly, the UFS SRC recommended that the role of alumni in residences should be redefined and limited to that of mentoring; financial assistance and recognition.

6.5 GOVERNANCE AND ROLE PLAYERS IN THE TRANSFORMATION OF HIGHER EDUCATION

A number of stakeholders at different levels are collectively responsible for promoting transformation, both at sectoral as well as at institutional level. In this regard, according to the TSG, the main drivers of transformation in higher education involve a range of specific institutional actors, each with its own mandate, scope of responsibility and limitations.

Participants went on to set out the roles of the various actors in the higher education sector. In this regard, it was submitted that the TOC was established to monitor progress on transformation in public universities. The TOC reports to the Minister of DHET on its findings on an annual basis.

The functions of the TOC have been identified as follows:

- a) Study and evaluate the transformation frameworks/charters and annual reports of universities, including transformation indicators and set targets;
- b) Determine effectiveness and efficiency of institutional transformation frameworks/charters, policies and strategies;
- c) Produce an annual report on policies and practices impacting on transformation within universities;

- d) Suggest a reporting mechanism by institutions on the set of institutional and national transformation targets and benchmarks;
- e) Identify best practices and challenges for transformation policies and practices;
- f) Bring to the attention of the Minister any problem areas of incidents affecting transformation;
- g) Initiate enquiries and/or public Hearings; and
- h) Advise the Minister on any matter it deems important, necessary and relevant for development and transformation of the sector.

On the other hand, USAF is a voluntary association of public universities in South Africa. TSG was established by USAF in 2011 as an “advisory arm” of USAF in respect of transformation matters. While the TSG reports to the Board of USAF on findings and makes recommendations in respect of transformation matters, it is not a decision-making body. Such powers belong to USAF, which considers findings and recommendations made by the TSG for decision-making purposes. USAF also plays a significant role in generating consensus, reconciling different interests, and in acting as a representative and collective voice of its members on higher education policy and strategic issues.

At the National Hearing, the TOC submitted that, in its view, USAF has not been effective in fostering transformation in public universities. It must, however, be noted that USAF is not a statutory body and that its individual members maintain institutional autonomy. Therefore, the effectiveness of any decisions taken by USAF is dependent on the willingness of individual universities to implement them.

Notwithstanding the limitations of USAF in engendering transformation, it was submitted that at its July 2014 meeting, the USAF Board directed the Executive Committee to clearly, consistently, and firmly speak out against discriminatory practices in the sector and engage with affected institutions on crisis-resolution, as well as advise or facilitate shifts in thinking where leadership can clearly make a positive difference.

It was further submitted that following the First Ministerial Summit on Transformation in Higher Education,⁷⁶ all universities which are members of USAF committed to the development of Integrated Transformation Plans (ITPs), which would serve as formal transformation statements for the respective universities. It was envisaged that the ITPs would cover aspects of transformation including institutional culture, curriculum, staff and student demographics, student life, access and success, race, gender, xenophobia and disability challenges. At the time the submission was made in August 2014, the TSG advised that 20 of the 23 universities had formally adopted ITPs, while the remaining institutions had committed to the finalisation of the process by the end of 2014.

At the time the National Hearing was conducted, the TSG was compiling a barometer for transformation which would be submitted to USAF for adoption. The barometer is intended at monitoring the progress of transformation at all universities.

The TSG has also created a digital repository of all transformation experiments, studies, training activities, workshops, innovations and developments underway across higher education to allow for sharing of best practices. In addition, the TSG has hosted colloquia as well as workshops and organised campaigns on transformation. TSG noted, however, that actual transformation lies with the institutions concerned.

According to TSG, challenges to transformation at institutional level persist. These challenges include the lack of a unitary understanding of the responsibilities in driving transformation at an institutional level, which has led to contradictory policies and levels of accountability. The lack of adequate leadership was also raised in several instances as hindering the advancement of transformation at an institutional level. In this regard, it was opined that the majority of vice chancellors at the time of the National Hearing were inadequately prepared, and poorly qualified, to be university leaders and thereby lacked academic credibility within the sector and amongst their peers. This has resulted in vice chancellors not taking leadership in effecting

76 22-23 April 2010.

transformation of institutional culture which links race, power and privilege at universities. The existence of uneven levels of commitment to transformation at different institutions was also highlighted as an on-going challenge.

The TSG advised that when making assessments of the progress on transformation, the focus should be on how universities are faring across a spectrum of transformation challenges, which includes an assessment of how individual institutions deal with manifestations of discriminatory practices, institutional culture, as well as epistemological, pedagogical and curriculum practices. In addition to this, the TSG emphasised that the influence of external role players, including alumni, supportive communities, business, political parties and social movements on the transformation or reinforcement of such cultures and practices, should also be closely analysed. The assessment of transformation needed to also include assessment of reported incidents of discrimination and anti-discriminatory practices, demographic changes of staff and students, institutional culture and how the university engaged with entities that can impact transformation.

Other than UP which indicated that a revised Constitution for Student Governance has contributed to a more positive culture in the University, most of the submissions did not provide any detail on the role of student representative bodies or trade unions in transformation, even though these bodies are important catalysts for transformation.

The TSG made a number of recommendations on the issue of transformation, which included: higher education institutions being accountable to the DHET on transformation; university councils exercising greater oversight of university management insofar as transformation goals are concerned; and including issues of performance that is related to transformation in senior management's performance contracts.

...it is apparent that, whilst there are a number of actors at a national and sectoral level who are involved in transformation issues (i.e. DHET, TOC, USAF and TSG), these actors have not been effective in ensuring real transformation at an institutional level.

From the above, it is apparent that, whilst there are a number of actors at a national and sectoral level who are involved in transformation issues (i.e. DHET, TOC, USAF and TSG), these actors have not been effective in ensuring real transformation at an institutional level. Some of the factors that may have contributed to this, is the lack of authority of some of these bodies to hold individual institutions accountable for any bad practices or failure to effectively transform. This, however, cannot be said of the Minister of DHET, who has powers in terms of the Higher Education Act to determine policies and issue directives in specific instances, including in instances where universities acted unfairly or in a discriminatory or inequitable manner towards a person to whom it owes a duty under the Higher Education Act.⁷⁷ It is for this reason that the Commission re-iterates its call for the Minister of DHET and the DHET to take a leading and decisive role in ensuring that transformation does occur at an institutional and sectoral level. Whilst other bodies such as the TOC, USAF and TSG should continue to play their identified roles in the transformation project, the DHET should assume the ultimate responsibility for driving the transformation project in this sector. If need be, additional legislative and policy measures should be introduced to ensure that this does happen.

There is also a need to look at governance models within universities, particularly those that merged in recent years. In this regard, only the NWU discussed its governance models and this highlighted a number of issues that affect transformation. The challenges identified by NWU might exist in other universities. NWU adopted what is termed a federal governance model in which previous campuses maintain their autonomy.

77 See Section 49A of the Higher Education Act.

NWU submitted that, while this model served the University well in the past by allowing for stability during the merger, it has had the unintended consequence of creating three separate and autonomous institutions, each with its own strategies, approaches and unique institutional cultures, thereby negating the purpose of the merger. The governance model has also resulted in some degree of competition, instead of cooperation, between campuses. Governance models therefore potentially pose a threat to transformation and should therefore be carefully reviewed by all institutions.

6.6 COMPLAINTS HANDLING

Complaints handling procedures are important mechanisms for addressing individual concerns and for redressing rights violations. Complaints handling procedures also serve as a useful tool for identifying and monitoring systemic issues. Accordingly, the proper management of complaints handling procedures is essential in any institution. Furthermore, in order to obtain maximum benefit from complaints handling procedures, the proper management and utilisation of data obtained from complaints handling is essential, as such data can assist in not only identifying patterns of conduct or systemic issues, but can assist in understanding the root causes of such issues. Moreover, the on-going monitoring of complaints and complaints handling processes can enable an institution to assess whether current policies or initiatives are effective, or alternatively, to identify potential gaps in the current systems. It is against this background that the Commission considered the various submissions on institutions' complaints handling procedures and processes.

In this regard, according to the DHET, the majority of complaints received at institutions of higher learning are academically-related. However, complaints in respect of racial discrimination appear to have been predominantly received against UFS and NWU. This observation, according to the DHET, could be influenced by a number of factors, including the fact that some complaints or incidents that occur at other universities may not be reported or made publicly known, or that the universities concerned may resolve such disputes appropriately in terms of their internal procedures.

At the NWU, details provided to the Commission relating to complaints lodged between 2005 and 2013 show that a significant portion of allegations of rights violations were based on racial discrimination. While some cases do appear to demonstrate racism, investigations found that no racism occurred in other cases. Complaints relating to discrimination on the basis of language and sexual orientation also featured prominently. The majority of complaints were resolved through mediation, or were referred to the responsible bodies for further attention.

The Wits SRC highlighted the high number of sexual harassment complaints at the University and the length of time it takes to resolve matters, with some matters taking up to three years to be finalised. A Sexual Harassment Office was, however, established at Wits in 2014, to try and address this issue.

The UFS has established Human Rights and Transformation Desks, both of which can receive complaints. Complaints can also be lodged through the Office of Student Affairs, the Dean of Students, Student Representatives, the UFS Protection Services, and the Institute for Reconciliation and Social Justice, as well as through the regular line functions of employees. In terms of procedures, complaints must be handled confidentially and impartiality and within 90 days of receipt. At the time of the National Hearing, only four complaints relating to racism had been formally lodged with the University. However, it was acknowledged that under-reporting may occur.

UP submitted that it had contracted KMPG to manage an independent Ethics Hotline whereby students may lodge complaints. All complaints received through that system are referred to the Registrar, and the Director: Risk Management and Internal Audit, anonymously for investigation. The Ethics Hotline is mainly used to report instances of or planned initiatives to contravene the University's rules and policies. Although complaints regarding sexual harassment and racial discrimination may be lodged with the Hotline, this

is not encouraged due to the fact that greater detail, including the identities of persons involved in such allegations, are normally required. UP has also developed a formal student academic complaints protocol, as well as a mechanism to deal with sexual harassment complaints. According to UP, all matters are handled confidentially and impartially. Efforts at mediation are first used and if unsuccessful, then the matters are fully investigated. Between 2009 and the time of the National Hearing, 11 cases of discrimination had been addressed.

UCT utilises a mediation process (also referred to as “Transformative Mediation”), as outlined in its Mediation Policy to resolve disputes which may arise. The Discrimination and Harassment Office (DISCHO) has also been established, which has been in operation at UCT since 2001.

The UL has a hotline service where students and staff can lodge complaints. A number of sexual harassment complaints have been lodged. Although the University set up a Commission to deal with cases of sexual harassment, it was unsuccessful as students were unwilling to come forward and provide details.

In light of the above submissions, it is apparent that dispute resolution has received some attention in most institutions. Furthermore, the complaints handling procedures of most, if not all universities, appear to provide for confidentiality and impartiality. However, most procedures do not set timelines for the finalisation of complaints, resulting in the resolution of complaints taking exceptionally long in some instances. In the Commission’s view, a lengthy and inefficient dispute resolution or complaints handling process may further contribute to feelings of alienation or indifference, and may contribute to the increase in tensions, rather than resolving them. In the circumstances, the Commission recommends that timelines should therefore be implemented as part of all complaints handling processes, and that responsible individuals be held accountable for the failure to adequately resolve complaints within those prescribed time limits. These timelines should, however, allow room for flexibility and must be reasonable and practicable.

...a lengthy and inefficient dispute resolution or complaints handling process may further contribute to feelings of alienation or indifference, and may contribute to the increase in tensions, rather than resolving them.

The submission also illustrated a high prevalence of complaints related to racism, sexual harassment, language and sexual orientation, amongst others. However, institutions such as the NWU and UFS indicated that they have received relatively low numbers of formal complaints relating to racism in particular, despite numerous major incidents and widely reported feelings of alienation and discrimination. This is illustrative of the likelihood that significant underreporting is occurring. Complaints handling mechanisms are, therefore, not always widely used by students or staff members to voice concerns and resolve disputes, resulting in some of the more destructive means of dispute resolution witnessed in recent times. It is vital for institutions, therefore, to regularly review their policies and procedures to identify the reasons for the underutilisation of these mechanisms, and to understand how these mechanisms can be enhanced. On-going monitoring and evaluation of complaints handling procedures is also important in order to enable institutions to determine the adequacy, and to enhance the efficiency and effectiveness of the complaints handling processes.

...universities must ensure that staff responsible for dealing with complaints, are adequately trained to deal with complainants and to address matters in a sensitive, competent and respectful manner.

Furthermore, in considering the sensitive nature of many complaints, universities must ensure that staff responsible for dealing with complaints, are adequately trained to deal with complainants and to address matters in a sensitive, competent and respectful manner. This is particularly true for complaints of a sexual nature, where a person may feel traumatised. Institutions should ensure that psychologists and social workers are available to provide counselling services where necessary.

An essential feature of a good complaints handling process is accessibility in order to ensure that students are able to easily access the process. It is encouraged, therefore, that multiple avenues for lodging complaints be made available at universities, subject to the availability of resources. These avenues can include hotlines which can be accessed free of charge, as well as walk-in centres for dispute handling.

Another pertinent issue regarding complaints handling, is the proper classification of complaints. This will enable a better understanding of the complaints and their resolution. A case in point is the classification of sexual harassment complaints in some universities as just criminal offenses. In the Commission's view, an approach which classifies incidents of sexual harassment as just criminal offenses fails to take account of the social factors driving the high levels of occurrence, resulting in the inability of universities to address the underlying causes.

It is also important that, while addressing complaints and incidents of an individual nature, systemic issues should also be addressed, with the aim of preventing the occurrence of incidents of discrimination and changing entrenched social perceptions, as well as enhancing social cohesion. In this regard, a positive example identified is the approach adopted by the UFS, which involves collaboration between complaints handling units and relevant university departments (such as the Department of Housing and Student Affairs) to address widespread issues.

Although not raised during the National Hearing, the Commission notes, with concern, the number of students and staff protests that have taken place on various campuses across the country. While many protests are peaceful in nature, others have been characterised by incidents of violence, including vandalism and intimidation. This phenomenon points to the inadequacy of the existing dispute resolution processes in universities. Accordingly, a review of the existing complaints handling and dispute resolution processes should be undertaken. Moreover, specific policies should be developed by universities for the management and resolution of protest action. Such policies should include the provision of training to staff members in order to capacitate them to handle the resolution of such matters through a variety of means, including consultations and mediation. That said, the Commission notes that while universities have a responsibility to properly manage and resolve protest action, persons engaging in protest action are equally required to protest within the confines of the law, and with due regard to the rights of others. Accordingly, the Commission calls for the discipline of students and/or staff members found to have been involved in acts of intimidation and/or vandalism during protest action.

6.7 FUNDING

According to the DHET, funding plays a major role in ensuring that transformation takes place. Through funding, students can be assisted to deal with challenges related to poverty and also have a better experience at universities. However, for many, funding remains a challenge, as well as a barrier to access and success at institutions of higher learning. In this regard, concern was continually raised regarding the high drop-out rates of students, particularly as a result of a lack of financial assistance. A number of stakeholders highlighted the challenge that there is a greater demand for funding than there is money available. This presents particular difficulties for students from disadvantaged backgrounds in accessing tertiary education. For example, only about 20-30% of students at the UWC obtain funding through NSFAS.

Also, while NSFAS is focussed on providing support to poor students, some middle class students could also not afford university and therefore either dropped out or could not attend. NWU and UFH highlighted similar challenges. In light of the above, it is apparent that the funding crisis is a serious barrier to access and success at universities.

6.7.1 STATE FUNDING TO UNIVERSITIES

According to the Ministerial Committee for the Review of Funding of Universities, at the time of the National Hearing, universities appeared to be underfunded annually by R15 billion, despite significant increases in student numbers. In this regard, the Report⁷⁸ illustrated that while expenditure on education is high, and the portion of GDP expenditure on higher education in South Africa is generally in line with other African countries, expenditure is significantly lower than in the Organisation for Economic Co-operation and Development (OECD) member countries and the rest of the world.⁷⁹ In real terms, government funding per FTE (Funding per full-time equivalent) enrolled student fell by 1.1% annually between 2000 and 2010, while student tuition fees increased by 2.5% per FTE student per year. This highlights the failure of state funding to keep up with inflation, which is compounded by the fact that the operational costs of universities and enrolment are increasing.⁸⁰ Additionally, South Africa's expenditure on higher education as a portion of expenditure on education was approximately 12% in 2011, compared to 20% as the average for Africa and 19.8% as the world average.⁸¹ Accordingly, overall, the report revealed that government funding was not sufficient to meet the needs of the public university system.⁸² These findings are in line with the findings in the National Development Plan 2030 (NDP) regarding the funding of institutions of higher learning. In this regard, according to the NDP,⁸³ *"[e]nrolments have almost doubled in 18 years yet the funding has not kept up, resulting in slow growth in the number of university lecturers, inadequate student accommodation, creaking university infrastructure and equipment shortages."*

...according to the NDP,⁸³ "[e]nrolments have almost doubled in 18 years yet the funding has not kept up, resulting in slow growth in the number of university lecturers, inadequate student accommodation, creaking university infrastructure and equipment shortages."

78 Department of Higher Education and Training "Report of the Ministerial Committee for the Review of the Funding of Universities" (2013) p 19 (as accessed at <http://www.dhet.gov.za/SiteAssets/Latest%20News/Report%20of%20the%20Ministerial%20Committee%20for%20the%20Review%20of%20the%20Funding%20of%20Universities.pdf>).

79 In 2011, GDP expenditure was 0.75%, compared to 0.78% in Africa; 1.21% in OECD countries and 0.84% in the world.

80 Financial and Fiscal Commission "Submission for the 2013/14 Division of Revenue, Chapter 3: Budget Review of Public Universities in South Africa" (2012).

81 DHET, "Second National Higher Education Summit: Annexure 3: Are we making progress with systemic structural transformation of resourcing, access, success, staffing and researching in higher education: What do the data say?" (October 2015), at pg.3.

82 P 19-20.

83 National Planning Commission "National Development Plan 2030: Our future – make it work" pp. 318 (as accessed at <http://www.npc.gov.za/pebble.asp?relid=25>).

In light of the above, it is apparent that state funding of higher education has not kept up with the demands of higher education. In the circumstances, the Commission echoes the call for increased funding, especially for previously disadvantaged universities.

6.7.2 NATIONAL STUDENT FINANCIAL AID SCHEME (NSFAS)

Between 1999 and 2015, NSFAS funding increased from R441 million to R9.5 billion. This fact notwithstanding, the need continues to exceed available funding. The idea of free higher education for the poor has been regularly debated and advocated for in the country's recent history and more sharply during the "Fees Must Fall" campaign. In 2012, the Minister of DHET established a Working Group on Fee Free University Education for the Poor in South Africa. The report produced by the Working Group⁸⁴ recognises that free university education for the poor has the potential to lift communities out of poverty and unemployment, while further promoting good citizenship.

Overall, it found that while free university education for the poor was feasible, it would require significant additional funding of both NSFAS and the university system, and would generally depend on a "*marked and generalised improvement in the social-economic situation of South African society as a whole*."⁸⁵ Finally, the report emphasised that an adequate system of financial aid is a necessary condition (albeit not the only condition) in improving access to higher education for the poor.⁸⁶

6.7.3 FUNDING OF SENIOR STUDENTS, POSTGRADUATE STUDENTS AND THE MISSING MIDDLE

It also emerged during the National Hearing that while many first-year students are able to obtain funding from NSFAS, senior students do not always receive NSFAS funding, which in turn contributes to high attrition rates. Accordingly, a focus on providing funding to as many students as possible (particularly new students) has inadvertently resulted in there being insufficient resources to fund existing students. In addition to this, the so-called "top slicing" (i.e. the reduction of funding allocations to students to ensure that a greater number of students receive a portion of funding required) has also resulted in many students being unable to afford the cost of living. The effect is that some students resort to living in poor and squalid conditions and lack adequate nutrition.⁸⁷

In recognising the multi-dimensional nature of poverty, including aspects of inadequate income as well as factors of social and psychological well-being (a sense of powerlessness and negative feelings about the self), the Report on the Ministerial Committee for the Review of the Provision of Student Housing⁸⁸ highlighted the need to ensure that levels of funding are sufficient to empower students to fully participate in academic, cultural and social aspects of university life. Accordingly, the achievement of higher enrolment and participation rates should not be promoted in a manner which contributes to the poor living conditions of students and the occurrence of high attrition rates.

In addition to this, the majority of funding is allocated for under-graduate programmes, and students are therefore often unable to continue with post-graduate studies, impeding the pipeline of both post-graduate students as well as academic staff. A number of universities have, however, implemented measures to fund post-graduate studies which should begin to yield positive results.

84 DHET "Report of the Working Group on Fee Free University Education for the Poor in South Africa" (October 2012).

85 *Ibid* at p x.

86 *Ibid* at p 11.

87 *Ibid* at p 6.

88 Department of Higher Education and Training "Report on the Ministerial Committee for the Review of the Provision of Student Housing at South African Universities" (2011) at p 133.

The National Hearing further established that a gap-market exists, consisting of students from middle-income families⁸⁹ who cannot afford to pay annual university fees, but likewise do not qualify for funding from NSFAS or for loans from private banking institutions. Accordingly, mechanisms need to be put in place to address this gap market in the system. The Commission notes that NSFAS is currently developing a new funding model for the purpose of providing a combination of bursaries and loans for funding this sector, commonly known as “the missing middle”. In this regard, there is a need for engagement with the private sector, in light of the role it can play in facilitating access to education in South Africa.

6.7.4 DISPARITIES IN FUNDING WITH THE HIGHER EDUCATION SECTOR

Apart from a generally under-funded sector, disparities between previously white and previously black universities are still prominent, with previously black universities continuing to be under-funded and underdeveloped.

According to the DHET Green Paper for Post-School Education, the current funding mechanisms in place have been found to be inadequate to promote inter-institutional equity, and may in fact entrench and accentuate inequalities⁹⁰. In this regard, the Financial and Fiscal Commission (FFC) conducted a budget review of public universities in 2012 and found that major inequalities in income distribution persist, with many historically white universities receiving a larger portion of the overall government budget, which is disproportionate to the number of FTE student enrolments.⁹¹ According to the FFC, the current funding framework fails to take account of institutional realities in South Africa. Despite this, the Ministerial Committee recommended that the funding framework, which utilises a formula-based approach, should be retained with some adjustments.⁹² However, in the Commission’s view, funding allocations should take into account the historical inequalities between institutions, and between different campuses. They should also take into account the available reserve funds in the respective universities. Moreover, funding allocations should endeavour to promote development and capacity building within previously disadvantaged institutions, in order to achieve a more equitable reality.

Apart from a generally under-funded sector,
disparities between previously white and
previously black universities are still prominent,
with previously black universities continuing
to be under-funded and underdeveloped.

While submissions did not delve into detail on the issue of salaries of academic staff, the UFH alluded to the challenge in attracting qualified academic staff due to the salaries offered by the University. While the financial autonomy of universities must be respected, this aspect has a significant impact on the ability of universities, particularly previously disadvantaged universities, to promote diversity and transformation through development and capacity building. Therefore, an enquiry into the salary levels of academics, particularly in relation to possible disparities between institutions, must be undertaken.

At the National Hearing, the Commission also noted with concern that whilst some universities were in the brink of financial disaster, other universities had large reserve funds available. It was submitted to the Commission that these reserve funds were ring-fenced for “specific projects” in the institutions concerned.

89 The gap market (alternatively known as the “missing middle”) refers to families earning between R122, 000 and R300,000 per annum.

90 2012.

91 Financial and Fiscal Commission “Submission for the 2013/14 Division of Revenue, Chapter 3: Budget Review of Public Universities in South Africa” (2012) p 90.

92 Department of Higher Education and Training “Report of the Ministerial Committee for the Review of the Funding of Universities” (2013) p 24 (as accessed at <http://www.dhet.gov.za/SiteAssets/Latest%20News/Report%20of%20the%20Ministerial%20Committee%20for%20the%20Review%20of%20the%20Funding%20of%20Universities.pdf>).

The Commission is of the view that this is another issue that must be carefully looked at by higher education authorities. Furthermore, the Commission is of the view that, in light of the current funding crisis in most universities, universities should consider reassessing the utilisation of their reserve funds and weighing their allocated use against the need to promote access and success at universities for the most poor and vulnerable.

6.7.5 MEASURES TO ADDRESS THE FUNDING CHALLENGE

In order to ensure that financial constraints do not translate into inequitable access to education, a number of universities have opted not to increase their fees and to keep their fees as low as possible. Other universities frequently enter into payment agreements with students, which have, unfortunately, caused financial instability in some cases. Private parties and companies have also come to the party, providing bursaries which are largely directed at serving the economic market need.

Notwithstanding some of these interventions, it is apparent that the need for funding is still great. In order to address this need, increased state funding of higher education is essential. While acknowledging the current strain on the fiscus, national government must, at the very least, attempt to provide for the cost of inflation, while also taking into account the growing operational costs and the cost of planned enrolment growth when allocating funding to universities.

Following a number of student protests where funding has been one of the major issues raised in 2015, a Presidential Task Team on the Funding Challenges at Universities was established. The Task Team was tasked with considering solutions to the immediate funding challenges at universities.

The Task Team submitted its final report with a number of recommendations to Parliament in December 2015.⁹³ The recommendations included that a 0% university fee increase be implemented for 2016; that a process be put in place to develop new financing models that include options for funding the gap market; and that the NSFAS shortfall (quantified at R4.6 billion) be made available from the fiscus in order to fund students who were inadequately funded, or were unable to access financial aid between 2013 to 2015, as well as students who qualified for funding in 2016.⁹⁴

In October 2015, President Jacob Zuma, announced that an agreement had been reached between stakeholders that a 0% university fee increase would apply for 2016. Subsequent to this announcement, a Presidential Commission of Inquiry into higher education funding and other issues was established. The task of the Commission is to investigate the feasibility of free higher education in South Africa, its financial sustainability, as well as to consider the independence and institutional autonomy of universities. As at the date of the release of this Report, the Commission of Inquiry was yet to release its report. The Commission is, however, encouraged by the setting up of this Commission of Inquiry and hopes that the Commission will be able to find practical solutions to resolve the current funding crisis in order to ensure the progressive realisation of the right to higher education for all.

6.8 COLLABORATION

During the National Hearing, the Commission noted that the historical policies in higher education resulted in an inequitable higher education system, with historically black universities receiving significantly less investment in resources, infrastructure and capacity development. Despite policies over the past 21 years aimed at redressing this, these inequalities prevail, and collaboration between historically white and black universities is therefore important.

93 <http://www.southafrica.info/about/education/universities-071015.htm#.VhaEKE3Nvml>.

94 Announcement from the Presidency "Presidential Task Team on the Funding Challenges at Universities submits report" (15 December 2015) (as accessed at <http://www.thepresidency.gov.za/pebble.asp?relid=21258>).

A number of collaborative efforts were encouraged by stakeholders and these included:

- a) Collaboration between historically black and white universities;
- b) Inter-governmental department collaboration; and
- c) Inter-sectoral collaboration.

6.8.1 INTER-UNIVERSITY COLLABORATION

There were already some examples of successful collaboration between UJ, UL and UFH, which enabled UL and UFH to achieve accreditation of their chartered accounting programmes with the South African Institute for Chartered Accountants. Another collaborative effort being developed in the area of research was between Wits, UL and the University of Venda (UNIVEN).

Notwithstanding some progress being made in this regard, numerous stakeholders called for greater inter-university collaboration, particularly between former white and former black institutions. According to USAF, the research performance of former black Universities continue to disappoint compared to the research output of former white universities. This points to the disparities which continue to exist. The lack of availability of research infrastructure, facilities, and equipment has also been cited as a constraint. Inter-university collaboration between former black and former white Institutions will enable resource sharing and skills transfer, which will, in turn, improve the quality of educational and research outputs in the former black Institutions.

6.8.2 INTER-GOVERNMENTAL DEPARTMENT COOPERATION

The White Paper on Post-School Education and Training also encourages cooperation between higher education institutions and the basic education schooling system, noting that many students exiting the schooling system are insufficiently prepared for further study. In this regard, the Commission was advised that there was on-going coordination between the DHET and the Department of Basic Education (DBE), as well as between the Deans of universities and the DBE. While this approach is supported, greater collaboration is required at a national level to support secondary education institutions in order to better prepare students for further study, and to improve the quality of basic education.

It was also submitted that there was an opportunity for collaboration between the DHET, Treasury and the South African Revenue Services (SARS) around the issue of taxes on educational services. In this regard, it was submitted that collaboration can offer important benefits to universities, which may help free required resources to promote access to university for the poor.

Further, there is an opportunity for collaboration between the DHET, universities and the Department of Human Settlements, which can assist with the expansion of student accommodation. Collaboration with the Department of Social Development (DSD) can also contribute to the improvement of the socio-economic challenges faced by poor students. Moreover, the DHET, in partnership with universities, should also work closely with the Department of Cooperative Governance and Traditional Affairs (CoGTA) in developing partnerships and aligning policies and programmes between different departments, in order to enhance transformation, and improve the accessibility of higher education, particularly for students from poor backgrounds.

6.8.3 INTER-SECTORAL COOPERATION AND COOPERATION WITH THE PRIVATE SECTOR

There is also a need for greater cooperation and collaboration between the DHET, universities, and transformation advocacy bodies in order to advance transformation of the higher education sector. In this regard, the Commission acknowledges that recent events, such as the “Fees Must Fall” campaign, have contributed to enhanced levels of engagement and collaboration, and encourages greater levels of this on an on-going basis. This enhanced level of inter-sectoral engagement and elevated urgency attached to transformation, was most aptly demonstrated by the October 2015 Durban Transformation Summit, which itself occurred in the context of robust and even militant student activism calling for accelerated transformation and the decolonisation of universities. The summit output included a range of carefully constructed working papers and resolutions that prioritised key implementation activities.

The post-summit output goal was to ensure that universities review their respective transformation plans, so that these give effect to the short, medium and long-term implementation of the summit resolutions. Ultimately, the goal is for individual university transformation plans to be consolidated into a national university sector transformation plan. Significantly, the summit resolutions drew special attention to the direct relationship between student access and success on the one hand, and the underfunding of universities especially historically disadvantaged universities, and unregulated fee increases, on the other hand. This is a position that is in line with the findings of this Report.

There is also significant opportunity for universities to partner with the public and private sector, both in regard to funding, as well as developing mentorship and training programmes for students, to better prepare them for life after university. However, while the private sector can play a crucial role in higher education, universities must be cautious not to emphasise market-driven skills requirements over other equally important non-market driven skills.

6.9 SOCIAL ISSUES IMPACTING ON TRANSFORMATION

The Apartheid system was based on a policy of separate development, which resulted in an unequal division of resources and opportunities on the basis of race. Deeply embedded economic, geographical and wider social divisions remain prevalent in the country more than 20 years after democracy. Previously disadvantaged areas and institutions remain severely under-developed, reflecting high levels of poverty, compounded by limited access or poor quality of basic services and basic education.

The poor quality of our basic education system has been found to be a material barrier to equitable access to higher education, in that it fails to adequately prepare students for tertiary level education. The schooling system, particularly in previously disadvantaged and rural areas, lacks significant resources and capacities, resulting in a poor level of education. Poorly equipped students then find it difficult to cope with the amount of work required of them, and produce lower performance outcomes. This factor is once again strongly associated with poverty and race.

While it is again acknowledged as a positive measure that universities have taken a number of initiatives to better equip students, for example through the provision of bridging or foundation programmes, expanded tutor support programmes, and first-year experience programmes, the 2010 Stakeholder Summit on Higher Education Transformation illustrated that the success of these programmes is often hindered by a failure to integrate them into the core curriculum. What is required is not only the more effective integration of these programmes into the core curriculum, but also a greater investment by the DBE, in collaboration with other departments and entities, in order to improve the overall standard of the basic education system as a whole.

Previously disadvantaged persons are also less likely to obtain post-graduate qualifications due to limited available post-graduate funding, and families' pressure to find a job. Those attending previously disadvantaged universities are even less likely to do so considering the fact that these institutions largely lack adequate infrastructure and resources, including human resource capacity. Accordingly, poverty and under-development continue to act as serious constraints to equitable access and opportunities.

The intersectionality of discrimination and subordination must also not be lost sight of. In this regard, many individuals face multiple forms of discrimination simultaneously. For example, women belonging to a particular racial group are more at risk of violence or discriminatory prejudice. According to the Office of the High Commissioner for Human Rights (OHCHR), “[i]ntersectional discrimination and subordination create consequences for those affected in ways which are different from consequences suffered by those who are subject to one form of discrimination only.”⁹⁵ This interconnection must be taken into account when designing and implementing transformation strategies.

95 OHCHR “Dimensions of Racism: Proceedings of a Workshop to commemorate the end of the United Nations Third Decade to Combat Racism and Racial Discrimination” (2003) p 180 (as accessed at <http://www.ohchr.org/Documents/Publications/DimensionsRacismen.pdf>).

7 KEY FINDINGS



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Accordingly, 20 years into our democracy, inequalities, patterns of systematic exclusion, marginalisation and subtle forms of discrimination persist in our institutions of higher learning.

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7. KEY FINDINGS

7.1 Having considered the submissions of all the parties and stakeholders during the National Hearing, the Commission makes the following key findings that:

7.1.1 Despite the many transformation initiatives in the higher education sector since the dawn of our democracy, our institutions of higher learning have not sufficiently transformed in the last 20 years with regard to race, gender, culture, language, disability and sexual orientation amongst others. Accordingly, 20 years into our democracy, inequalities, patterns of systematic exclusion, marginalisation and subtle forms of discrimination persist in our institutions of higher learning.

7.1.2 While the autonomy of universities has traditionally been regarded as sacrosanct, and with due respect for this status, such autonomy should be exercised with an impetus to achieve the vision and values of the Constitution. The bleak reality is that this is happening to varying degrees, on varied issues, with limited success. This reality requires support and leadership from both the DHET and universities for it to be a positive one. A collective drive, supported by a coherent national policy framework to achieve the constitutionally envisaged framework is necessary.

7.1.3 Some of the factors that have contributed to the slow progress of transformation in institutions of higher learning include:

- a) The lack of a uniform understanding of what transformation means;
- b) The lack of institutional will to transform university cultures in some universities;
- c) Poor integration of the transformation project at all levels of institutional life;
- d) The persisting disparities between racial groups inherited from our Apartheid past, as well as the persisting disparities between former white and former black universities;
- e) The lack of commitment to multilingualism in institutions of higher learning, as well as the lack of real commitment to the development of indigenous languages as academic and scientific languages that can be used as mediums of instruction;
- f) Insufficient attention being paid to the role of sport in the transformation agenda;
- g) The slow progress in changing student demographics in some universities and the failure of some universities to diversify the student demographics on its campuses;
- h) The slow progress in changing the demographics of academic staff (particularly senior management staff) and university management in some universities toward more representivity and progression programs for identified staff;
- i) The persisting subcultures of discrimination and domination within universities;
- j) The insufficient supply of adequate university accommodation and ineffective residence placement policies which hinder racial integration at university residences;
- k) Inadequate governance structures in some universities;
- l) Under-funding of the system of higher education by the state;
- m) Insufficient collaboration between various actors within the higher education sector;
- n) Ineffective complaints handling mechanisms in some universities which result in festering tensions, which at times manifest themselves in destructive forms; and
- o) A myriad of persisting social challenges, resulting in inequitable access to and success within the higher education system.

- 7.1.4 The factors tabulated above which have contributed to the slow progress in transformation to varying degrees must be addressed by the DHET and by universities.
 - 7.1.5 Government's and universities' responses to issues of transformation have often been triggered by specific events, resulting in such responses in the form of policies, systems and processes not having the benefit of comprehensive consultation, contextual analysis of the external and internal environment, the broader objectives of transformation and the lived realities of students across social lines.
 - 7.1.6 The DHET as the mandated authority to achieve the constitutional aspirations for the realisation of the right to higher education has not adequately consulted to identify the range of issues impacting the transformation project, nor has the DHET developed effective strategies, programmes and guidelines to inform implementation, monitor and account for progress or to sustain the project over a period of time.
 - 7.1.7 Universities as primary implementing agents have not developed cohesive, comprehensive plans to address the multifaceted needs evidenced in submissions required for transformation to be achieved.
- 7.2 Insofar as the disparities between racial groups are concerned, the Commission specifically finds that access to, and success at institutions of higher learning, continue to be stratified along racial lines. Statistical data supporting this finding has been reported by research bodies. However, no clear plans to eradicate these disparities were provided.
- 7.3 Insofar as university orientation programmes are concerned, the Commission specifically finds that whilst many universities have done well in conducting orientation programmes in their universities with the view to facilitating the integration of students into university life, there is a need for universities to review their orientation programmes to ensure their effectiveness in fostering inclusivity and a human rights culture within universities.
- 7.4 Insofar as the persisting subcultures of discrimination and domination within universities are concerned, the Commission specifically finds that the need for comprehensive diversity programs which address initiation practices and orientation has not been sufficiently addressed. Initiation practises in some universities persist, albeit in a clandestine manner and therefore, there is a need for continued engagement between university management and student bodies, as well as a need for the introduction of human rights education in university curricula in order to root out initiation practices, as well as other repugnant cultures within universities.
- 7.5 Insofar as curricula design is concerned, the Commission specifically finds that there is a need for greater inclusivity in the design and development of university curricula, as well as a need for universities to continuously review their curricula to ensure its responsiveness to broader societal issues and concerns.
- 7.6 Insofar as university accommodation is concerned, the Commission specifically finds that some universities' residence placement policies have failed to adequately take into account the financial need of students, as well as the particular needs of students with disabilities. The Commission also finds that some universities' placement policies have contributed to the lack of transformation and social integration within institutions of higher learning. Moreover the Commission finds that some universities' residence cultures remain untransformed and continue to hinder the attainment of substantive transformation in institutions of higher learning.
- 7.7 Insofar as monitoring and accountability of universities in respect of transformation is concerned, the Commission specifically finds that the DHET has not played a sufficient role in the transformation of institutions of higher learning. In particular, the Commission finds that the DHET has failed to consistently hold institutions of higher learning accountable for the lack of transformation in their respective institutions, despite being empowered to do so in terms of the Higher Education Act.

- 7.8 Insofar as the governance structures of universities are concerned, the Commission specifically finds that university management in some universities has failed to take adequate responsibility for driving their respective institutions' transformation agenda. The Commission also finds that there is a need for universities to review their current governance models and structures in order to ensure that such structures and models do not hinder transformation.
- 7.9 Insofar as university complaints handling procedures are concerned, the Commission specifically finds that whilst most universities had complaints handling procedures in place, most of these procedures at the time of the National Hearing did not provide for clear timeframes for the finalisation of complaints. The Commission also finds that whilst most universities had complaints handling procedures, such complaints handling procedures were underutilised by students, which points to the ineffectiveness and/or inaccessibility of some of these complaints handling procedures.
- 7.10 Insofar as funding is concerned, the Commission specifically finds that whilst government funding of the Higher Education Sector has gradually increased over the years, the Higher Education sector remains underfunded, thereby contributing to the slow progress of transformation in this sector. The Commission also finds that through its funding allocation model, the DHET has inadvertently contributed to the perpetuation of inequalities between the former black universities and the former white universities.
- 7.11 Insofar as collaboration is concerned, the Commission specifically finds that while pockets of collaboration between former white and former black universities exist, collaboration between former white and former black universities has been inadequate. The Commission also finds that there is a need for greater collaboration amongst the various government departments such as the Departments of Basic Education and Labour, as well as amongst the various actors within the higher education sector engaged in the project of transforming institutions of higher learning in South Africa (i.e. TOC, TSG, USAF and DHET).

8 RECOMMENDATIONS



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...make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution, as well as other measures for the observance of such rights.

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8. RECOMMENDATIONS

In terms of Section 13(1)(a)(i) of the SAHRC Act, the Commission can:

“make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution, as well as other measures for the observance of such rights”

Accordingly, in light of the above findings of the Commission, the Commission makes the recommendations that follow. These recommendations are aimed at advising all parties concerned on some of the steps that can be taken to ensure that institutions of higher learning adequately transform. These recommendations should be viewed in conjunction with the other recommendations made by the Commission elsewhere in the Report. It is the Commission's hope that these recommendations will, in some way, contribute to the transformation of institutions of higher learning and help advance the right to equality for all. Parties referred to in the recommendations that follow are required to report to the Commission on the implementation of the recommendations within 12 months from date of this Report.

8.1. RECOMMENDATIONS RELATING TO TRANSFORMATION POLICIES

DHET

- 8.1.1 The DHET must play a leading role in the transformation of institutions of higher learning and should exercise its powers in terms of the Higher Education Act to hold universities accountable for their lack of transformation.
- 8.1.2 The DHET, in consultation with relevant stakeholders, must develop guidelines on appropriate transformation goals and strategies within the higher education sector. These national instruments should include governance; monitoring and accountability; human resources policies; plans to inform culture change; the support of previously disadvantaged students; language and sport; university curricula; complaints handling; funding; collaboration; accommodation and orientation programmes. The issues identified for attention have each been expanded below. The Commission records further that the listed issues are by no means exhaustive and may be supplemented through the process of wide collaboration and consultation as recommended.
- 8.1.3 The DHET must lead efforts to accelerate the development of the sectoral transformation charter.
- 8.1.4 The DHET should require university councils to report annually on the state of transformation at their respective universities. Thereafter, the DHET, together with the TOC, should produce an annual report on the state of transformation in the higher education sector at a national level and provide a copy of same to the Commission and Parliament.

All Universities

- 8.1.5 Noting the divergent nature of the existing transformation plans and/or charters in the various universities, the Commission recommends that all universities must develop transformation charters or plans which at the very least set out the following: the institution's transformation goals and objectives. The goals and objectives should be reasonably capable of driving real transformation in the institution concerned and have regard to the particular challenges of the institution concerned; how the institution intends to achieve those goals and objectives; clear time frames for the realisation of the identified transformation goals and objectives; the persons

who will be responsible for carrying out the institutions' transformation plans in the institution's various structures; the role of each identified person in the implementation of the institution's transformation plan or charter; the person or body within the institution who will be ultimately responsible for driving the transformation project of the institution concerned. This person or body must have the powers to ensure that the institution's transformation plan is carried out in all the identified structures of the institution; and mechanisms to measure and monitor transformation in the institution concerned.

- 8.1.6 All universities must include bodies such as student representative councils and trade unions in the development of their transformation plans and strategies, and must encourage these bodies to play a central role in monitoring perceptions and incidents of unfair discrimination occurring on the ground.

8.2. RECOMMENDATIONS RELATING TO HUMAN RESOURCES POLICIES

All Universities

- 8.2.1 Universities must ensure that human resource policies prioritise the recruitment of under-represented and/or previously disadvantaged persons, particularly academics and leaders in senior posts. However, such policies and practices must ensure that a cap is not used once a particular transformation target has been reached and that persons from over-represented categories, such as white males, are not completely excluded from opportunities.
- 8.2.2 While the Commission recognises that progress has been made in changing the demographic profiles of staff and students in the higher education sector overall, universities which are below the related national and provincial demographics should examine current policies and institutional cultures in order to identify reasons for the lack of sufficient progress, and must take reasonable measures to further enhance diversity. To the extent required by the universities concerned, the Commission calls upon TSG to provide independent advice and guidance to universities in this regard.
- 8.2.3 Universities must maintain a firm commitment to attracting and retaining new academics, and must take measures to ensure that new academics are adequately capacitated; and that an inclusive nurturing culture is created for them to perform their work effectively.
- 8.2.4 Universities should take measures to accelerate the process of training and developing young academics, to enable them to qualify for more senior positions, with a particular focus on previously disadvantaged professionals. However, care must be taken to ensure that employment equity objectives are not limited to changing the demographics alone, but must ensure that persons appointed to the relevant posts are adequately capacitated to deliver at the level at which they have been appointed in order to achieve substantive transformation.
- 8.2.5 While recognising that this may already be done to an extent, all universities must implement mentorship programmes for new or junior academics, both within the institution itself as well as externally, through inter-university collaboration.
- 8.2.6 Universities must develop policies to regulate the appointment of retired academics as academic consultants. The policies should *inter alia* restrict the appointment of retired academics to limited circumstances ie as part of a skills transfer programme or as part of an initiative to retain necessary expertise.
- 8.2.7 All universities must review the composition of Councils, Senates and Faculty and Departmental Committees to ensure diverse representation and active participation. Universities must also consider expanding the membership of such bodies in order to achieve this purpose.

- 8.2.8 It is also recommended that the Department of Labour, together with DHET and Employment Equity Commission initiate a consultative process through which reforms in respect of human resource policies at universities may be strengthened, beyond quota driven targets.

8.3. RECOMMENDATIONS RELATING TO THE SUPPORT OF PREVIOUSLY DISADVANTAGED STUDENTS

All Universities

- 8.3.1 All universities and faculties should ensure that adequate and effective early-warning systems are in place to identify students that require additional support early on, with a view of improving success rates and decreasing attrition rates.
- 8.3.2 All universities should consider the implementation of annual programmes and activities aimed at celebrating diversity and promoting facilitated and empowering dialogues and conversations on transformation and associated social issues.
- 8.3.3 Support to previously disadvantaged students must specifically be addressed in the plans referred to in paragraph 8.1.5 above.

8.4. RECOMMENDATIONS RELATING TO LANGUAGE AND SPORT

DHET

- 8.4.1 DHET, in collaboration with the TOC and other relevant stakeholders, must conduct an assessment of the impact of language policies on institutional culture and social integration, and must draft guidelines or best practices to assist universities in implementing language policies in a manner that promotes integration and access.

All Universities

- 8.4.2 Universities are required to review current language policies to determine appropriateness, practicality and impact on the overall institutional culture. In this regard, the dual or parallel system of tuition should be re-assessed.
- 8.4.3 Universities offering simultaneous interpreting services must take measures to include African languages on an equitable basis. Further, universities must ensure that interpreters employed are adequately trained to provide quality interpreting services, and where applicable, must desist from utilising students enrolled in the modules they are interpreting.
- 8.4.4 While it is noted that a number of universities have established wide-ranging policies to encourage and develop multilingualism, institutions are encouraged to continue to implement initiatives to further advance this objective, within available means. In particular, emphasis should be given to the provision of English proficiency courses to first-year students as well as to encourage students and staff members to take African language courses. Moreover, where students are enrolled in programmes that require them to interact with a diverse community (such as health sciences and social work), universities should require students and staff members to take African language courses.

- 8.4.5 In acknowledging the fact that individual universities have made means to accommodate specific disabilities within their particular institution, the language and disability policies at institutional and/or regional inter-university level must specifically accommodate persons with disabilities, including but not limited to deaf, partially sighted and blind persons, to ensure that access to higher education is not inhibited to persons with disabilities. Moreover, all policies should also take cognisance of learning disabilities.
- 8.4.6 Universities and other higher education stakeholders should take measures to promote a diverse range of sporting activities across all campuses. In doing so, universities must be aware of the gender and class dimensions associated with sport, and should implement measures to ensure that poor students are not excluded from opportunities to participate.

8.5. RECOMMENDATIONS RELATING TO INITIATION PRACTICES

DHET

- 8.5.1 Noting that initiation practices continue in some universities, albeit in a clandestine manner, notwithstanding the existence of policies prohibiting initiation practices in most, if not all, universities, the Commission recommends that the DHET closely monitors the occurrence of such practices and takes strong measures to curb such practices.

All Universities

- 8.5.2 Universities must also implement greater monitoring mechanisms aimed at preventing transgressions and holding persons accountable, while student representative bodies must play a stronger role in monitoring and reporting on incidents on the ground.

8.6. RECOMMENDATIONS RELATING TO ORIENTATION PROGRAMMES

All Universities

- 8.6.1 All universities must ensure that human rights and diversity training is offered to all staff and students during orientation programmes. Specific orientation programmes should also be developed to educate students on the prohibition and impact of initiation practices.
- 8.6.2 In order to enhance the impact of human rights and diversity training, as well as to create an awareness of university life, universities should consider making orientation programmes, or certain portions thereof, mandatory.
- 8.6.3 All universities should ensure that central oversight and monitoring of orientation programmes, including those run by residences, is conducted, and that such programmes are regularly reviewed to assess appropriateness and impact. Such assessments should include student feedback assessments.

8.7. RECOMMENDATIONS RELATING TO UNIVERSITY CURRICULA

All Universities

- 8.7.1 University departments and academics should regularly review the content of curricula to ensure that the content, as well as the method of teaching, are socially relevant and responsive to the development needs of the country.
- 8.7.2 Universities should provide guidance and/or training to academics, to ensure cognitive awareness of how their perceptions of students influence the manner in which students are taught and to enable them to adapt their teaching styles to the learning needs of students.

8.8. RECOMMENDATIONS RELATING TO ACCOMMODATION AND RESIDENCES

DHET and Stakeholders

- 8.8.1 The DHET, in consultation with National Treasury, should give particular attention to the need to develop and/or expand the existing stock of student residences for all universities, but particularly for historically disadvantaged universities, when allocating budgets. Moreover, the DHET should engage with private sector stakeholders and the Department of Human Settlements, with a view to developing additional, decent and accessible student accommodation off campus.
- 8.8.2 The DHET, in consultation with the National Treasury, should ensure that mechanisms are in place to provide for appropriate funding to universities to ensure that residences are properly maintained, particularly in respect of institutions that are unable to recover adequate income to provide for operational and maintenance costs. Notwithstanding the time frames provided for in paragraph 8 above, it is recommended that a detailed, fully costed and time bound plan to address such needs is provided to the Commission, Parliament and universities within 12 months of the release of the determination by the Presidential Commission of Inquiry.

All Universities

- 8.8.3 Universities must take measures within available resources to ensure that all residences are properly maintained and that students have access to a decent standard of living.
- 8.8.4 Universities must take measures within available resources to ensure that all residences and other facilities are accessible to persons with disabilities and the TOC should conduct a survey across all public universities to determine the extent of accessibility for those with disabilities. Following this process, the DHET together with the TOC should provide adequate oversight to ensure that facilities are progressively made accessible, within the available means of relevant universities.
- 8.8.5 All universities are required to conduct assessments of safety and security and transportation concerns for staff and students, both on and off campus. Assessments should include engagement with students and student representative bodies. Thereafter, universities are required to implement reasonable measures to enhance safety and security and transport support.

- 8.8.6 All universities must, in consultation with student representative bodies, review current residence allocation policies, and must ensure that quotas applied in the allocation of residence placements are appropriate to promote social integration, but must also ensure that such quotas do not act as a cap for the placement of different racial groups.
- 8.8.7 Furthermore, while academic performance should not be disregarded in the allocation of residences, this should not be the sole consideration when residential places are allocated. Other factors that must be considered in the allocation of residence placements include the financial needs of students and their ability to access adequate private accommodation. The needs of persons with disabilities must also be given priority.
- 8.8.8 Allocation to specific residences and room allocation should be undertaken centrally, combined with regular monitoring mechanisms to ensure that the purpose of room allocation is not undermined by student residents switching rooms according to their personal preference. Greater oversight by the TSG as a peer review mechanism is also recommended.
- 8.8.9 All universities should conduct independent assessments of prevailing residence cultures and traditions, which should include an assessment of residence names, symbols, practices and values, to identify and remedy any discriminatory, offensive or degrading elements. Such assessments may be done with the guidance and assistance of the TSG.
- 8.8.10 All universities must further reconsider the role of alumni, particularly with regard to the management of and influence over residences and residence cultures and activities.

8.9. RECOMMENDATIONS RELATING TO GOVERNANCE, MONITORING AND ACCOUNTABILITY

DHET

- 8.9.1 The DHET, in consultation with all relevant stakeholders, is required to identify standard performance indicators, with a view of measuring transformation progress of institutions.
- 8.9.2 The DHET is further required to develop reporting mechanisms, and to evaluate both the appropriateness of targets and plans in place to promote transformation objectives, as well as the relative progress made by institutions on an annual basis. In this regard, appropriate accountability mechanisms should also be put in place.
- 8.9.3 The DHET, in collaboration with other relevant stakeholders, is required to develop best practice guidelines with regard to transformation of governance structures.

All Universities

- 8.9.4 All universities must ensure that internal transformation oversight and accountability mechanisms are in place and that transformation structures and processes are periodically reviewed in order to identify gaps, challenges or overlaps in the mandate, or functions of various persons/bodies responsible for transformation objectives.
- 8.9.5 All universities must review current governance models, with the view to identifying problems or gaps in such models, to ensure that such models do not hinder transformation.

TSG and USAF

- 8.9.6 The TSG is encouraged to conduct regular assessments of the performance of universities on the basis of a peer review mechanism, and should provide guidance and assistance to institutions struggling and/or failing to appropriately design and implement plans and initiatives aimed at promoting transformation.

- 8.9.7 USAF, together with university councils collectively, should address concerns relating to the experience, capacities and qualifications of Vice Chancellors at a collaborative and peer-review level.

8.10. RECOMMENDATIONS RELATING TO COMPLAINTS HANDLING

All Universities

- 8.10.1 All universities must have effective complaints' handling procedures in place. Assessments to determine the effectiveness of complaints handling mechanisms should be undertaken and conducted periodically thereafter. The assessments should incorporate the perceptions of students on the effectiveness, accessibility, efficiency and adequacy of the existing mechanisms, as well as identify weaknesses or gaps in the complaints handling mechanisms.
- 8.10.2 All universities should have a formal system in place to monitor the receipt and resolution of complaints. Such monitoring should not only consider the formalities of complaints resolution, but must seek to identify patterns of conduct or systemic issues which may necessitate a broader intervention; including at a sectoral level basis.
- 8.10.3 In order to avoid a superficial approach towards complaints handling, all universities should consider the requirement for staff, particularly the head of a complaints handling unit, to undergo specific training on a human rights and gendered approach to complaints handling, to ensure that staff are able to correctly assess and identify deeper social issues and address complaints systemically.
- 8.10.4 All universities must develop specific policies for the management and resolution of protest action. Universities should also ensure that relevant staff members are trained and adequately capacitated to handle the resolution of protest action through a variety of means, including consultations and mediation.

8.11. RECOMMENDATIONS RELATING TO FUNDING

- 8.11.1 The Commission welcomes the various initiatives adopted to date in response to concerns relating to the funding of universities. As a result of the ongoing investigation and consideration of funding issues at a national level, the Commission will not make extensive recommendations on this matter, but will limit its recommendations to the following:

DHET and other state actors

- 8.11.2 That the existing funding mechanism and models be reviewed and that the findings of such review be made available to the Presidential Commission of Inquiry into higher education funding. The review should include scrutiny of lived realities of the university community, and challenges associated with practical implementation and accountability for policies and programs specifically arising from this Report.
- 8.11.3 That the current funding mechanisms should be reviewed by the DHET together with the National Treasury, to make special provision for the development of historically disadvantaged universities.

- 8.11.4 That funding mechanisms should ensure that students are provided with sufficient financial assistance in order to maintain a decent and adequate standard of living that is conducive to progress and success at institutions of higher learning.
- 8.11.5 That special attention should be given to the funding of senior students to enable them to complete their studies, thereby decreasing high attrition rates as a result of financial exclusions. This exercise should also give attention to:
 - 8.11.5.1 The funding of postgraduate students, particularly of female students and students from previously disadvantaged racial groups, in order to increase the pipeline of academic staff from underrepresented groups; and
 - 8.11.5.2 The funding needs of the “missing middle”, to ensure that all students have equitable access to higher education.⁹⁶

8.12. RECOMMENDATIONS RELATING TO COLLABORATION

TSG and/or TOC

- 8.12.1 The TSG should facilitate increased collaboration between historically white and historically black universities with regard to capacity building and resource sharing.
- 8.12.2 The TOC together with the TSG should further examine the role that the public and private sector can play in advancing access to higher education, opportunities for success, and overall development of the higher education sector. Collaborations with the public sector in this regard should be facilitated by the Department of Cooperative Governance and Traditional Affairs (COGTA).

The DHET and/or the DBE

- 8.12.3 The DHET, should design and initiate programmes to foster collaboration by universities and other stakeholders. Such programmes will assist in skills and resource sharing between former black and former white universities.
- 8.12.4 On-going collaboration is also warranted with the DBE, in order to assist in the development and capacity building of staff, and to further equip and prepare students for higher education. This recommendation arises in the context of the pressing need for education to be viewed as a continuum. Both authorities for education should therefore take additional measures to improve the quality of secondary education, in order to better prepare students for higher education.
- 8.12.5 The collaborative initiatives recommended above should supplement initiatives by the DHET to encourage greater collaboration with the public and private sectors for the provision of additional funding/bursaries, as well as training programmes to up-skill students and young graduates.

⁹⁶ At the time of this report, the Minister of Finance made reference to this need, during his budget speech in October.



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9 CONCLUSION



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Although a form of regulation and assessment is essential, this must be accompanied by other qualitative assessments undertaken at an institutional level.

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9. CONCLUSION

In conclusion, it is undeniable that some gains have been made in the higher education sector since 1994. In this regard, funding to those in need has substantially increased as a result of the establishment of NSFAS; the number of students able to attend university has almost doubled; progress has been made in respect of the demographic diversity of both students and staff; and a number of initiatives have been implemented to enhance transformation in line with numerous policies and frameworks which have been created for this purpose. However, despite the relative gains, transformation in the higher education sector has been relatively slow.

While many of the underlying challenges have developed under a discriminatory and oppressive history, the prevalence of these challenges also lies in the inability of the post-1994 State and institutional policies to achieve substantive reform, with many policies inadvertently reinforcing historical inequalities. Over a number of years, transformation in the country has largely become over-simplified, with predominance given to a quota system aimed at changing demographics, while the transformation of institutional cultures has become somewhat side-lined.

Although most universities have developed transformation policies and plans, the adequacy and implementation of these appear to be lacking. This is largely due to the lack of capacity and/or the lack of institutional will to implement reform in a meaningful way. In this regard, sufficient guidance and oversight is needed at a sectoral level from the DHET. However, stakeholders must be wary of placing too much emphasis on the development and implementation of policies, which may inadvertently translate the transformation process into a mere compliance exercise, based on an assessment of predefined indicators, whilst losing sight of the complex, multi-layered and dynamic nature of transformation. Although a form of regulation and assessment is essential, this must be accompanied by other qualitative assessments undertaken at an institutional level. Moreover, for transformation to move forward, staff and students must play an active role in the making of post-apartheid, non-sexist, inclusive and democratic universities.

All in all, the 2015 - 2016 “Fees Must Fall”, “Rhodes Must Fall”, “Outsourcing Must Fall” and “Afrikaans Must Fall” student campaigns that focused on matters as varied as the financial accessibility of universities, transformation, decolonisation, the outsourcing of university cleaning, catering, gardening and protection services staff, and for Afrikaans (given its perceived role in denying access for non-Afrikaans speakers and in shaping a culture that is exclusionary) to be scrapped as a university language of instruction at UP, sent a firm reminder that transformation efforts at our universities are simply inadequate, and that these efforts – as reflected in the Report above – are either technical-administrative-compliance driven or are university management-led without the active and sustained bottom-up participation of students and staff. The protests also serve as a vital reminder that as things stand, students, and possibly staff, are bystanders rather than active participants and empowered co-creators of the transforming and democratic post-apartheid university. It is self-evident therefore that universities must relook and reinvent their transformation programmes to ones that are goal-driven and that mobilises active participation by staff and students, lest the protests of 2015 and 2016 become an annual occurrence and our universities descend into chaotic and free-for-all disorderliness.

ANNEXURE A

LIST OF RESPONDENTS AND STAKEHOLDERS WHO PARTICIPATED DURING THE NATIONAL HEARING

- i. Department of Higher Education and Training
- ii. University of Johannesburg
- iii. Nelson Mandela Metropolitan University
- iv. North West University
- v. University of the Witwatersrand
- vi. University of the Free State
- vii. University of Pretoria
- viii. University of KwaZulu-Natal
- ix. University of Limpopo
- x. University of Cape Town
- xi. University of the Western Cape
- xii. University of Fort Hare
- xiii. Higher Education Transformation Network
- xiv. Universities South Africa
- xv. Transformation Strategy Group
- xvi. Transformation Oversight Committee
- xvii. Student Representative Council - University of Johannesburg
- xviii. Student Representative Council - Nelson Mandela Metropolitan University
- xix. Student Representative Council - North West University
- xx. Student Representative Council - University of the Witwatersrand
- xxi. Student Representative Council - University of the Free State
- xxii. Student Representative Council - University of Pretoria
- xxiii. Student Representative Council - University of KwaZulu-Natal
- xxiv. Student Representative Council - University of Limpopo
- xxv. Student Representative Council - University of Cape Town
- xxvi. Student Representative Council - University of the Western Cape
- xxvii. Student Representative Council - University of Fort Hare
- xxviii. Solidarity
- xxix. National Education, Health and Allied Workers Union (NEHAWU)
- xxx. Prof. Pitika Ntuli

“

...universities must relook and
reinvent their transformation
programmes to ones that are
goal-driven and that mobilises
active participation by staff and
students...

”



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Transformation at Public Universities
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