**Report of the Portfolio Committee on Higher Education, Science and Innovation on the Colloquium on Institutional Autonomy of Universities in South Africa, Dated15 June 2022**

The Portfolio Committee on Higher Education, Science and Innovation (herein referred to as the Committee) having convened a Hybrid Colloquium on Institutional Autonomy of Universities in South Africa on 29 March 2022, reports as follows:

**1. DELEGATION LIST**

**1.1 Members of the Committee**

Ms NT Mkhatshwa: Chairperson (ANC), Ms D Mahlatsi (ANC), Ms JS Mananiso (ANC), Mr T Letsie (ANC), Ms D Sibiya (ANC), Mr BS Yabo (ANC), Ms C King (DA), Dr NV Khumalo (DA)\*, Ms N Tarabella-Marchesi (DA), Mr SS Zondo (IFP) and Dr W Boshoff (FFP).

**1.2 Support staff**

Mr A Kabingesi: Committee Secretary, Ms M Modiba: Content Advisor, Dr A Arendse: Researcher, Mr J Majozi: Parliamentary Communications Officer (PCO) and Mr T Bottoman: Committee Assistant.

**2. INTRODUCTION AND BACKGROUND**

Section 55(2) of the Constitution of the Republic of South Africa, 1996 stipulates that “the National Assembly (NA) must provide for mechanisms (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of (i) national executive authority, including the implementation of the legislation; and (ii) any organ of state.” The Constitution and the Rules of the National Assembly (NA) mandate the Committees to exercise oversight over the Executive to ensure that it is accountable for the execution of its duties.

Section 59 (1) further commits the National Assembly to “(a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public.” In line with this constitutional obligation, the sixth Parliament aims to deepen democracy by enhancing public involvement. One Strategic Outcomes of Parliament as per the 2019 – 2024 Strategic Plan is to enhance public involvement, in order to increase public access and opportunities to participate in the processes of Parliament.

The Committee, as an extension of the National Assembly, committed itself to enhancing public involvement in its processes, and to provide a platform for the public and interested parties to engage and discuss issues of national importance/interests. In promoting participatory democracy, the Committee has resolved to convene a series of colloquia to engage on subject matters that the Committee programme does not provide adequate time to engage in such discourse. Colloquia bring multiple stakeholders from a wide range of organisations (private sector, government, academics, civil society, international organisations etc.) to engage on a specific issue identified by the Committee during its oversight activities.

The diverse stakeholders and groups present their submissions / presentations on a particular topic of the Colloquium, and their valuable inputs enable the Committee to formulate its own perspective in making-evidence informed recommendations to address the gaps identified during the Colloquium. Since the beginning of the Sixth Parliament, the Committee has convened two colloquia on the Fourth Industrial Revolution (September 2019) and Post-School Education and Training Funding (November 2019). The COVID-19 pandemic impacted the two planned Colloquia on Skills Development in South Africa and Indigenous Knowledge Systems.

**2. COLLOQUIUM ON INSTITUTIONAL AUTONOMY OF UNIVERSITIES IN SOUTH AFRICA**

It was against the aforementioned background that the Committee, as an oversight body, convened a series of colloquia under the overarching theme on ***“Institutional Autonomy of Universities in South Africa”*** to mainly reflect and further engage in a discourse with stakeholders in the higher education sector on how to balance the institutional autonomy of universities with public accountability. The Colloquium was divided into Part A and B. Part A focussed on two sub-themes, Cooperative Governance in Higher Education: Successes and failures and Institutional Autonomy: Enablers and impediments. Part B of the Colloquium will be convened later in the year.

**2.1. Method**

The Committee invited speakers within the higher education sector to present on the two Sub-Themes. This included the Deputy-Minister of Higher Education, Science and Innovation, Mr B Manamela, who delivered the key note address; Director-General (DG) and other senior officials from DHET; Universities South Africa (USAf), represented by the CEO Professor A Bawa; the Council on Higher Education (CHE) represented by the Council member Professor Y Waghid; the South African Union of Students (SAUS) representing the voice of students; Congress of South African Trade Union (COSATU) representing workers in the sector; Higher Education Transformation Network (HETN) representing civil society. The Committee had also invited other key role-players within the higher education sector, including the leadership from the National Student Financial Aid Scheme (NSFAS); University Vice-Chancellors, other academics, the South African Qualifications Authority (SAQA).

In facilitating public involvement to increase public access and opportunities to participate, on 4 September 2021, the Committee issued a call for public submissions on the subject matter. The Committee received four submissions from interested parties. The Committee further invited them to make oral presentations, and two members of the public accepted the invitation. Furthermore, on 28 March 2022, the Committee also issued a media statement to inform the public on the Colloquium and the platforms available to follow the proceedings. The Colloquium was held at the Cape Peninsula University of Technology (CPUT), South African Renewable Energy Technology Centre (SARETEC) at Bellville Campus, in a hybrid format and was also broadcast live on the parliamentary YouTube channel.

**2.2. Cooperative governance in higher education**

In 1997, the Ministry of Education adopted a model of co-operative governance for the higher education sector in South Africa based on the principle of autonomous institutions working co-operatively with a proactive government and in a range of partnerships. This was necessitated by the need to transcend the adversarial relations between the state and civil society arising from the apartheid era.

The White Paper notes that co-operative governance assumes a proactive, guiding and constructive role for Government. It also assumes a cooperative relationship between the state and higher education institutions (HEIs). One implication of this is, for example, that institutional autonomy is to be exercised in tandem with public accountability. Another is that the Ministry's oversight role does not involve responsibility for the micro-management of institutions. The third implication is that the Ministry will undertake its role in a transparent manner. The Ministry will drive the transformation of the higher education system through policies and strategies that are guided by this view of the role of the Government and its relationship to HEIs.

The governance of universities is regulated by the Higher Education Act and the institutional statutes. The Act constitutes the principal legal framework for higher education institutions and provides for the establishment of the governance structures; among other offices and structures, in all public higher education institutions, each with distinctive roles. The Institutional Statute is the governance instrument used to interpret the Higher Education Policy into the governance practices of the university and gives effect to the Act. The governance and management structures and processes are very specific to, and typical of universities.[[1]](#footnote-1)

The Higher Education Act states that the Council of an institution, its Senate and Vice-Chancellor through the Council, are accountable for their actions to the State through the Minister of Education. The Act provides a sound and clear framework for the governance and management of public higher education institutions.

In 2016, Parliament passed the Higher Education Act amendment Bill, which amongst other things provided for the Ministerial interventions to,

* Approve institutional statutes; and make a standard institutional statute, which applies to every public higher education institution that has not made an institutional statute.
* Determine the policy on the funding of public higher education
* Issue directive(s) to the council of a public higher education institution, appoint an independent assessor to investigate the affairs of an institution; or appoint an administrator to take over the functions of management and/or council.
* Make regulations on any matter which the minister is empowered or required to prescribe by regulation in terms of this act; the maximum remuneration of council members; and the planning and reporting framework for public higher education institutions.

Even after the strengthening of the Ministerial powers through the directives, the Committee has observed governance and management lapses in some institutions post the amendment act. Two universities were placed under the administration, the University of Fort Hare and the Vaal University of Technology. Furthermore, two Independent Assessors were appointed to conduct investigations into the state of affairs of Mangosuthu University of Technology in 2018 and 2021, respectively. The Committee also observed that funds meant to expand access to and success from higher education for students and to address the skills shortages to grow the economy and improve the lives of many South African citizens are mismanaged, through corrupt awarding of tenders, collusion with private accommodation providers, ghost workers to mention but a few.

**2.2. Academic Freedom, Institutional Autonomy and Public Accountability**

Section 16(1)(d) of the Constitution guarantees the right to academic freedom and the freedom to scientific research.[[2]](#footnote-2) This implies that academic freedom is linked with human rights such as freedom of speech, association and freedom of thought.[[3]](#footnote-3) In defining academic freedom, the Education White Paper 3 (“the Education White Paper”) states that it is the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. It further states that it is a precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge.[[4]](#footnote-4)

The White Paper further defines institutional autonomy as a high degree of self-regulation and administrative independence with respect to student admissions, curriculum, methods of teaching and assessment, research, the establishment of academic regulations and the internal management of resources generated from private and public sources. Such autonomy is a condition of effective self-government and is thus one that is able to act according to own discretion and ability to regulate its own affairs. However, the great majority of universities around the world are public institutions or are dependent on government funding hence governments have considerable power to influence what takes place on campus.[[5]](#footnote-5) Academic freedom and institutional autonomy thus represent a unique social treaty between the state and the institutions of higher education.[[6]](#footnote-6)

Institutional autonomy is about the self-regulation of a higher education institution in matters of teaching and research, administration, management and governance. The Act specifies that HEIs cannot use the principle of autonomy to resist change or transformation or to justify poor financial management or maladministration.[[7]](#footnote-7) The Higher Education Act states that higher education institutions should enjoy the freedom and autonomy in their relationship with the state within the context of public accountability and the national need for advanced skills and scientific knowledge.[[8]](#footnote-8) The state thus legally identifies a relationship between government regulation and academic freedom.

The Committee has observed an emerging culture of some form of resistance to account to Parliament by some institutions of higher learning, and often, institutional autonomy is used to repel public accountability. The Committee further noted that universities are beginning to emphasise their statutory powers and institutional autonomy whenever Parliament calls them to account. Concerns have been raised within the higher education sector of what is perceived as an oversight infringement on institutional autonomy and interference at universities by Parliament and politicians. There have been calls by the South African Union of Students (SAUS) to revisit the notion of institutional autonomy by universities as public universities often use this concept to evade public accountability. The key concerns raised include, but are not limited to:

* The alleged use of institutional autonomy by University Vice-Chancellors to suppress or stifle student activism on campuses by using court interdicts;
* Vice-Chancellors reneging from implementing decisions or resolutions taken by all stakeholders at the stakeholder engagement forums;
* The alleged use of institutional autonomy to delay implementation of transformation policies and employment equity plans;
* Introduction of mandatory vaccinations without the government pronouncing on the national policy; and
* Alleged use of institutional autonomy to exclude students financially.

In its 16th National Congress Discussion Document, the South African Student Congress (SASCO) argued that the omnipresent use of institutional autonomy alongside academic freedom has created an impression that the two notions are conceptually and practically similar. Institutional autonomy is not synonymous with academic freedom.[[9]](#footnote-9)

The principle of public accountability implies that institutions are answerable for their actions and decisions not only to their own governing bodies and the institutional community but also to the broader society.[[10]](#footnote-10) Firstly, it requires that institutions receiving public funds should be able to report how, and how well, money has been spent. Secondly, it requires that institutions should demonstrate the results they achieve with the resources at their disposal. Thirdly, it requires that institutions should demonstrate how they have contributed to national policy goals and priorities.

Section 69(c) of the Higher Education Act provides that the Minister may make regulations consistent with this Act on – the annual reporting framework.[[11]](#footnote-11) Notwithstanding that universities are required to comply with the reporting requirements that are gazetted by the Minister, the Committee observed that some of the reporting compliance standards are inadequate, like the Supply Chain Management (SCM) processes as they fall short of the Public Finance Management Act (PFMA) (No. 1 of 1999, as amended) standards. The Auditor-General of South Africa (AG) made a similar observation. Although universities are not expected to comply fully with the PFMA as per section 47(4)(d), they are required to comply fully with accounting standards. The question is to what extent can the reporting requirements of universities, especially the SCM, be strengthened to the standard of the PFMA.

**2.4. Problem statement**

Transformation of the higher education sector has been a critical aspect of reform of the sector and various aspects which require transformation have lagged in various universities, whilst other universities have recorded significant transformational progress. Notwithstanding this progress, much of it has been a change of form rather than content. Africans are largely represented in higher education, but the university curriculum and its strategic research focus have not significantly shifted. It is still largely Eurocentric and not Africanised.

The balance between achieving academic freedom, institutional autonomy and public accountability remains a tension even after 28-years of democracy. Some questions the Colloquium aimed to answer was whether institutional autonomy can be a hindrance for the state in intervening in institutions to ensure they contribute to the national developmental imperatives, which is not only about the form, but the content. The Committee has observed through its oversight activities, in particular, during assessment of governance and management challenges at some institutions, that some institutions do want to account on their output and performance. To ensure accountability to the public, transparency is key, Parliament has the responsibility to ensure that the funds it appropriates to the institutions through the Department of Higher Education and Training are utilised effectively and efficiently. Furthermore, Parliament has to ensure that national imperatives as set out in the National Development Plan and the Medium-Term Strategic Framework (MTSF) are realised.

**2.5. Outcomes of the Colloquium on Institutional Autonomy of Universities in South Africa**

The following were the outcomes of the Colloquium:

(a) Reflect and evaluate the successes and failures of corporate governance in the higher education sector and public accountability;

(b) Identify gaps within the current legislation, including policies and regulatory frameworks that contribute to the successes and failures/collapse of corporate governance in higher education;

(c) Propose a review of the current legislation or policies and regulatory frameworks to strengthen corporate governance;

(d) Identify internal factors (within the Department and institutions) as well as external factors that contribute to the successes and failures of corporate governance, as well as proposing mitigation strategies; and

(e) Identify factors that will contribute to the protection of academic freedom, institutional autonomy, whilst ensuring adequate public accountability.

(f) Establish a well-resourced Task Team to look at the issues that will emerge in both Part A and B of the Colloquium and propose further recommendations and implementation plan.

**3. SCENE SETTING SESSION**

**3.1 Opening and welcome by Prof Nhlapo: Vice-Chancellor CPUT**

Prof C Nhlapo: Vice-Chancellor welcomed the Committee and stakeholders to CPUT. He noted that the University committed to assist the Committee when it received the request for the venue to host the Colloquium, and also given the significance of the topic.

Prof Nhlapo noted that the subject matter of the Institutional Autonomy of public Universities in South Africa was a very important and critical discussion for all stakeholders. He said this is an issue that has been topical for years, but there are still contradictions and paradoxes and how to manage them is of utmost importance. This is seen in a number of charters that have been signed across the world, including the Magna Charta by European Universities, the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, the Declaration of Rights and Duties inherent in Academic Freedom, adopted by the International Association of University Professors and Lecturers, Kampala Declaration on Intellectual Freedom and Social Responsibility, the Dar es Salam Declaration on Academic Freedom and Social Responsibility of Academics. Prof Nhlapo noted that the instruments are looking at a particular subject. That means that there is something that must be tacked. Additionally, he further indicated that the Colloquium must be brave and tackle the bull by the horns and be able to say how can the sector deal with the subject matter.

Prof Nhlapo alluded to the fact that academic freedom and institutional autonomy are two sides of the same coin, but the two concepts come with responsibility to society and social responsibility. Academic freedom and institutional autonomy are not end in themselves, and universities have a singular opportunity and obligation to contribute to development in society, democracy and to play an active role in changing societies and strengthening social contract. Therefore, the relationship between academic freedom, institutional autonomy and democracy is critical and has a fundamental value for higher education across the globe. He concluded his welcome address by wishing the Committee well and committed to being part of the session.

**3.2 Remarks by the Chairperson of the Committee**

Ms N Mkhatshwa: Chairperson expressed her gratitude to all the stakeholders and members of the public who availed themselves for the Committee’s Colloquium on Institutional of Universities in South Africa, including those who joined virtually. In setting the scene, she noted that the Colloquium had been convened primarily to engage on the concepts of institutional autonomy and academic freedom of universities in South Africa, and how to balance these two intrinsically linked concepts with public accountability. She said the Colloquium emanated from a number of discussions the Committee had as part of its oversight work and it had been a long standing item on the Committee’s programme, which was previously affected by changes to the parliamentary programme.

The Chairperson alluded that the Colloquium would comprise two parts, the first, focusing on receiving submissions from various stakeholders and interested parties in higher education on their views on institutional autonomy and academic freedom of universities. The second part would broadly focus on having conversations on what had been submitted in the first part of the Colloquium, and invite more stakeholders to engage with the Committee on this subject.

The Chairperson said the Committee was empowered by the Constitution and mandated to exercise oversight over public institutions of higher learning, which received a large portion of their budget from the public funds voted by Parliament. As a result, public universities are accountable to Parliament for their work, and members of the Committee have the right to conduct oversight over these institutions as part of their work. By exercising this critical oversight function, the Committee and its members were certainly not attempting to interfere in the affairs of the universities. Alternatively, the oversight function was aimed at helping the institutions in fulfilling their core mandate meaningfully.

In relation to the aims of the Colloquium, the Chairperson said she hoped it would explicitly define the role of universities in society, the role of the DHET over universities and the role of university management and councils in line with relevant legislation. She added that universities play a critical role in contributing to the developmental agenda of the country, and in its pursuit of addressing the socio-economic realities such as high unemployment, poverty and inequality.

**3.3 Keynote Address: Mr B Manamela: Deputy Minister**

The Deputy Minister delivered the key note address at the Colloquium. He commended the Committee for the visionary decision to host the Colloquium, particularly considering that it had been almost 30 years since the democratic state initiated the project of higher education transformation, under the auspices of the National Commission on Higher Education (NCHE).

He proceeded to give a historical perspective of the country’s universities, which have their origins in a racist and divided past. He made reference to repugnant legislation such as the Extension of University Education Act of 1959, which made it a criminal offense for a black person to register at a formerly open university without the written permission of the apartheid Minister of Internal Affairs. He noted that such legislation created universities that were reserved for the particular ethnic and racial groups. The designation of higher education institutions for specific ethnic and racial groups consolidated the apartheid and European colonialism in South Africa, and ensured that black people were channelled towards particular careers that would not enable them to acquire high-end skills.

The Deputy Minister alluded that the notion of institutional autonomy and the debates o it, were as old as the formation of modern states and universities, and could also be traced back a few hundred years. With specific reference to the South African context, he said that institutional autonomy was central in the policy debates on higher education transformation that were regularly held between the government, leaders of HEIs, students and workers organisations, and other important stakeholders in higher education. To undo the colonial character of the country’s higher education system, the democratic government established the National Commission on Higher Education (NCHE). The Commission produced the overarching framework for the transformation of South Africa’s higher education landscape. The NCHE identified the deficiencies in the higher education system and based on that the Commission then suggested that the vision for a transformed higher education system. In addition to adopting the vision of the NCHE, the democratic government also adopted a set of fundamental principles that had to guide the implementation of the project of higher education transformation. These were equity and redress, democratisation, development, quality, effectiveness and efficiency, academic freedom and institutional autonomy and public accountability.

On the concept of academic freedom, the Deputy Minister said the Commission understood the concept to mean the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. It was also regarded as a precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge. Institutional autonomy also meant a degree of self-regulation and administrative independence with respect to fulfilling academic and educational tasks. The Deputy Minister said that universities stakeholders should be given space to exhaust all internal processes in addressing issues that affect them, rather than prematurely escalating them to external institutions. Such moves would be equated as equated as interference. The Department will only intervene in the event that stakeholders could not find each other.

In conclusion, the Deputy Minister said the issue of institutional autonomy and whether or not it has enabled the programme of higher education transformation, can be better understood if it is examined in relation to other key questions of higher education transformation. He hoped that the Colloquium would provide useful recommendations on how to accelerate the project of higher education transformation in South Africa.

**4. SUMMARY OF THE PRESENTATIONS**

**4.1. Sub-Theme 1: Cooperative Governance: Successes and challenges**

**4.1.1. Department of Higher Education and Training (DHET)**

Dr N Sishi: Director-General (DG) made the presentation on behalf of DHET. The presentation responded to Sub-theme 1 of the Colloquium, Cooperative Governance in Higher Education: Success and Failures. The DG began the presentation by providing a definition of cooperative governance which is a multi-tiered system of governance with delineated powers and constraints and checks and balances across different levels and spheres of governance.

The DG gave an overview of the policy origins of institutional autonomy, which can be found in the *Policy Framework for Education and Training African National Congress Education Department: January 1994 (yellow book),* the *National Commission on Higher Education, 1996* and *The White Paper 3 (1997).* In essence, these policy documents make provision for higher education institutions to have a degree of autonomy in determining their affairs balanced with the need for public accountability.

In relation to co-operative governance, the DG said the White Paper 3 (1997) and the Higher Education Act, 1997 (Act No. 101 of 1997) adopted co-operative as the model for higher education. In terms of the National Commission on Higher Education (NCHE), 1996, co-operative governance implies that no single actor or agency can claim sole responsibility or authority for determining the policies and priorities of the higher education system. According to the Education White Paper, 1997, co-operative governance assumes a proactive, guiding and constructive role for government, and also assumes a co-operative relationship between the state and higher education institutions.

The DG gave an overview of the roles and responsibilities in the governance of higher education. He noted that the Ministry sets policy and system goals and works with HEIs to resolve governance issues. The CHE advised the Minister on higher education matters and accredits higher education programmes. The HEIs are autonomously governed by the council and make contributions to national objectives.

With respect to the funding of universities, the DG indicated that universities receive state funds in the form of block and earmarked grants. He said block grants comprised 84 percent of the total state budget towards universities. Similarly, earmarked grants were used for a specific purpose and were not council controlled. They required a range of inputs, such as project proposals from universities and annual progress reports to the Department. The DG also referred to the funding challenges of higher education, and noted that public funding in recent years amounted to 40 percent of all income for the South African university system compared to nearly 50 percent a decade ago. This decline has resulted in an increased emphasis by universities on student tuition fee income, which has brought with it new governance challenges.

The DG indicated that one of the key features of co-operative governance was the emphasis on institutional autonomy exercised in tandem with public accountability. He noted that the performance of HEIs and the use of the funds was monitored through a system of annual reporting based on the Reporting Regulations. These regulations sought to strengthen the government’s role in ensuring that institutions report on their activities, and such require from a council and management of the institution to exercise their fiduciary and managerial responsibilities transparently. The DG also provided examples on how HEIs report to DHET and other relevant bodies.

The DG highlighted the key factors contributing to the governance failures of universities which included: the inability of councils to fulfill their fiduciary responsibility; fraught confusion and contestation between the council and management; fraught relationships between the council and VCs; unacceptable and counter-productive conduct by some council members; factionalism at council level; weak or non-existence administrative systems; weak or dysfunctional senate and dysfunctional or marginalised institutional forums. The DG also noted that despite the legislative and regulatory changes; and the increasing reporting demands, governance and management challenges persist; and that this calls for alternative mechanisms to resolve the crisis.

**4.1.2. Universities South Africa (USAf)**

Prof A Bawa: Chief Executive Officer (CEO) who joined the Colloquium virtually presented on behalf of USAf, and provided an overview of the role and purpose of universities. Prof Bawa noted that universities were social institutions, created by society to serve multiple functions. Moreover, universities were simultaneously local and intensely global and also served as bridges between societies.

In terms of locating and contextualising universities, Prof Bawa said universities were captured in historical, political, cultural narratives. He indicated that they existed in particular physical and cultural context, and function in a national regulatory environment which steers the way in which they can operate, through planning, funding, audit and quality instruments together with other national policies.

Prof Bawa mentioned that universities were expected to contribute to the development of competitive economies through their: impact on the labour market with the development of high level professionals; performance of research/innovation; establishing long-time platforms for research and development and development of economic policy. In relation to funding, Prof Bawa mentioned that public universities have three (3) streams of income, namely: state subsidies, tuition fees and a third stream income. He said government funding in 2019 comprised 41.9 percent of total income into the sector, tuition and accommodation fee income comprised 33.4 percent and a third stream income was 24.7 percent.

With respect to the role and purpose of governance, Prof Bawa said universities were public institutions and Statutes were foundational and also each university was defined by its Statute. The Statutes defined the primary structures and processes of the university to facilitate effective governance and administration. All institutional rules and policies were subject to the Statute.

Prof Bawa indicated that co-operative governance was required to: provide for broad social and public accountability; provide for the optimal functioning of universities; hold universities accountable for the use of state subsidies and grants; harness and leverage the capacities and strengths of various stakeholders. Within the South African context, he noted that co-operative governance encompassed the idea of institutional autonomy and opened the way for state steering of higher education. He mentioned the co-operative governance structures and mechanisms as being the councils; senate and institutional forum.

In conclusion, Prof Bawa said there was a need for strengthening the function of the higher education ecosystem, and to consider a review of the continuing relevance and efficacy of the Higher Education Act, 1997. He further called for the strengthening of university councils; building articulation between higher education and the technical and vocational education and training (TVET) sectors; strengthening the collaboration between various role-players in higher education. Prof Bawa ended the presentation by raising a critical question on whether there is a need for another national commission to re-establish the social compact that was eroded during the 2015 to 2017 #FeesMustFall protests.

**4.2. Sub-Theme 2: Institutional Autonomy: Enablers and impediments**

**4.2.1. South African Union of Students (SAUS)**

Mr L Daweti: Secretary-General began the presentation by indicating that it had been SAUS that triggered the debate on institutional autonomy, a year ago when an agreement was reached with the former Chairperson of the Committee. He said universities were too autonomous to a point that students as primary stakeholders could not even question the salary paid to VCs. He called for the Colloquium to find a way to deal with institutional autonomy, and SAUS was lobbying for semi-autonomy.

In relation to the status quo in higher education, he said the Minister provided a range on fee adjustment in consideration of the inflation rate, and institutions decided to disregard the guidance and increased fees and accommodation as they wished. He noted that enrolment targets when it came to demographics particularly in the former white institutions remained a concern. The introduction of mandatory vaccination by certain universities without following the government’s position was a concern.

With respect to autonomy and semi-autonomy, Mr Daweti argued that there was a difference between the two concepts. Semi-autonomy meant partial autonomy whilst autonomous referred to self-governing. He said SAUS proposed for 30 percent autonomy of universities given that they depended on government funding for sustainability. He further argued that the government should control 70 percent of the institutional operations such as fees, enrolments, student health and wellness.

Mr Daweti called upon university VCs to work closely with the union particularly when it comes to student disciplinary matters. He proposed that the university management ought to consult SAUS before suspending student leaders, as they cannot be the ball players and referees when it comes to disciplinary matters. In terms of the way forward, he called for the restructuring of all university structures and for students to have more voice in terms of selecting university governance structures. He proposed that the DHET should be given powers to handle student disciplinary matters.

**4.2.2. Congress of South African Trade Union (COSATU)**

Mr M Parks: Parliamentary Coordinator conveyed an apology of COSATU’s President, Ms Z Losi. He said COSATU had a vested interest in the topic of the Colloquium due to its affiliated unions that represented teaching and other support staff, and as parents of students struggling to afford tuition fees.

In relation to institutional autonomy, Mr Parks said this concept was important, however, universities were not public service departments. He argued for the need to avoid political interference in the work of universities as experienced during the apartheid era, and the need to avoid mismanagement by universities as experienced during state capture.

With respect to the constitution and legislative context, Mr Parks said the Constitution provided for academic freedom and separation of powers. Similarly, the Higher Education Act, 1997 as amended provided for institutional autonomy but also placed obligation upon DHET to ensure universities abided by the law and can be held accountable for breaking the law. He touched on the necessity of transformation in higher education to overcome the legacies of apartheid. He also noted that higher education played a key role in addressing transformation objectives and there is a need for universities to reflect South African diversity.

In relation to the curricula of higher education, Mr Parks said it needed to be geared towards the needs of the economy given the high unemployment rate sitting at 46 percent for young people. He argued for a shift from the humanities to the sciences, engineering studies to improve the economy and be globally competitive. With respect to the fees and admissions, he indicated that universities were not affordable for 90 percent of South Africans, and there was a need for fees to be affordable and subsidies to be increased. He argued that universities should have relevant admission criteria.

In so far as subsidies and efficiencies were concerned, Mr Parks said the majority of university funding came from taxpayers’ monies, and there is a need for accountability in how public funds are spent. With regard to maladministration and corruption, he noted that corruption and a decade of state capture contributed to the damage of the Brand South Africa. Corruption also contributed to fiscal constraints, which imposed an unfair burden on parents.

Mr Parks made reference to the employment equity which compelled the higher education sector to have plans to ensure all levels of staff reflect the South Africa’s demographics. He said some universities have responded positively to the provision of the employment equity whilst others were lagging behind. Mr Parks referred to the conditions of service in the sector, and said university financial inequities created unfair advantages and brain drain at times. He called for the need to move towards a common collective bargaining process in higher education.

In conclusion, Mr Parks argued for the need to correct balance between institutional autonomy and national, transformational, economic, educational and legal obligations. He called upon universities to embrace transformational objectives and comply with good governance and developmental objectives. He also urged the government to provide financial support and investment in universities.

**4.2.3. Council on Higher Education (CHE)**

Prof Y Waghid: Council Member indicated that he was delegated by Prof Mosia: Chairperson of the CHE Council to present on his behalf at the Colloquium. He said the presentation would put forward the CHE’s views on the concepts of institutional autonomy and academic freedom, and he would also utilise the opportunity given by the Committee to also express his views. As an introduction, he made reference to the CHE’s publications, which address the issue, namely: the two Kagisano publications on institutional autonomy in higher education published in 2003 and 2013; two research reports of the CHE Task Team on South African Government Involvement in, and Regulation of Higher Education, Institutional Autonomy and Academic Freedom.

Prof Waghid made reference to the principles that guide the higher education transformation in the as per the Education White Paper: *A Programme for Higher Education Transformation* (1997). The White Paper identified eight (8) fundamental principles, namely: equity and redress; democratisation; development; quality; effectiveness and efficiency; academic freedom; institutional autonomy and public accountability.

In terms of the definition of institutional autonomy, Prof Waghid said the Education White Paper, 1997 defined the concept as a high degree of self-regulation and administrative independence with respect to student admissions; curriculum; methods of teaching and assessment; research, the establishment of academic regulations and internal management of resources generated from private and public sources. He added institutional autonomy entitled a university to make academic decisions without undue interference from government, or any external body or person.

On academic freedom, Prof Waghid said academic freedom and freedom of scientific research were rights in the Bill of Rights (section 16(1) d) of the Constitution. He noted that institutional autonomy and academic freedom were the defining characteristics of universities. In terms of public accountability, he noted that the Education White Paper, 1997 defined the concept as the act of institutions being answerable for their actions and decisions to their governing bodies (councils), institutional community and the broader society. In practice, public accountability entails; reporting on the utilisation of public funds; demonstrating the results; and demonstrating that the public institutions strive to achieve national policy goals and priorities.

Prof Waghid concluded the presentation by raising the following proposals: there is a need to relook at the concepts of academic freedom and institutional autonomy in the context of glocalisation, indigenisation and therefore bring together global and localisation. He indicated that context will determine how the concepts will be developed and analysed. He also proposed that there is a need to work towards a shared or collective of the perfect form of institutional autonomy and whether there should be a conditional autonomy with heightened form pf democratisation and engagement.

**4.3. Oral submissions**

**4.3.1. Mr CT Hanyani**

Mr CT Hanyani: Former Chairperson of the National Tertiary Educators Union (NTEU) was among the members of the public who made a written submission to the Committee on the Institutional Autonomy of Universities. The Committee invited Mr Hanyani to make an oral presentation of his written submission.

He began the presentation by providing a background and indicated that he had 14-years of experience in the higher education sector. He said the government through DHET and other entities had been funding higher education institutions (HEIs) through various types of grants such as block and earmarked grants. The funds that the government utilised to fund the institutions were public funds, thus universities ought to account on the use of these funds.

His presentation focussed mainly on academic research and the authority of Executive Management. In relation to academic research, he said this was one area where there has been strong advocacy for autonomy when it comes to questions around research. He argued that research funding from government to HEIs had been increasing over the past years, and questioned the returns of the investment. He maintained that public funds should fund research that solves societal problems. He argued for the DHET to begin focusing on more realistic parameters when it makes HEIs account for public funds, and for research by HEIs to have meaningful impact on societal problems.

In relation to the authority of Executive Managers, he said universities were regarded as autonomous to a certain extent with Councils being responsible for governance, but largely delegating their authority to the Vice-Chancellors (VCs) and management. He argued that the authority given to management structures or VCs compared to their tenure was excessive and prone to misuse, and made it easy for them to transfer risks into the university. He mentioned that some of these managers leave the university before the financial and legal risk can be noticed, and the institution would be left with a serious financial and legal burden. Mr Hanyani questioned the role of Council in exercising its oversight over management and mentioned that there were seven (7) universities that had gone under the administration. He proposed a different model which would hold managers more accountable for their actions.

In conclusion, he noted that the autonomy of researchers ought to be regulated to ensure their research contributes to solving societal problems. He also indicated that the authority of Council and management should be reviewed to minimise the risk associated with it, and for the governance of institutions to be more collaborative with stakeholders.

**4.3.2. Higher Education Transformation Network (HETN)**

Dr R Legoabe: Chairperson HETN was invited by the Committee to make submission. He began the presentation by providing a brief background of the HETN, which is an independent Network of Alumni from Universities and Technical and Vocational Education and Training (TVET) colleges across South Africa, and was established on 11 February 2011. He also gave an overview of the Network’s missions, objectives and the National Development Plan (NDP) Vision 2030 objective to expand the production of highly skilled professionals and enhance the innovative capacity of the nation.

In relation to the rationale for state intervention, he mentioned a number of trends affecting transformation in the higher education sector, namely: non-compliance with employment equity targets; lack of compliance enforcement; undermining by VCs due to non-statutory advisory status of the Transformation Oversight Committee; disproportionate employment of black / African as contractors; inequities discriminatory practices; adverse organisational workplace culture; high turn-over of black graduates and staff and low number of black African professors.

In relation to the governance challenges in higher education, Dr Legoabe mentioned the following: fruitless and wasteful expenditure; adverse audit findings; non-compliance with delegations of authority; non-compliance with supply chain management policies; dysfunctional Bid committees; poor oversight on infrastructure projects; lack of consequence management by the Council and VCs and no recoveries on errant service providers.

In relation to the way forward, Dr Legoabe proposed the need for greater role of the Auditor-General (AG) in auditing HEIs, need for greater transparency in the utilization of public funds, especially infrastructure efficiency grant; greater transparency on private-public-partnership (PPPs) and stronger compliance.

**4.3.3. Dr S Mfundza-Muller**

Dr S Mfundza-Muller: Senior Research Fellow at the Johannesburg Institute for Advanced Studies (JIAS) was also among the members of the public who responded to the Committee’s call for written submission. He indicated that he was presenting in his own capacity and not representing UJ. He began his presentation by making reference to his book that was recently published called “*The Incentivised University”.* In respect of the preliminaries on the topic of the Colloquium, he said academic freedom and institutional autonomy were fundamental if universities were to fulfill their role in democratic societies. He argued that universities and academics cannot simply be assumed to act in the broad public interest, and must be subject to robust accountability mechanisms.

Dr Mfundza-Muller said there were various important widely-held beliefs and claims about South African universities that did not hold up to scrutiny, and these included: exceptional global achievement and status; success of the research incentive system; that the academic freedom provision in the Constitution primarily pertains to the autonomy of institutions and their managers which was incorrect and ignored ways in which institutions themselves infringe on academic freedom.

Dr Mfundza-Muller made reference to what he themed, an original sin of post-apartheid higher education. He argued that unlike in the broader public sector where many incompetent or racist corrupt bureaucrats from the apartheid era were rapidly removed from government positions, no such process took place in academia. He noted that incompetent and mediocre individuals who happily served in apartheid institutions have been allowed to retain permanent posts until retirement. He further argued that the notion of academic freedom remains a foreign concept in the internal practices of many Formerly-Afrikaans institutions.

Dr Mfundza-Muller provided examples of institutional infringement on academic freedom and specific examples for action which included: transparency of higher education institutions and the higher education system; predatory publishing and sexual harassment and gender-based violence (GBV).

**4.4. Written submissions**

There were two members of the public who submitted written submissions but did not make oral presentations at the Colloquium.

**4.4.1. Mr Sibabalo Mdingi**

Mr Sibabalo Mdingi is a student at Cape Peninsula University of Technology (CPUT). Mr Mdingi indicated that the submission was not on behalf of the University. In the submission, the student raises a lack of transformation at the institution and that co-governance seemed to be an impossible task. He noted that the University has failed in the times when it was agitated to establish a student Parliament that can keep the SRC in check. He further indicated that the University failed in the past three years to hold the SRC election, leaving the students with a tired SRC that seemed to be pompous and did not advocated student issues, but rather advanced their pockets.

The submission notes that there should be social transformation and appeals for the following:

* The establishment of a student Parliament;
* Establishment of a residential student council that will advance issues faced by students at residences;
* Have tutors designated at respective residences to assist students with academic work;
* Hold online SRC elections and consider digital campaigning as a way forward;
* See social transformation (LGBTQIAP+) be seen as valid and that their identification on the student cards be Mx rather than Mr.

**4.2.2. Mr Hugh Amoore**

Mr Hugh Amoore is from the University of Cape Town. The submission notes that the Ministry’s oversight role and its steering role have been considerably strengthened by a key measure introduced over the past decade. His view is that these measures were both needed and appropriate for a system of publicly funded HE. Any consideration of the balance between autonomy and accountability must take account of these measures; where an HEI has failed to meet the standards set by these measures it must be held accountable for this. One of the features of the annual reporting process and the setting of objectives is that HEIs must set the pass rate and throughput targets and report on their performance against them; given the fact that the throughput rates of many of the public HEIs are not good, this is a key feature of the reporting requirements. The key features of the regime now in place are set out in the Higher Education Act as amended and regulations as follows:

1. The Act and regulations have put in place a regime by which public HEIs account to the DHET/Minister/Public for their work; important examples are: the policies made by the Minister under S 3 of the Act and made binding on all public (and in some cases private); the reporting regulations and the regulations for annual performance plans which must be reported on in the annual report and which specify the audit requirements.

2. There are important limitations on institutional autonomy written into:

1. the funding framework (gazetted by the Minister from time to time);
2. the increasing use of earmarked funding allocations; requiring specific audit reports to claim the funding; and
3. the enrolment process, whereby the DHET sets each public HEI’s enrolment targets (and where failure to meet these targets is punished through the funding mechanisms).

3. There are important limitations on institutional autonomy to offer qualifications through:

1. The Programme/Qualification Mix (PQM) process (by which the DHET decides what qualifications in what subject areas an HEI may offer);
2. The Council on Higher Education (CHE) accreditation process which accredits (or refuses to accredit) a qualification on an HEI’s PQM: in other words, the first hurdle is the PQM, and the second is the CHE accreditation process;
3. The process by which a qualification must be registered on the National Qualification Framework (NQF) by the South African Qualifications Authority (SAQA); this does not follow automatically after CHE accreditation and SAQA ensures that the qualification is in terms of policy (e.g., articulation, Credit Accumulation and Transfer (CAT), and the Recognition of Prior Learning (RPL), etc.

**5. DELIBERATIONS**

The following emanated from the discussions during the Colloquium:

**5.1 Co-operative Governance in Higher Education**

* University councils were the highest decision-making bodies in universities and also tasked with the responsibility of ensuring good governance of the institution in line with the Higher Education Act, 1997, as amended. Thus, the appointment of suitably qualified members to councils remains critical and fundamental for promoting good governance.
* The co-operative governance structures / mechanisms of universities were clearly defined by the Act and the relevant university statutes. However, there is a degree of unilateral top-down approach by some universities, thus undermining the critical voice of stakeholders, which is not in line with the principles of good governance. An example was given in respect of the introduction of mandatory vaccination policies by some university councils despite the considerable opposition by stakeholders, and that there was no national policy by the Department of Health on mandatory vaccination.
* The inability of councils to provide strategic leadership and direction, resulting in the abdication of their oversight responsibilities to the university management, is a cause for concern in the higher education sector. This is reflected in the number of universities placed under the administration due to the failure by councils to exercise their fiduciary duties.
* Co-operative governance provides for multiple layers of accountability mechanisms for universities. By virtue of receiving public funds, universities were accountable to the state on the utilisation of public funds in delivering their core mandate of teaching and learning, and producing research oriented towards solving societal challenges.
* The role of the state/Parliament in overseeing the work of universities remains critical given that universities were not homogeneous in their nature. Thus, the oversight role of these bodies over universities ought to be appreciated as a means of promoting co-operative governance and protecting these institutions from poor governance.
* Public universities are statutory entities of the state and do not belong to the university councils or management. Thus, they belong to the citizens of this country and are at their service for a common good. It is disconcerting that some universities choose to treat themselves as social enclaves, immune from public scrutiny. Public accountability of universities was not limited to the state; university communities, members of society also have rights to demand accountability from universities.

**5.2 Institutional Autonomy**

* Institutional autonomy, academic freedom and public accountability were intrinsically linked concepts which co-existed for a good purpose. Thus removing one from each other would have negative repercussions for the functioning of universities.
* The stakeholders agreed that there is no universal understanding of institutional autonomy in terms of the concept and practice. There was a consensus that institutional autonomy is a socially constructed entity; therefore, the contestation of ideas on what is meant by institutional autonomy and academic freedom within the South African context is bound to take place, and such discourse needs to be supported with the view of reaching a common understanding among the stakeholders within the higher education sector.
* The Committee is in full support of academic freedom, institutional autonomy and corporative governance and would oppose any views that are meant to undermine / erode these fundamental principles or those who wish to interfere in institutions.
* It was noted that there is an emerging culture by the universities to use the Protection of Personal Information Act (POPIA) and the Promotion of Access to Information Act (PAIA) to withhold information from members of Parliament, thus, evading public accountability.
* Notwithstanding the overwhelming support of the recognition of institutional autonomy, the Committee and stakeholders were of the view that this concept places the institutions out of the reach of the rulers and it should not be abused at the expense of public accountability.
* Transformation in higher education has been an ongoing process since the democratic dispensation, and there has been, unfortunately, very slow progress in terms of equitable demographic representation in the staff component at some former white institutions. Compounding the matter is that there has not been a reasonable explanation given to justify the slow pace of transformation, and institutional autonomy in such instances is a cause for concern.
* The neo-liberal construct of institutional autonomy was not assisting South African universities in responding to the country’s triple challenges of poverty, unemployment and inequality. Despite having world acclaimed universities, South Africa is a developmental state with unique challenges, and with the most unequal society in the world.
* The notion that public funding allocated to universities should contribute to knowledge production and research that is responsive to societal needs was fully supported.

**6. SUMMARY**

The Committee’s Colloquium on Institutional Autonomy of Universities in South Africa was the third one since the beginning of the sixth (6) Parliament and the first to be held outside Parliament and in a hybrid format. The platform provided by the Colloquiums afforded stakeholders, key role-players in the PSET sector and members of the public to have their voice heard in the decision-making processes of the Committee. In essence, the Colloquium was an exchange of ideas between Parliament and stakeholders to find possible means to move the sector forward.

The majority of the stakeholders and other key role players that participated in the Committee’s Colloquium agreed that universities are part of the societal ecosystem and play a critical role in human and societal development. Critical in the work of universities is their ability to develop knowledge and research, which essentially contribute to addressing societal challenges. Thus, the notion of institutional autonomy is critical for their existence and sustainability. However, such autonomy is not infinite, and is also subject to scrutiny.

Similar views strongly emerged on the co-existence of institutional autonomy, academic freedom and public accountability. It was noted that these concepts were intrinsically linked and difficult to separate from each other. In a society based on democratic principles, institutional autonomy and academic freedom are fundamental in preserving the social stature of universities. Equally, public accountability exists to ensure that universities are not above scrutiny nor beyond reproach. By virtue of receiving public funds, universities are accountable to the state and the public at large in the manner in which they utilise public resources.

The Colloquium agreed that good governance is fundamental to the well-functioning of universities, and that institutional autonomy or academic freedom may not supersede good governance. It was noted that failure by certain university councils in exercising their fiduciary duties undermined the principle of co-operative governance. It further noted that the abuse of institutional autonomy was more prevalent where good governance failures were obvious. The Colloquium also noted that the deliberations on institutional autonomy should be ongoing and be further explored so that there is a common understanding among the stakeholders about the notion of institutional autonomy.

**7. RECOMMENDATIONS**

The following formed part of the key recommendations emanating from the deliberations of the Colloquium:

* Good governance is fundamental to improving the quality and performance of higher education institutions. Thus, the Department ought to address its capacity challenges, especially within the University Education Branch and work towards improving its oversight and monitoring function over higher education institutions.
* Institutional autonomy and academic freedom of universities should be recognised and safeguarded, however, not at the expense of public accountability. Additionally, universities should deal decisively with any external forces that are interfering in their affairs, and they should be named and shamed.
* The Department and the stakeholders develop a new framework on what academic freedom and institutional autonomy is in the context of South Africa and to move away from neo-liberal principles, which depart from the premise that all are equal. The importance of co-operative governance in higher education is critical and university management and councils ought to work closely with other co-operative governance structures such as the SRC, labour unions and Institutional Forums in attempt to address operational deficiencies. Adding to this, the establishment of University Ombuds will assist in facilitating the resolution of students and staff grievances at universities, by providing an independent space for mediation of conflicts among university stakeholders.
* Institutional internal processes should be exhausted before disputes are escalated to the Department and to the Committee.
* The sector revisits the relationship between the state and institutions within the principles of co-operative governance, institutional autonomy and public accountability, as well as to expand the notion of public accountability beyond the state.
* The Department, working with stakeholders strengthens the functioning of the higher education ecosystem.
* The Department considers the implementation of training and capacity development programmes for Council members to equip them with skills necessary to execute their fiduciary duties. Moreover, the Department should resuscitate the Chairpersons of University Council Structure.
* The Department builds the leadership capacity of student organisations.
* Universities embrace the spirit of law and comply with good governance and developmental imperatives. Additionally, there should be a strengthened collaboration between the higher education sector, the CHE, the Department, the Department of Science and Innovation, SAQA and the Committee.
* The Minister establishes a Ministerial Task Team or a national commission to re-establish social compact where a charter can be developed and each stakeholder makes commitments to ensure the success of co-operative governance.
* The Department, working in collaboration with stakeholders should revisit the notion of social ownership of institutions of higher learning.
* The Department reviews the existing legislation and regulatory frameworks to identify gaps in implementation for the strengthening of good governance in higher education.
* State funding should be geared towards research and innovation that will assist the country in addressing the societal challenges of unemployment, inequality and poverty.
* There is a need to redefine the matrix that the higher education sector uses to measure itself against.
* Institutions should revisit the discourse on the decolonisation of the curriculum. Furthermore, the curriculum offered at institutions should support the economy currently and in the future.
* The sector should interrogate admission policies of institutions, including Recognition of Prior Learning, articulation of TVET college students to universities
* Institutions to desist from the intimidation of student leadership and organised labour by using court interdicts. Notwithstanding this, student leadership and organised labour be cautioned that radicalism is not anarchy.
* There is a need for greater governmental and financial support and investment in universities for teaching and learning, research and infrastructure expansion.
* There should be a greater transparency in the usage of public funds, especially infrastructure efficiency grant (IEG) and research funds. Additionally, there should be greater transparency on public private partnerships (PPP) in higher education’s usage of public funds.
* The role of the AG in the auditing of higher education institutions should be strengthened.
* The Committee should convene Part B of the Colloquium to enable a wider stakeholder participation, including unorganised stakeholders to express their views on the concept of institutional autonomy of universities in South Africa.

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Report to be noted.

1. Fourie (2009). [↑](#footnote-ref-1)
2. Constitution of the Republic of South Africa (1996). [↑](#footnote-ref-2)
3. Kori (2016). [↑](#footnote-ref-3)
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