



***Academic Freedom, Institutional
Autonomy and Public Accountability
in South African Higher Education***

***Report of the independent task team on Higher
Education, Institutional Autonomy and
Academic Freedom (HEIAAF)***

Council on Higher Education

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FOREWORD

Academic freedom and institutional autonomy are values that are regarded as distinctive features of higher education systems in many countries across the world. South Africa is no exception. Academic freedom is a right enshrined in the South African Constitution and the 1997 White Paper which set the framework for higher education transformation includes academic freedom and institutional autonomy as founding core principles. Despite the seemingly entrenched nature of these values, there is ongoing debate about whether these values are being eroded by government, funding agencies, sponsors, donors and institutional management. This debate is not unique to South Africa. Internationally, there is a similar debate about these rights in relation to public obligations such as accountability. Governments in many parts of the world, concerned about the performance of public higher education institutions in meeting national goals, have revised funding systems, planning and reporting requirements in an attempt to influence performance positively. A frequent criticism of these mechanisms is that they diminish institutional autonomy and academic freedom.

The CHE in mid-2005 established a task team to undertake an independent assessment. The Task Team's objectives were to analyze the nature of government regulation of higher education, examine conceptions of academic freedom, institutional and public accountability and produce a report on these issues. The Task Team began its work by extensive information gathering via a literature review and consultation with institutions, stakeholder bodies and individuals. Research was then commissioned and regional forums were convened in 2006. The papers and reports were all made available on the CHE website. In 2007 the Task Team convened a seminar to deliberate on the commissioned research findings and at the end of last year the CHE Consultative Conference debated the influence of planning, funding and quality assurance on institutional autonomy and academic freedom. The Task Team report was finalised earlier this year.

I am pleased to present this report which covers the outcome of the extensive work undertaken by the Task Team. I particularly wish to draw attention to the conclusions and recommendations. The CHE welcomes comment on the recommendations, which will form the basis of advice to be submitted to the Minister of Education. The deadline for comments is 15 October 2008. The address to use for submitting comments on this report is: academicfreedom@che.ac.za



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- All Task Team Members,
- Dr Saleem Badat, convenor of the Task Team since its inception in his capacity as the CEO of the CHE,
- Ashley Symes, higher education consultant, responsible for providing research and project management support to the Task Team,
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- Dr Mala Singh for her contribution to the Task Team's work as Interim CEO of the CHE,
- Dr Lis Lange for her contribution to the Task Team's work as Acting CEO of the CHE.

The address to use for submitting comments on this report is: academicfreedom@che.ac.za

ACRONYMS AND ABBREVIATIONS

APSA UNISA	Academic and Professional Staff Association UNISA
CHE	Council on Higher Education
CHEC	Cape Higher Education Consortium
CHET	Centre for Higher Education Transformation
CPUT	Cape Peninsula University of Technology
CSHE	Centre for the Study of Higher Education
CTP	Committee of Technikon Principals
CODESRIA	Council for the Development of Social Science Research in Africa
CUT	Central University of Technology
DoE	Department of Education
DoL	Department of Labour
DTI	Department of Trade and Industry
ETQA	Education and Training Quality Assurer
FTE	Full-Time Equivalent
FXI	Freedom of Expression Institute
HEB	Higher Education Branch
HEC	Higher Education Council
HEF	Higher Education Forum
HEIAAF	Higher Education, Institutional Autonomy and Academic Freedom
HELM	Higher Education Leadership and Management
HEMIS	Higher Education Management Information System
HEQC	Higher Education Quality Committee
HEQF	Higher Education Qualifications Framework
HESA	Higher Education South Africa
HSRC	Human Sciences Research Council
IF	Institutional Forum
MBA	Master of Business Administration
MoE	Ministry of Education
MRC	Medical Research Council
MTEF	Medium-Term Expenditure Framework
MUT	Mangosuthu University of Technology
NCHE	National Commission on Higher Education
NCOP	National Council of Provinces
NHEIAS	National Higher Education Information and Applications Service
NPHE	National Plan for Higher Education
NQF	National Qualifications Framework
NRF	National Research Foundation

NSFAS	National Student Financial Aid Scheme
NTESU	National Tertiary Education Staff Union
NUTESA	National Union of Technikon Employees of South Africa
NWG	National Working Group
NWU	North-West University
PQM	Programme and Qualifications Mix
RU	Rhodes University
SAQA	South African Qualifications Authority
SANSCO	South African National Students Congress
SAPSE	South African Post-Secondary Education
SASCO	South African Students' Congress
SASO	South African Students' Organisation
SAUVCA	South African Universities Vice-Chancellors Association
SERTEC	Certification Council for Technikon Education
SETA	Sector Education and Training Authority
SRC	Students' Representative Council
SUN	Stellenbosch University
TFHES	Task Force on Higher Education and Society
THRIP	Technology and Human Resources for Industry Programme
TUT	Tshwane University of Technology
UCT	University of Cape Town
UFS	University of the Free State
UJ	University of Johannesburg
UKZN	University of KwaZulu-Natal
UP	University of Pretoria
UNCESCR	United Nations Committee for Economic, Social and Cultural Rights
UNESCO	United Nations Scientific, Educational and Cultural Organisation
UNISA	University of South Africa
UZ	University of Zululand
Venda	University of Venda for Science and Technology
Wits	University of the Witwatersrand
WRC	Water Research Commission
WSU	Walter Sisulu University for Technology and Science

EXECUTIVE SUMMARY

This is the report of the independent Task Team on Higher Education, Institutional Autonomy and Academic Freedom (HEIAAF), established by the Council on Higher Education (CHE) in mid-2005. The Task Team has interrogated the nature of regulation of South African higher education by government and other agencies since 1994; and has sought to promote debate on conceptions of academic freedom, institutional autonomy and public accountability, especially in the context of transformation. The Task Team investigation was prompted by concerns and claims that government steering of higher education risked becoming ‘interference’. These concerns arose from shifts both actual and perceived in the policy and implementation trajectory particularly from the late 1990s. The enquiry was also informed by recent (largely unresolved) scholarly, sectoral and public debates about the state of academic freedom, institutional autonomy and accountability in South African higher education.

Chapter 1 provides more details of the background and terms of reference of the HEIAAF enquiry (Sections 1.1 and 1.2). The Task Team gave particular attention to such questions as:

- What conceptions of academic freedom, institutional autonomy and public accountability prevail or contend in South African higher education today?
- To what extent has the mode of state steering for higher education changed after 1994, or violated academic freedom and institutional autonomy? and
- Is there a need to rethink the mode of steering higher education and how could that be done?

The Task Team followed a process which stimulated research and debate, and generated materials far more extensive than this final report. Its methodology encompassed submissions, commissioned research and expert opinion, interviews and discussion fora (Section 1.3). HEIAAF submissions did not cite outright state interference in higher education, but gave the Task Team a clear sense that stakeholders perceived government to act undemocratically at times. Interlinked processes of debate, research, dissemination and reflection served especially to highlight points of conceptual convergence and divergence underpinning perspectives on the governance of higher education, giving the Task Team material to develop as the basis for analysis of the regulatory environment. This in turn informed the structure and approach of the Task Team report (Section 1.4) which proposes duly contextualised conceptualisation - in terms of global and local trends and complexities – of co-operation, academic freedom, autonomy and accountability as a framework of principles for evaluating higher education steering. The report does not, however, claim that consensus on key concepts and the nature of steering exists in all respects. Instead it aims to contribute to shared understandings, and to invigorate debate in areas where consensus may be unachievable or even undesirable.

Chapter 2 provides the Task Team’s examination of four essential concepts: co-operative governance (Section 2.2), academic freedom (Section 2.3), institutional autonomy (Section 2.4)

and accountability (Section 2.5). This is prefaced by a discussion of the fragmented history of South African higher education (Section 2.1) and its legacy of conceptual variance and confusion. In particular, academic freedom and institutional autonomy have been easily conflated, while accountability has been poorly or narrowly understood.

With respect to *co-operative governance*, the Task Team accepts that the policy framework of 'co-operative governance' (Section 2.2.1) intends a multi-tiered system in which constituencies work co-operatively with government in a steering capacity, and in which institutional autonomy should facilitate academic freedom and accountability. However, there have been very different understandings of co-operation in practice; and different ideas have emerged in the HEIAAF enquiry about how to revitalise the 'state-sector' relationship (Section 2.2.2). The Task Team considers, among others, the arguments: that 'co-operative government' as defined in the Constitution applies to the relationship between government and universities as 'organs of state'; that higher education governance can be conceived and implemented as a 'social compact' for institutional autonomy; and that the balance between autonomy and accountability must be continuously struck in shifting conditions. Ultimately, the Task Team is most in support of the last idea, finding that co-operation – however formulated in policy - is a critical element of how higher education functions in a democratising society (Section 2.2.3). This requires high levels of participation and continuous engagement between all actors free to exercise their powers and their interests. The Task Team is wary, in the absence of any test in the courts, of deeming universities organs of state. This notion may, under certain conditions, risk aligning universities with government policy choices not necessarily identical with constitutional imperatives (including academic freedom) for which higher education is responsible to society.

In its analysis of *academic freedom*, the Task Team explores (Section 2.3.1) how a renewed concept and practice of academic freedom in higher education can benefit South African society at large, recognising that the Constitution allows academic freedom to 'everyone' and not specifically to academics or universities. It finds that any such reformulation begins by seeking to counter potential and actual external *and internal* threats to the academy – state repression and/or interference, over-control by government bureaucracies and institutional hierarchies, commercial and functional impingements on academic work, and unreformed institutional cultures. Here it is found useful to consider different elements associated with the academy that need to be exercised, supported and protected by state and society and at sectoral, institutional and academic levels of governance (Section 2.3.2). The Task Team conceptualises academic freedom as residing in a particular configuration of these elements: constitutional deliberative democracy, or participation by state authority, citizens and academics on issues and choices in society; the scholarly freedom of individual academics and students; collegial and accountable participation by groups of academics in the governance of academic affairs at university level ('academic rule'); institutional autonomy as a support to scholarly freedom and academic rule; and the range of accountabilities associated with all of these. Potential ways of consolidating academic freedom and free speech in contemporary South African higher education are

suggested, with an emphasis on the need to empower academics, their freedoms and responsibilities, rather than a focus on any particular preferred means for doing so.

With respect to *institutional autonomy*, the Task Team understands that this idea admits of no universal understanding or practice, but is context-specific. The HEIAAF investigation converges on the concept of ‘substantive autonomy’ as suitable for the South African higher education context (Section 2.4.1). On this understanding, institutional governance is exercised to ensure that the institution serves social and public purposes – rather than functional and/or instrumental political, institutional or market goals. It is also exercised to support scholarship, academic freedom and other constitutive values of the academy integral to higher education’s accountabilities to society – rather than to quell these in the name, for example, of ‘efficiency’ or ‘discipline’. Modes of co-operation inside institutions and the sector, and between institutions and government, should actively consolidate substantive autonomy (Section 2.4.2), as this does not appear to be consistently practised in South African higher education as yet. Here suggestions include: an intermediate system-wide process, or possibly a representative forum or specifically constituted fora from time to time, for the purposes of interaction between higher education institutions, government, regulatory agencies and other sectors of society; as well as sectoral initiatives to promote and give effect to sectoral and institutional self-regulation, along the lines already advocated by higher education institutions’ sectoral body (Higher Education South Africa/HESA).

The concept of *accountability* has received less attention in South African higher education than academic freedom or institutional autonomy. The Task Team finds (Section 2.5.1) that public accountability as formulated in South African higher education policy refers rather narrowly to the application of public funding to achieving public policy goals. In contrast, the Task Team views higher education accountability as multi-faceted, containing distinct but reciprocal elements of collegial, functional, fiduciary and public or social accountability. These dimensions in combination should ensure that academic endeavour serves the public good, as higher education’s ‘democratic accountability’ is not oriented around national goals for transformation only, but also inheres in an effective defence and practice of academic freedom and substantive institutional autonomy. Moreover, democratic accountability is best conceived not as a static goal, but as a dynamic process. The Task Team concludes (Section 2.5.2) that government should formally review how successfully it is meeting the requirements of its democratic accountability in relation to higher education. It also proposes some institutionalised forms of accountability at system, institutional and intermediate layers to deal with the continuously emergent nature of higher education accountability. These include: stakeholder representations made directly to Parliament, formal and informal channels for engagement within higher education governance, and a mechanism to promote the accountability of Councils to society.

Chapter 3 analyses and assesses the regulatory environment of higher education in South Africa after 1994, using understandings generated in Chapter 2 of co-operation, academic freedom,

substantive autonomy and democratic accountability as a framework of principles for evaluative purposes. An overview of the trajectory of government steering of higher education (Section 3.1) establishes that government has defined ‘steering’ progressively more sharply since 1997 through legislative change and policy developments in planning, funding and quality assurance. However, the optimal degree and boundaries of steering remain undefined and therefore open both to interpretation and negotiation.

Amendments to the Higher Education Act since 1997 (Section 3.2.1) indicate to the Task Team a defensible intention by government to heighten the accountability of higher education institutions. Unfortunately, a preference for blanket application in these amendments, matched to inadequate consultation, has contributed to a sense amongst higher education institutions that government does not always strike a balance between principles of institutional autonomy and accountability and that government commitment to consultation is lacking.

The Task Team finds (Section 3.2.2) that steering through *planning* (institutional restructuring, programme and qualifications planning, student enrolment planning) has also most commonly highlighted a contested autonomy-accountability balance. Institutions have faulted government for a planning approach that is overly centralised, bureaucratic, opaque, generic and guilty of translating the public good into selective performance targets. These factors have been problematic for institutions in the restructuring process (2001 onwards) notwithstanding their in-principle support for transformation of the higher education landscape. In addition, 2002-03 government decisions about institutional programme and qualifications mixes in the absence of due framing policy, factual data, quality criteria and academic expertise invoked concern about incursions on academic freedom. Enrolment planning outcomes negotiated since 2007 between institutions and government give more hopeful signals for consultative planning in the interests of a single yet differentiated higher education system. Accountable system planning, in the Task Team’s view, requires enhanced communication and engagement between actors, especially on the part of government; proactive contributions to policy and implementation by institutions and the sector; proper information as the basis for planning decisions; and a balanced appreciation of the many ways in which higher education and academic freedom serve society.

In the case of steering through *funding* (Section 3.2.3), the Task Team appreciates that public funding is justifiably used to drive accountable behaviour by public institutions. Yet it is around issues of accountability by government that institutional concerns are greatest in relation to funding frameworks, means of funding allocation and general funding trends. They cite a form of financial steering which is removed from individual institutional needs. This exposes institutional core functions and the exercise of academic freedom to risks arising from decreasing subsidy, earmarked funds allocated on unclear criteria, and increased reliance on private funding sources. Specifically, there is concern that ministerial latitude to alter the definitions and values of public funding components, and to allocate earmarked funds in the absence of consultation, creates potential now and in the future for unaccountable funding

decisions. The Task Team is clear that government must proactively explain its funding choices and be willing to engage in proper dialogue around these with higher education institutions.

The Task Team notes that steering through *quality assurance* (Section 3.2.4) differs from other forms of higher education steering in that it is regulated by an independent statutory body rather than the Department of Education and that it emphasises institutional accountability for quality while also developing that capacity. These factors are taken to inform an apparently wide sectoral view – shared by the Task Team – that quality assurance has posed no explicit danger to academic freedom and institutional autonomy up to now, despite its location close to the heart of academic judgements and decision-making. However, the Higher Education Quality Committee is subject to some suspicion on the grounds, for example, that it features as part of a set of statutory and bureaucratic arrangements for programme approvals which as a whole may limit autonomy and even academic freedom. The sector also cautions that steering through quality assurance could turn malign under certain conditions, such as an unduly heightened accountability drive or a shift away from a consultative steering approach. For the Task Team, a concern that substantive institutional autonomy be safeguarded in the presence of an external quality assurance dispensation is entirely valid. Both agency and institutions are therefore accountable for monitoring and sustaining an engaged mode of steering to support academic quality as an outcome of academic freedom properly exercised.

In making an overall evaluation of the regulatory environment (Section 3.3), the Task Team observes that, even if flagrant instances of government interference are hard to pinpoint, government's steering of higher education has in recent years – most sharply between 2001 and 2004 – grown more directive, less consultative, and occasionally prone to hierarchical decree. Some modifications of the steering approach are recommended to enhance system development, system co-operation and system critique; to address negative forces at play in the regulatory environment (constrained capacity, weak co-ordination, system-change overload, market ideology and managerialist ethos); to deal with ongoing contested issues; and to consolidate principles of co-operation, academic freedom, substantive autonomy and democratic accountability. Emphasised are the need to distinguish between constitutional imperatives and higher education policy choices; a renewed commitment to genuinely co-operative means of policy-making and implementation; a mode of regulation that is multilateral, engaged and iterative; and increased attention by government to processes that facilitate negotiated outcomes with individual institutions as part of the planning and funding of an integrated yet differentiated higher education system.

Chapter 4 summarises the main findings, conclusions and recommendations made by this report for the consideration of the CHE (Section 4.2), as presented in its various sections and in the paragraphs above. The Task Team offers some suggestions (Section 4.1) for further in-depth research to pursue important lines of enquiry beyond the bounds of the HEIAAF investigation.

1 THE HEIAAF TASK TEAM ENQUIRY AND ITS REPORT

This chapter situates the Task Team's report and provides the background of its enquiry in snapshot. It highlights key steps in the process and substantive contributions arising from them. The Task Team's approach in this report is explained, in relation to the context in which the enquiry has occurred.

1.1 Background of the enquiry

Academic freedom and freedom of scientific research are rights guaranteed by the South African Constitution of 1996¹, as aspects of the freedom of expression. Academic freedom is further specified as a core principle for the governance of South African higher education by the 1997 *White Paper*² on higher education transformation, which serves as the overarching policy framework for the sector. This framework is founded on a set of co-existing principles, also including institutional autonomy and public accountability³. It envisages that the principles will be exercised and balanced through the distribution of authority and responsibility amongst different actors. In particular, policy envisages higher education as a terrain of 'co-operative governance' involving many 'partners'. They are: the autonomous (and mainly public) institutions who are responsible for core higher education functions of teaching and learning, research and community engagement; a proactive government which 'steers' the development of the higher education system, and is complemented by certain statutory bodies and regulatory agencies; and a range of other stakeholders including students, academic and non-academic staff, employers of graduates, and the professional, private and public sectors which draw on the knowledge and high skills produced by universities.

At the time of its adoption in 1997, the *White Paper* was seen to represent a broad consensus, arising in large part from the work of the National Commission on Higher Education (NCHE) which reported in 1996⁴. This 'consensus' was formally constituted in the *Higher Education Act*,⁵ also of 1997. There has been no explicit shift since then in the policy framework – or in the constitutional status of academic freedom, which has not been tested in the courts. Still, in 2005, the Council on Higher Education (CHE) established an independent Task Team to investigate the nature and modes of government involvement in South African higher education, institutional autonomy and academic freedom (HEIAAF). What events, and perceptions of events, have given rise to such an enquiry, at this time?

Into the 'events' category fall detailed policy formulation and implementation. Various legislative changes were enacted through amendments to the *Higher Education Act* in every year between 1999 and 2003. Amendments related especially to governance and financial crises at institutions in the late 1990s; concerns about compromises in the quality of educational provision by an expanding private higher education sector; and the intention after 2001 to restructure public higher education through mergers and incorporations. Government has actively steered the higher education system using the levers of planning, funding and quality assurance. The 2001 *National*

Plan for Higher Education (NPHE)⁶ marked a particular watershed, providing the framework and mechanisms for the restructuring of higher education programmes and the institutional landscape, and setting indicative targets for the size and shape of the higher education system. Programme restructuring was leveraged through the Department of Education (DoE) Programme and Qualifications Mix (PQM) exercise of 2002. Decisions as to mergers and incorporations were finalised by the Minister of Education in December 2002, for implementation from January 2004. The Higher Education Quality Committee (HEQC) was established in 2001 as a permanent sub-committee of the CHE, with the mandate for programme accreditation, institutional audit and quality promotion in higher education. Accreditation and audit policy frameworks and criteria were ready for implementation by the end of 2004; audits commenced in 2005; while aspects of re-accreditation (e.g. of private providers) began before then. From 2004, a new funding framework was implemented by the DoE to distribute funds to institutions for, in its terms, delivering core services as specified by government-approved institutional plans, and to improve higher education responsiveness to labour market signals. The mechanisms in the framework come into operation only after government has determined the total of public funds that should be spent in a given year on higher education, as well as what services should be provided by the sector. The funding framework has been accompanied by the introduction of a new higher education management information system, and government insistence on a system-wide enrolment planning approach.

Into the ‘perceptions of events’ category fall: stakeholder reactions to the events just described; policy analysis of that trajectory; and scholarly, sectoral and public debate about the state of academic freedom, institutional autonomy and accountability in South African higher education. The most general reaction to the unfolding policy trajectory has been a sense that state steering of higher education has markedly intensified since 1997. Many stakeholders – especially but not exclusively higher education institutions – have viewed this with trepidation. In their claim, steering of this degree risks running to interference, as it involves a narrowing of the scope of institutional autonomy and limits on academic freedom (for example, proscription on the academic programmes institutions can offer) which run counter to the higher education policy framework. Government does not deny strongly steering the system; but it argues that a firm hand is needed to elicit appropriate accountability from higher education institutions who do not take the initiative for themselves, and that this is in line with constitutional and policy imperatives.

Policy analysts and advisers, in commenting on the intensification of steering in practice, have sometimes raised arguments in favour of modified conceptualisations of higher education governance, based on a re-examination of the underlying principles. The CHE, in its 2002 advice to the Minister of Education on higher education governance⁷, proposed the construct of ‘conditional autonomy’. This was offered as a possible framework for renegotiating limits of state steering and the distinctive roles of state and sector in contributing to the public good. A separate stream of policy and public debates⁸, intersecting with Jonathan Jansen’s controversial critique of incursions by government on academic freedom and autonomy in his 2004 TB Davie

memorial lecture⁹, has proposed the idea of ‘differentiated autonomy’. This emphasises the need for differentiated steering of institutions with divergent histories, capacities and performance, and for some kind of ‘social contract’ around higher education.

Scholarly enquiry into the nature of academic freedom in South Africa after 1994¹⁰ has highlighted contending views on the relationship between academic freedom and institutional autonomy, and at times sought to separate these concepts through consideration of matching rights and duties of academic freedom in a changing context. Potential threats to academic freedom have been analysed, and significantly some have been seen to arise *inside* universities rather than outside them (under the influence of e.g. lucrative contract research; and corporate management styles atypical of universities, loosely dubbed ‘managerialism’ although there are discernible variants). Yet a connection has also been observed between these internal developments and a supervisory government’s apparent endorsement of higher education efficiency and responsiveness in relation to ‘the market’. (This term is often used loosely, e.g. to indicate the labour market; to refer to global and local competition for income from students, donors, public and private funders; or to mean commercially-valuable higher education services or knowledge products.)

1.2 HEIAAF terms of reference

1.2.1 Aims and purpose

Against this background of concerns and claims about threats to academic freedom, and ‘government interference’ in autonomous public higher education institutions, the CHE judged it important to undertake a rigorous and independent investigation of the issues. The HEIAAF Task Team was established in mid-2005 for this purpose, consistent with the CHE’s responsibilities independently to advise the Minister of Education, to monitor and evaluate higher education, and to contribute to higher education development.

The twofold purpose of the HEIAAF investigation has been to interrogate the nature of regulation of higher education by government and other agencies since 1994; and to promote debate on conceptions of academic freedom, institutional autonomy and public accountability, in general, and in the specific context of South African higher education transformation. The aims of the investigation were to:

- Stimulate research and writing;
- Build shared understandings of institutional autonomy, academic freedom and public accountability, through the creation of various public fora, public discussion and debate on these concepts; and
- Develop consensus, as far as possible, on the nature and modes of government involvement in higher education transformation, and on the relationships between government and other regulatory bodies and higher education institutions.

The HEIAAF Task Team's objects were to:

- Critically analyse the nature and modes of government and other regulatory bodies' involvement in higher education and its transformation and development;
- Identify and critically assess the conceptions of academic freedom, institutional autonomy and public accountability held by key higher education actors; and
- Produce for the consideration of the CHE a report on the nature of the involvement of government and regulatory bodies in higher education, on various conceptions of academic freedom, institutional autonomy and public accountability, and on their efficacy especially with respect to higher education transformation and development.

In formulating its report, the Task Team concentrated on answering these questions:

- What conceptions of academic freedom, institutional autonomy and public accountability prevail or contend in South African higher education today? What conceptions exist or can be developed to best suit higher education's context of development, democratisation and transformation?
- To what extent has the mode of state steering for higher education, agreed upon in the context of South Africa's democratic settlement in the mid-1990s, changed or turned into state interference, as far the relationship between higher education institutions and the state is concerned?
- What violations of academic freedom and institutional autonomy (as variously conceived) are involved if this steering mode has changed?
- Is there a need to rethink the mode of steering higher education and how could this be done?

It should be noted that the Task Team's terms of reference, and so its enquiry, focused on public higher education.

1.2.2 Methodology

The Task Team saw the HEIAAF *process* as being as important to the intentions of its enquiry as the outcome constituted by its report. One implication is that even where directions developed in the enquiry have not been centrally pursued in this document, they may remain significant under a wider view. The Task Team certainly does not see the completion of its investigation as marking the end of debates begun or elaborated in the interests of a vital higher education sector – it encourages those inside and outside universities to continue them.

The HEIAAF enquiry began in July 2005, when the Task Team agreed its terms of reference and programme of work¹¹. Six key mechanisms were adopted for the purposes of information-gathering, research and engagement:

1. An overview of recent and current debates in South African higher education around academic freedom, institutional autonomy and public accountability, was commissioned and completed in October 2005¹². This gave the Task Team a point of departure for interrogating submissions and commissioning research. The overview was posted on the CHE web site with a select bibliography of further reading, to inform and stimulate further debate.
2. In July 2005, the Task Team invited stakeholders (institutions, stakeholder bodies and individuals) to make submissions in writing or in person, on issues falling within the scope of the HEIAAF enquiry. Twenty-five written submissions were received by October 2005 and themes were analysed in order to select topics for commissioned research and regional fora. As some stakeholders were unable to complete submissions within the original timeframe, and as higher education institutions had generally been unable to consult all their stakeholders in the process of making ‘institutional’ submissions, the process was expanded. The deadline for submissions was extended to the last quarter of 2006 and the Task Team invited submissions directly from institutions’ academic staff associations, other staff representative bodies, and Students’ Representative Councils (SRCs). In total, 33 submissions were received and most were placed with due permission in the public domain via the CHE web site.
3. The process of commissioning research began in November 2005, and five independent research projects commenced in March 2006 with submission of drafts from July 2006-January 2007. Four of the HEIAAF research reports were published by the CHE between November 2006 and February 2007¹³:
 - ‘Academic Freedom, Institutional Autonomy and Public Accountability in Higher Education: a Framework for Analysis of the “State-Sector” Relationship in a Democratic South Africa’ (Ruth Jonathan)¹⁴;
 - ‘Eternal (and Internal) Tensions? Conceptualising Public Accountability in South African Higher Education’ (Steven Friedman and Omano Edigheji)¹⁵;
 - ‘Academic Freedom, Institutional Autonomy and the Corporatised University in Contemporary South Africa’ (Kristina Bentley, Adam Habib and Seán Morrow, Human Sciences Research Council)¹⁶; and
 - ‘Autonomy as a Social Compact’ (André du Toit, University of Cape Town)¹⁷.
4. The Task Team met with selected individuals and groups having relevant knowledge, experience, perspectives or affiliations. These included members of the Executive Committee of Higher Education South Africa (HESA); DoE representatives; HEQC Board representatives; and the South African Students’ Congress (SASCO). A presentation to Parliament’s Portfolio Committees on Education, and on Science and Technology, was made in May 2006.

5. To engage institutional and other stakeholders in the debate, the Task Team organised six regional fora during March-June 2006 (Pretoria, Bloemfontein, Cape Town, Johannesburg, Durban and Port Elizabeth). The fora drew on the perspectives of knowledgeable individuals through keynote addresses and discussant responses, and gave opportunity for plenary discussion. The papers and the reports¹⁸ of the regional fora were made available on the CHE web site. The Task Team also made known its willingness to participate in meetings and fora convened by stakeholders, in order to open up debate on HEIAAF issues. In late 2005 and early 2006, Task Team inputs were made at two student movement events, and at the annual congress of the National Union of Technikon Employees of South Africa (NUTESA).
6. The Task Team convened a seminar in April 2007 to reflect on the HEIAAF commissioned research outcomes. In contrast to the regional fora, the participants of the research seminar were invited not as stakeholder representatives but as experts in their fields. A special deliberation of the Task Team followed the seminar, with the invited participation of individuals from various sectors¹⁹ to supplement the Task Team's perspectives. Further complementary perspectives were garnered by the Task Team from the CHE Consultative Conference in November 2007, which debated the influence of policy and regulatory initiatives in higher education since 1994.

This report has been prepared by the Task Team as a distillation of its findings from the completed HEIAAF process.

1.3 The HEIAAF process and its outcomes²⁰

1.3.1 The HEIAAF submissions²¹

Of the 33 written submissions received: one was from a civil society body (FXI); one from Parliament (NCOP); one from a research development agency (NRF); three from sectoral bodies (two of these regulatory agencies (HEQC, SAQA), the third from HESA²²); three from stakeholder formations at institutional level (the Institutional Forums of TUT and UZ, and the disabled staff and students representative on the IF of UP); four from stakeholder bodies (two national unions (NTESU, NUTESA), one national student body (SASCO), one institutional academic staff body (APSA UNISA)); four from individuals; and 16 from higher education institutions²³. An informal and verbal submission was made by the DoE²⁴.

Few of the 16 institutional submissions represented consensual agreements on the issues addressed; a number were academic viewpoints submitted via the conduit of the institution. The Task Team found that, with a few exceptions where a more systemic perspective pertained, these critiques flowed from individual institutional trajectories and problems.

Submissions received from stakeholder bodies/formations, especially unions, focused on specific issues which directly affected stakeholders' immediate interests. They served to shed useful light

on the possible impact of ‘managerialism’ upon academic freedom, institutional autonomy and accountability. The FXI submission too focused on a ‘growing disciplinary culture’ inside institutions, judged to restrict the free speech rights of staff and students.

The DoE, HEQC and SAQA conceded in their inputs that there might be room for a stronger consensus to be built around principles underpinning the system of higher education governance, but did not perceive their execution of their roles to be in conflict with the intentions and objectives of policy. Their submissions underscored as necessary and appropriate the unfolding of policy events. In contrast, the extent and nature of national policy-making in recent years, and the application of specific steering instruments²⁵, prompted many criticisms by higher education institutions.

Whatever their particular angle of vision, the submissions seemed to the Task Team to indicate at least some clusters of agreement. All accepted that higher education must be responsive to imperatives of socio-economic transformation and so be accountable to society - although there was varied opinion about the preferred line of that accountability (e.g. via the Ministry of Education, via Parliament). Many submissions agreed – and not only the institutional ones – on a number of undesirable developments in system governance. These included a perceived strong shift in the balance of power in higher education to the DoE after 1997. Government’s handling of higher education matters was often viewed as deficient in terms of transparency and co-ordination. It was seen as contradictory that institutions were increasingly managed by performance indicators within an efficiency framework, while government proliferated policy change and provided fewer resources. Policy outcomes were seen to be insufficiently tracked and analysed.

Institutional and some other submissions distinguished²⁶ between different sets of circumstances requiring different kinds of intervention (examples below are those given by the submissions indicated, not the views of the Task Team):

- Circumstances where it is felt that the Ministry of Education (MoE) must intervene in institutional governance, e.g. when there is evidence of mismanagement, financial irregularities, or breakdown of Council governance (CUT, p. 2; UNISA, p. 4). Some also see it as incumbent upon the Ministry to intervene to address major historical inequalities, e.g. it is argued that direct government intervention to bring about institutional restructuring was required to achieve transformation that could not be left to the determination of market forces (RU, pp. 3-4); and that government must be able to define the ‘rules of engagement’ for higher education transformation, provided there are clear checks and balances (SASCO, pp. 26-28).
- Areas where ministerial leadership is generally welcomed within a framework of co-operation, e.g. provision of a legal framework, making and implementing macro-policy for the sector. Yet, policy formulation, implementation and monitoring were consistently viewed by diverse institutions as a *joint* responsibility to be led and co-ordinated by the Ministry. Responsibility for managing the boundary between steering and interference in a context of transformation was also seen to be shared. (Wits, p. 1; WSU, p. 3; IF TUT, p. 9-10; NCOP, p. 14-15; NRF; p. 4-5; NTESU, p. 1-2; Venda, p. 1.)

- Borderline cases where ministerial involvement was perceived to be problematic. The MoE/DoE was seen sometimes to use inappropriate means for influencing the higher education system or particular institutions – e.g. by undue intervention in student governance through direct communication with students, the creation of national student bodies and the involvement of students in quality assurance (MUT, p. 5; TUT, p. 4; IF TUT, p. 4); and by prescriptions to institutional Councils which could lead to interference in day-to-day management (TUT, p. 4-5; IF TUT, p. 4). There was concern about government action perceived as arbitrary, adversarial or impatient in difficult circumstances where varied opinions exist as to what is controllable by universities and what is government’s responsibility (e.g. NWU, p.1; Wits, p.1-2).
- Areas of institutional self-regulation where ministerial authority and intervention is viewed as ‘out of bounds’. These included any aspect of academic governance and academic practice, e.g. determining an institution’s mission (APSA UNISA, p. 1); the university budget (CUT, p. 3-4), including setting quotas for particular categories of graduates and suspending subsidy and/or the right to enrol students in certain fields of study (UFS, p. 11; SUN, paper 1: p. 5-6); the day-to-day governance and management of an institution, including the appointment or performance assessment of any kind of staff of the university (CUT, p. 3-4; SUN, paper 1: p. 5-6; also see: TUT; NUTESA, RU); student recruitment, admission and selection (SUN, paper 1: p. 5-6); and standards and methods of assessment of students (SUN, paper 1: p. 5-6). All interventions construable as attempts by government to impose a political, ideological, religious (c.f. CUT, p. 3-4) or ‘market’ (c.f. FXI, p. 12-13) orthodoxy were rejected as dysfunctional.

A significantly dissenting voice with respect to the delineation of regulatory authority was SASCO’s. The student leadership advocated, amongst other things: a system of Vice-Chancellors’ reporting simultaneously to Councils and the Minister; nationally-set conditions for the remuneration of senior managers; and a national framework for student tuition fees (including clear bargaining powers of students). SASCO agreed in principle, however, that management and academic functions of universities are the realm of institutional self-regulation (SASCO, p. 22-27).

The HEIAAF submissions process was intended to encourage and facilitate broad participation in the enquiry. Each submission to the HEIAAF process had individual characteristics and perspectives. The Task Team could not deal with every issue raised, nor conclude on the accuracy of all the views ventured; but it accepted that the submissions were indicative of an environment in which diverse and even contradictory views are held. It chose to focus (as here) on overall areas of commonality and some distinctive themes within those, to shape the focus of HEIAAF research and debate (as well as noting gaps left open by the submissions for exploration by other means). Importantly for the Task Team, even if the submissions did not cite outright interference, a clear sense emerged that stakeholders perceived government to act undemocratically at times. There was apprehension about the future, and actual and potential unintended consequences of policy; but no clear mechanisms to resolve those impending dangers were formulated.

1.3.2 HEIAAF debate and research

Key elements of HEIAAF debate were the regional fora (March-June 2006) and the HEIAAF seminar (April 2007), which intersected with themes of the commissioned research. These interlinked processes served especially to raise points of conceptual convergence and variance, pointing towards bases for analysis of the regulatory environment.

Debate at the regional fora coalesced around the following themes:

- Understanding and practice of academic freedom: It was agreed that the Constitution provided the primary context for conceptualising and giving practical effect to academic freedom, institutional autonomy and accountability – although the Constitution’s protection of certain rights was not uniformly understood. Increasing clarity was generated that academic freedom and institutional autonomy are distinct concepts and that conceptual conflation of the two in South Africa has in the past inhibited an effective practice of both.
- Threats to academic freedom: The range of actual, potential and perceived threats to academic freedom was comprehensively discussed. Significant among these were: the bureaucracies of both state and institutions; institutional Councils and management hierarchies disposed to foster ‘managerialism’; academic and other prevailing orthodoxies which stifle new ideas and alternative voices; commercial consultancy and contract research whose terms may limit or impinge on the freedom of academics involved in carrying them out; market forces as these manifest through the influence of various forms of commodification, commercialisation and corporatisation of higher education; and failure to transform institutional culture(s).
- The nature of the university: The debates acknowledged the evolving nature of universities in contemporary South Africa as in other times and places, as well as the importance of deriving appropriate principles for the higher education endeavour in a context of transformation and democratisation. Participants agreed that, while it was not in the sector’s interests to claim special status apart from society, higher education could defensibly argue its status as a fundamental driver of human and social development²⁷.
- The nature of steering: The idea of ‘patrolling the boundary’²⁸ emerged to capture the notion of necessary vigilance and co-operation by *all empowered parties* with respect to the implementation of higher education governance, and the practice of academic freedom, institutional autonomy and accountability, under different circumstances and in different instances (e.g. in relation to particular policies or problems arising, or particular institutional environments and crises of governance).

The four published HEIAAF research reports made unique contributions to the enquiry, while combining to consolidate important themes and issues. Here the main arguments of the research are briefly outlined, while endnotes flag additional substantive topics addressed:

- Ruth Jonathan provided a theorised and in-principle assessment of co-operative governance and its functioning in the contemporary South African context. She argues that higher education supports development and democratisation through legislation and the co-operation of organs of state consistent with the constitutional framework (in her analysis, ‘organs of state’ include government, statutory bodies *and* higher education institutions). Centrally, she argues that universities are social institutions in whose practices the public has a legitimate interest because of the academy’s unique role as ‘engine of reform’: empowering citizens and society by helping to form their preferences, making contributions to development and equity, and powerfully shaping the future through the generation of knowledge. Where higher education responds to social conditions on this basis, Jonathan contends, academic freedom and institutional autonomy are firmly grounded in ‘democratic accountability’, rather than in any way constrained by ‘public accountability.’²⁹
- Steven Friedman and Omano Edigheji enquired into the public accountability of higher education institutions as a somewhat neglected topic in the South African literature. Their research sounds a number of warnings about the way in which public accountability is conceived and implemented, for example: that accountability is a much broader concept than a demand for accounting to political authorities; that the public to which institutions account is highly heterogeneous; that accountability cannot be conceived so as to constrain intellectual independence; that institutional autonomy may under certain circumstances undermine both intellectual freedom and public accountability; and that ‘market’ mechanisms usually do the same. The key argument of the research is that the substance of higher education accountability – as is also true of the boundary between accountability and academic freedom – is evolving and should be subject to continuous negotiation, supported by both open-ended and institutionalised channels of engagement.³⁰
- Kristina Bentley, Adam Habib and Seán Morrow examined the status and practice of academic freedom and institutional autonomy in South Africa today, with a particular focus on transferable lessons from post-independence Africa. Their central finding is that academic freedom and institutional autonomy can be strengthened by a set of strategic reforms which would empower stakeholders for meaningful contestation, be adapted to contemporary realities and needs, and leverage the social responsibility of the academy. They recommend that higher education reforms focus on achieving a diversity of stakeholders, a diversity of income streams, and a system of supports and rewards for intellectual engagement.³¹
- André du Toit analysed the potential of a social compact for institutional autonomy in South African higher education, as a basis for building trust between state, sector and society. The research proposes a composite ideal of academic freedom, comprising (individual) scholarly freedom, academic rule as an element of internal university governance (e.g. Senate), and institutional autonomy in the university’s external relations. However, it recognises that aspects of academic freedom will be variously accepted or contested depending on different historical, political, and academic cultures in a higher education system – and that these factors will influence the degree of trust that is achievable. In the South African case, a policy of co-operative governance is seen to represent an in-principle compact which has unravelled under the influence of government directive and some of the manifestations of

managerialism. Du Toit argues that a multi-layered conception of accountability provides a better basis for a social compact around institutional autonomy than broad ideas of ‘trust’ and that this can be achieved through a set of conducive conditions. These include: professionalisation of scholarship; a strong academic tenure system; an ‘internal compact’ between management and academic faculty within universities; an ‘external compact’ between executive management and the state; and facilitative structures and forums such as a system-wide academic staff association and representative forum of higher education institutions.³²

Participants at the April 2007 seminar debated the research findings and formulated broad areas of agreement for the Task Team’s consideration.³³ These included:

- It was primarily the advent of democracy in South Africa in 1994 which prompted and necessitated a re-examination of the relationship between society, the state and higher education; the need for this re-examination persisted, as continued contestation around the nature and degree of state steering showed.
- It was in the interests of co-operative relationships between government, regulatory bodies and higher education institutions – and in the broader interests of society – that conceptions of academic freedom, institutional autonomy and public accountability be renewed, although formulaic prescriptions should be avoided.
- Academic freedom would best be reconceived around matching rights, duties and accountability dimensions linked to context.
- Institutional autonomy was distinct from academic freedom although it must be exercised to safeguard academic freedom.
- Prevailing notions of ‘public accountability’ were generally too limited to capture higher education’s public and social role, and a broader understanding and practice of higher education’s accountability to society was required.
- Academic freedom was essential for knowledge production and hence essential to higher education institutions’ role as social institutions with a public good function; the social goods that higher education produced were not only for present benefit and should not be constrained by short-term or populist considerations.
- Higher education, its individual institutions and associated sectoral, institutional and academic governance structures, needed to be claimed as spaces for democratic deliberation; the lack of such genuine deliberation might lie at the core of any putative governance ‘crisis’.

1.3.3 Expert opinion in the HEIAAF process

The HEIAAF process was designed to access different sources, orders and aspects of expertise as already described. Later in its enquiry (mid-2007), as part of the process of developing successive drafts of its report, the Task Team commissioned supplementary expertise in selected areas for its own deliberations.³⁴ Expert opinion had undoubted value but was not always conclusive for the Task Team.

1.4 Approach taken in this report

1.4.1 *Issues global and local*

The Task Team has heeded international and global trends in higher education, but has not made these the focus of its report. Excellent in-depth analyses of the issues can be pursued in all four of the published HEIAAF research reports.³⁵ Here the Task Team draws attention only to the broad backdrop which has informed its investigation of trends in the local regulatory environment.

First, the Task Team noted that modes of regulation in higher education, and underpinning conceptualisations of academic freedom, institutional autonomy and public accountability, are currently matters of interest and concern the world over. Universities are abidingly alert to the safeguarding of academic freedom, but this particular constellation of concerns arises from the trajectory of the modern research university in the last 60 years. Massification of higher education has undercut the relative dominance once enjoyed by academics in university life and intensified public accountability demands on institutions.³⁶ In addition, the competition imperatives of global and local markets have commodified many aspects of knowledge production, and shifted its basis (e.g. contract and private-sector research). Universities continue to have a distinctive and essential role in producing and transferring knowledge in the service of state and society, but their application of public resources is increasingly subject to performance audit by government and fiscal pressures sometimes seem to run counter to this role.

Second, the Task Team observed that, in this environment, threats to academic freedom can arise in multiple forms: those identified by the HEIAAF regional fora (see Section 1.3.2) would be identified in many countries around the world.³⁷ To generalise, in the Anglo-Saxon world, state-supervised higher education systems, government-led reforms and increased demands for quality assurance and performance accountability have been interpreted as symptomatic of neo-liberal economics impinging on institutional autonomy and on academic freedom. In the francophone world, the notion of *'franchises universitaires'* in state-controlled systems may have afforded the academy better protection, but academic freedom in other state-controlled systems – Latin American, for example – has come under political sway. In post-independence African countries, the ideal of the 'development university' failed as higher education's potential socio-economic contributions were serially derailed by authoritarian governments, by the 'structural adjustment' agenda, and by economic liberalisation.³⁸ Yet this experience made it conversely clearer to African academics that higher education must entail social responsibility and that academic freedom, institutional autonomy and accountability are intertwined concepts in which both rights and duties to society inhere.³⁹

Third, the Task Team observed that this African realisation has increasingly found its way into international declarations on higher education in the last two decades (e.g. the 1998 *World Declaration on Higher Education for the Twenty-First Century*⁴⁰). In addition, international law

requires states to respect academic freedom as a principle based on a series of basic and widely accepted human rights.⁴¹ In many countries, domestic law provides explicit protection for academics – South Africa is such a case.

In short, since 1994, South African higher education has become part of the world higher education community in both senses of the global economic market and of cultural internationalism. It is subject as much as higher education anywhere else to potential distortions of freedom and accountability, while also having the opportunity to influence evolving patterns and principles of higher education governance in Africa and elsewhere.

1.4.2 The complexity of core concepts

The Task Team regarded the generation of a heuristic framework underpinned by principles (i.e. ‘a framework of principles’) for its analysis of the regulatory environment to be an important part of its task. With this in mind, it selected four conceptual ‘anchors’ in its investigation (academic freedom, institutional autonomy, accountability and ‘co-operative governance’), but has had to acknowledge and accommodate complexities attached to the conceptual investigation.

First, the conceptual legacy of academic freedom, institutional autonomy and accountability in South African higher education is anything but cohesive, arising as it does from a troubled and fragmented history. The idiosyncratic system of higher education that developed before 1994 – and has been restructured since 2001 – continues to entail challenges for the configuration of governance relationships on a basis of principle. Higher education institutions and other stakeholders are variably positioned, both in terms of their starting points and their overall capacity, to apprehend and respond to a re-evaluation of key concepts.

Second, higher education debates in recent years have created their own complexity, because they have continued to be open debates: contested and incomplete. Thus, the ‘conditional autonomy’ and ‘differentiated autonomy’ debates alluded to in Section 1.1 have not been fully developed, and neither concept has received notably strong support from policy-makers or higher education institutions, although each has provoked much comment. Recent critiques of higher education governance have sometimes perpetuated muddling conflation (e.g. of academic freedom and institutional autonomy) and significant gaps (e.g. a full account of the dimensions of accountability).

Third, core concepts have normative (in-principle) as well as contextualised (empirical) dimensions. The Task Team has had to be as wary of losing the ‘historical mooring’ of concepts as of restricting itself to a ‘here and now’ understanding of academic freedom, institutional autonomy and accountability which might produce unanticipated and undesirable outcomes under evolving circumstances and a longer view.

Fourth, core concepts have to be understood separately and in relation to one another. The Task Team has adopted the view that the concepts of academic freedom, institutional

autonomy and accountability are distinctive, giving rise to separable but complementary questions⁴². The Task Team's terms of reference have directed it to investigate key concepts and relationships in South African higher education *in a context of transformation*. Over and above considerations that attach to the traditional social and public roles of universities, this context renders a discussion of academic freedom as a norm isolated from duties to society (accountability) unintelligible, if not impossible. Conversely, a discussion of academic freedom so tightly coupled to a particular version of accountability – under the rubric, for example, of 'growth and development imperatives' – that it subverts norms of freedom long bound up with the idea of the university would be reckless.

Fifth, the nature of 'the university' is complex and evolving. The university embraces norms and traditions associated with the assertion of particular claims (especially the claim to free enquiry), as well as fulfilling a public role necessarily shaped by the needs and expectations of the society it serves today and for the future. That the trajectory of the idea of the university remains open-ended is evidenced by many trends, including that new models and theories of the university and knowledge production are routinely advanced (e.g. 'the entrepreneurial university', 'Mode 1 and Mode 2 knowledge production', 'the engaged university', and other such ideas).

Finally, 'state steering', as one possible mode of higher education system governance, takes different forms in different contexts. Co-operative governance is a *particular variant* of that mode proposed for the governance of higher education in South Africa and remains subject to a range of understandings.

1.4.3 Emerging issues in the enquiry

Some issues early revealed themselves to be part of the Task Team's enquiry, even where not *explicit* in the terms of reference (albeit accommodated within those guidelines). Two examples illustrate:

First, the Task Team's terms of reference referred explicitly to 'public accountability'. It became apparent that 'public accountability' is rather a narrow term and the Task Team adjusted its focus to encompass accountability more broadly. This choice is reflected in preferred use of the inclusive term 'accountability' in this report.

Second, the Task Team became increasingly aware that it could not consider the relationships between higher education regulators and institutions, separately from the relationships between institutional governors, administrators, staff and students, and the ways in which each influences the other. The conceptualisation of core principles would be truncated if oriented only around the external relationships of institutions, without taking account of internal dynamics.

1.4.4 Consensus and the nature of this report

This report contains the Task Team's findings and conclusions, drawing on aspects of the HEIAAF process as already recounted. For clarity and economy, the report focuses on the outcomes of the Task Team's deliberations, rather than trying to capture all the detail, interest and, often, scholarly integrity, of these contributions. The potentially vast scope of the Task Team's field of enquiry required it to make particular choices reflected in the content of this report. The report represents at its heart an analysis of the local regulatory environment of South African higher education, in particular the nature of regulatory interventions and their impact on academic freedom, institutional autonomy and accountability. This is the topic of Chapter 3. The analysis is grounded in prior examination (in Chapter 2) of four essential concepts (academic freedom, institutional autonomy, accountability and 'co-operative governance') and is therefore informed by such conceptual clarification *as the Task Team has found appropriate and possible*.

The last statement requires explanation. While the achievement of 'consensus as far as possible' was an aim of the investigation, the Task Team has had to allow that consensus on various issues may or may not – now or ever – exist. This report has had to navigate: (dis-)agreement among Task Team members; (mis-)alignment between submissions, and other sectoral contributions, and Task Team views; (mis-)alignment between commissioned research findings, other expert opinion, and Task Team views; iv) (non-)existence of a system consensus on particular issues (i.e. between government, the higher education sector and/or other actors); and (non-)existence of consensus among higher education institutions. In this report, the Task Team records and discusses some key contending views where these arise, while retaining a focus on those findings which constitute Task Team agreements.

Its propositions (summarised in concluding Chapter 4) aim to contribute to new and possibly shared understandings, to encourage and invigorate debate in areas where full consensus may be unachievable or undesirable, to stimulate imaginative engagement with the issues, and to inform policy review and action. Moreover, they formulate a scheme of responsibilities and tasks for the full range of actors, including: society, Parliament, DoE, statutory/regulatory bodies, sectoral bodies, higher education institutions, institutional Councils and managers, academics and students. The Task Team takes the view that building shared understanding provides the basis for transformation, while ongoing interaction between actors is crucial to a vigorous and responsive higher education sector and academic enterprise.

2 THE CONCEPTUAL TERRAIN OF HIGHER EDUCATION GOVERNANCE IN SOUTH AFRICA

This chapter explores core conceptual issues in the HEIAAF enquiry, in order to provide a framework of principles for the analysis of the regulatory environment in Chapter 3. The chapter sets out findings and formulates, for the consideration of the CHE, conclusions in those areas where conceptual clarification is warranted, where conceptual consensus exists, and where prospects for an emerging consensus appear strongest or might be facilitated by particular means.

2.1 A fragmented legacy

In Section 1.4.2, the Task Team argued that all contestations over academic freedom, institutional autonomy and public accountability occur in a distinct socio-economic context and that understandings of core concepts are embedded in the thicket of history. This is an essential optic for its discussion of the conceptual legacy in South African higher education, so notably characterised by persistent structural and ideological fragmentation. Although institutional restructuring has been steered by government since 2001, the Task Team believes that social ordering using policy instruments, even in the most propitious circumstances, cannot escape the traps of 'tradition' – including divergent 'traditions'. It has therefore sought to trace any historical fracturing of ideas which may underpin newly variant understandings of core concepts, and so to grasp what is necessary for conceptual renewal.

Before 1994, in Ruth Jonathan's apt phrase, 'the typology of institutions ... serve[d] as an aetiology of apartheid'⁴³ in South African higher education. Myriad forms of inequality marked this institutional landscape: most blatantly, racial, class and also gender barriers to access; uneven funding and resources predicated on different allocated roles and governance models for historically white and historically black institutions; variable staff-student ratios; wide differences in pedagogy, curriculum, qualifications, research development and quality measures. Unsurprisingly, this unevenness extended to interpretations of academic freedom, institutional autonomy and accountability.

Under apartheid, both English- and Afrikaans-medium universities enjoyed a measure of academic freedom and autonomy – always with the qualification that they functioned as part of a socially-engineered system. Early (English) South African institutions had depended on the University of London for the recognition of their qualifications, and modelled their academic programmes and administration on Scottish tradition. In an abstract form, notions of academic freedom, and the related concepts of institutional autonomy and accountability, were accordingly influenced by an understanding that a university was a community of scholars intent on the pursuit of truth; to succeed, the university needed to be free of outside interference. The English-medium universities articulated their opposition to the apartheid state's 'separate university education' policies from 1957 onwards and declared themselves 'open universities'. The Afrikaans-medium institutions favoured an approach more akin to Dutch and German models of higher education: universities

should serve the nineteenth-century idea of nation-building. This gave birth to the *volksuniversiteit*⁴⁴ – the idea that the South African university should offer the fruit of its labour to the building of the Afrikaner nation. Afrikaans-medium universities colluded with state policies, albeit with some notable exceptions of protest and political activism by staff and students.⁴⁵ Yet generalisations like these are difficult to sustain: many have noted that the English-medium universities – ‘autonomous’ or not – worked closely with the state and its institutions.⁴⁶ State funding continued to be channelled by them towards projects that were in essence supportive of the government’s goals, especially in the natural and social sciences.

In contrast to historically white universities, the six designated ‘black’ universities enjoyed little autonomy of any kind. They were administered as extensions of state control, meaning government (or governments, given that the bureaucracies included those in ‘bantustans’ and self-governing territories) exercised a tight rein over appointments, the curriculum and budget. In turn, these institutions became sites of resistance when students began to organise after the late 1960s.⁴⁷ ‘Technikons’, established by Act of Parliament in 1967, did not – until 1993 – award degrees, and were likewise subject to central control of curricula, examinations and certification.⁴⁸

Nowhere in this patchwork system did public accountability exist in any recognisable democratic form, even insofar as accounting for public monies. So, historically white universities were funded by formula and could keep unspent balances; all historically black universities and technikons were initially funded by a system of negotiated budgets and were compelled to return unspent monies.

The open universities’ position vis-à-vis the state turned on ‘four essential freedoms’ drawn together under the term ‘academic freedom’: namely, the right of the university to determine, on academic grounds alone, who may teach, what may be taught, how it shall be taught, and who may be admitted to study. In this, they followed a formulation by Thomas Benjamin (TB) Davie, then the Principal of the University of Cape Town.⁴⁹ By the time the HEIAAF enquiry began 50 years later, this formulation had come to occupy an allegedly ‘paradigmatic’⁵⁰ status in South African higher education. At first glance this seems strange, given the insistence that has been placed here upon fragmentation. Yet it is explainable because of the intervening *White Paper* ‘consensus’ which, like TB Davie, formulated the principle of academic freedom with a marked emphasis on one key criterion: *‘the absence of outside interference, censure or obstacles in the pursuit and practice of academic work [as] precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge.’*⁵¹ All the same, the Task Team could not easily accept such a paradigm at face value and instead felt compelled to assess it critically. Reasons for its critical stance included the particular historical circumstances which gave rise to the TB Davie formulation and which no longer pertain; and the events and perceptions leading to the Task Team’s enquiry, which signalled that consensus was after all imperfect.

While before 1994 the TB Davie formulation enjoyed great political currency as a ‘categorical and unqualified assertion’⁵² in anti-apartheid circles, every claim made in its name took place in a

country in which all forms of education had been corroded by the ideology of race. Although the open universities confronted the state on the issue of racial admissions and staffing, other aspects of their relationship with the apartheid state went largely unaffected. This compromised outcome can be explained in large part, in the Task Team's view, by the conflation of the concepts of academic freedom and institutional autonomy: by directing their attention solely towards external threats to their institutional autonomy, the English-medium universities neglected (or ignored) many internally-generated compromises over their academic freedom.⁵³

Around the open universities' approach to academic freedom developed an intricate rite of institutional practice (including academic freedom lectures and the like) which helped to position the idea of academic freedom and/or institutional autonomy as a prize to be valued within the 'tradition' of South Africa's universities. With the ending of apartheid, the importance attached to the prize has continued, even though the target of its focus – the apartheid state – is no more.

In illustrating this, Ruth Jonathan has noted that 'the apartheid regime ...left a legacy of social practices and institutions deeply undemocratic in their constitution, as well as their distribution.'⁵⁴ As she explains, for the white minority, university entry (which assumed adequate school performance) and employment (after graduation) were normal expectations. When these fell away with political change, new opportunities – however welcome, politically – were interpreted as threats to academic freedom. And while academics may have anticipated greater academic freedom and institutional autonomy under democracy, few fully grasped that demands for accountability 'would extend far beyond traditional parameters of mere public accounting and into scrutiny, on the public's behalf and in the name of system coherence and transformation, into what was taught, where and how, as well as into what research activity would be publicly supported and how that would be monitored'.⁵⁵

Arguing in similar vein, André du Toit points out that the implications of the 1997 *Higher Education Act* were ambivalent for the idea of university autonomy:

Bringing all higher education institutions within the scope of the same statutory regulation served as a double-edged sword: for the historically white universities it meant that they were deprived of any special measures of independence previously enshrined in their respective University Acts, while for the historically black universities the reverse applied [in that they did not acquire such measures].⁵⁶

In effect, the issues of academic freedom, institutional autonomy and public accountability have been rendered incoherent by two linked issues – a fragmented history and differing expectations of political change.

Recent debates⁵⁷ have offered two potential directions for a contemporary conceptualisation of academic freedom in South African higher education, while proceeding from the starting point of the TB Davie formulation. The one supports a 'classic' notion, namely: advocating the right of

professors in their teaching and their research to follow their ideas wherever they lead them. The other believes that academic freedom, along with institutional autonomy and accountability, should be contextualised and historically constructed. Judged by these, South Africa's 'paradigmatic' view on academic freedom – and the notions of institutional autonomy and accountability with which it is bound up – is no longer adequate. Because it was a specific outcome of a particular oppositional political discourse, the Task Team finds that the TB Davie formulation cannot be classified as 'classic': but, equally so, it is no longer appropriately contextualised for the new socio-economic context. Renewal of the concepts of academic freedom, institutional autonomy and accountability is unquestionably necessary – and is the essential work of this chapter. Given that 'co-operative governance' in South African higher education is a policy framework premised on a particular understanding and configuration of the three concepts, it too features as part of the Task Team's examination of how to promote an effective regulatory environment on a basis of principle.

2.2 Co-operative governance

2.2.1 The policy of co-operative governance

The 1997 *White Paper* and *Higher Education Act* specify South African higher education as a system of state supervision, or state steering (although without employing these terms, which were explicitly used by the NCHE report that informed them). In such systems, public higher education institutions are guided by framework policy which aims to ensure academic quality and public accountability and are partially but usually substantially resourced from public funds to enable them to play their public role. They are granted institutional autonomy with oversight typically vested in a Board or Council. Academic freedom is guaranteed – by tradition, by international convention, by statute, or occasionally, as in South Africa, by constitutional provision. These systems are distinct from state control systems, in which the state through its bureaucracy exercises direct control over higher education in the public interest.

Prior to 1994, South African higher education was characterised by poor integration and low levels of mutual trust: the NCHE therefore chose to recommend a particular form of state supervision, whereby constituencies would work co-operatively with government in a steering capacity. A wide range of partnerships was implied by the NCHE's proposals for differentiation of functions and powers; and for separate yet connected functions of policy formulation, decision-making, implementation and monitoring. The *White Paper* accepted these broad tenets, advocating that governance should enable co-operative rather than conflicted contestation of different interests. The *White Paper* clarified the responsibilities of governance partners and designated structures to promote co-operative behaviour. At the same time, the *White Paper* departed from some NCHE proposals.⁵⁸

First, it gave greater prominence than the NCHE envisaged to the leadership of the Minister of Education. While government plays a 'proactive, guiding and constructive role' in system governance, and institutions are recognised as autonomous in principle, policy unambiguously

states that ‘when all the appropriate investigations and consultations have been completed, a Minister must decide, and must take responsibility for the consequences of the decision.’ The *White Paper* specifies the leadership role, duties and authorities of the Minister in great detail⁵⁹, meaning that the Minister is, in practice, ‘at the head of [a] hierarchy of authority and responsibility’.⁶⁰ However, direct ministerial interference in institutional matters is intended as a matter of last resort in line with legislative provisions for the appointment of an Independent Assessor⁶¹ to investigate troubled institutions, and the successive appointment if required of an Administrator⁶² to take over the authority of the Council and/or management. In the severest case, a Minister has the power to amalgamate or close an institution.⁶³

Second, the *White Paper* did not establish two higher education statutory bodies, i.e. a ‘Higher Education Forum’ (HEF) and a ‘Higher Education Council’ (HEC). The HEF would have served as a large, representative, deliberative stakeholder forum to be consulted by the Minister on key policy issues. The HEC would have been a small council of trusted higher education experts vested with the fund allocation, planning and quality assurance functions. Instead, the CHE assumed advisory functions and executive responsibility for quality assurance. The Higher Education Branch (HEB) of the DoE took on the planning and fund allocation functions⁶⁴, as well as other responsibilities.⁶⁵ These arrangements have received sporadic criticism over the years – in the Task Team’s view, mainly because the role of individual institutions in the flow of co-operative decision-making for the sector became unclear. Until the formation of HESA in 2005, the sector was without an organisation representative of all institutions; and still no body unites the various institutional perspectives and those of specific stakeholders. Although it is broadly representative, the CHE has to guard its intellectual and operative independence statutorily from both the Ministry’s influence and the interests of specific institutions and institutional clusters.⁶⁶

At institutional level, the *White Paper* intends a high degree of autonomy/self-regulation through the authority vested in institutional governance structures and legislative restraint through the development of national regulatory frameworks.⁶⁷ In institutions, co-operative governance is given expression through the interrelationship between:

- The university Council, which has a minimum of 60% external members representing a range of constituencies and perspectives, and is charged with acting in the institutional and the public interest (and not, as is sometimes mistakenly assumed, in line with mandated stakeholder interests). As ‘the highest decision-making bod[y] of public institutions’⁶⁸, Council is accountable for institutional governance, transformation, oversight of management, and senior appointments; it reports annually to the DoE in terms of regulations.⁶⁹
- The Senate, which must always have a majority academic membership although it can be constituted along various lines.
- The Institutional Forum (IF), which is a mandated stakeholder forum with a statutory advisory function to the Council.

The roles of these three bodies are underpinned by the principles of autonomy and accountability (especially central for Council); the rights and duties afforded to the academic community by academic freedom (especially central for Senate); and the imperatives of institutional democratisation and transformation (especially central for the IF). In addition, each public higher education institution is obliged by the *Higher Education Act* to have an SRC and executive management.⁷⁰ It is through the broad-based membership of the Council – not through Parliament or the Minister – that a university is intended to be accountable to society. The *White Paper's* formulation of institutional autonomy and public accountability as policy principles makes this clear:

...[I]nstitutional autonomy refers to a high degree of self-regulation and administrative independence with respect to student admissions, curriculum, methods of teaching and assessment, research, 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. However, there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defence of mismanagement. Institutional autonomy is therefore inextricably linked to the demands of public accountability. ... 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. Firstly, [public accountability] 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 met national policy goals and priorities.⁷¹

The Task Team accepts that *policy intends* 'co-operative governance' as a multi-tiered system of governance with delineated powers and constraints, and checks and balances across different levels and spheres of governance (system, institutional, academic). It is intended to support the steering of transformation through designated levers (planning, funding and quality assurance), while simultaneously preserving the degree of institutional autonomy necessary to defend academic freedom in teaching, learning and research, and to pursue the public good through the accountable exercise of higher education's core functions.

2.2.2 Interpretations of co-operative governance

The prevailing policy framework was adopted at a time when there was a particular air of consensus in South African higher education. Since then, unease has grown about co-operative governance as a concept imperfectly understood and enacted – although the Task Team encountered divergent opinion on the nature of those imperfections and how they should be addressed.

This was exemplified by the HEIAAF submissions, which revealed – albeit 'between the lines' – interpretative variance and even confusion about co-operative governance. At system level, submissions by regulatory agencies (SAQA, HEQC) referred to these agencies' commitment to consultation within the framework of allocated roles and responsibilities, but failed to

acknowledge that other stakeholders questioned their efforts at times. At institutional level, submissions by higher education institutions were rarely the outcome of an internal process; staff bodies and others were critical in their submissions of managements who failed to engage them in governance matters. At both levels, stakeholders apparently disagreed on the function of consultation in higher education governance. At the extremes, different parties might see it either as a procedural step on the way to independent decision-making by designated authorities, or as a substantive step giving content to shared decision-making, or co-determination.

In policy advice to the Minister⁷² on the state of co-operative governance at public higher education institutions (May 2002)⁷³, the CHE found governance difficulties at institutional level to be connected to lack of conceptual clarity across the system. In line with the terms of reference of that investigation, the CHE report focused on recommending changes in policy/legislation and practice to improve the functioning of institutional governance structures.⁷⁴ However, in addition, the CHE warned that good institutional governance must be premised on a clearly conceived relationship between institutions, government, state and society and found that here ‘co-operative governance’ was not helping:

[I]t is now in danger of becoming a hindrance that confuses policy and inhibits the development of good practice. For many co-operative governance has become an empty phrase that means little more than ‘co-operation in governance’ or even ‘corporate governance’. Because co-operation in governance is an obvious value that can be achieved by a wide variety of devices (such as traditional committee systems), the policy of ‘co-operative governance’ can be used to resist change through the argument that the policies of transformation are being fulfilled through managerial functions, despite the fact that these do little to widen ... participation in higher education.⁷⁵

The CHE recommended renewal of debate on the vision and principles underlying the system of higher education governance. At the time, the ‘conditional autonomy’ concept was offered as a potential framework for this – namely, the idea of striking: ‘a balance between the substantive autonomy of institutions to determine their own policies, and the restrictions on their procedural autonomy that follow from the state’s control over the overall policy framework, funding and other means of control.’⁷⁶ The conditional autonomy concept was poorly received by the sector, especially because it seemed to imply that institutional autonomy could be taken away under certain procedural conditions, but also on the grounds that changing the policy framework was no solution to problems that had been encountered in implementing co-operative governance.⁷⁷

The HEIAAF research, sometimes supported at other points in the HEIAAF debates, has proposed three potential ‘routes’ to a revitalised understanding and exercise of a co-operative ‘state-sector’ relationship – although without explicitly recommending that the prevailing policy framework be jettisoned.

A first ‘constitutional route’ is based on public law and theoretical analyses treating the South African Constitution as the necessary starting point for analysing higher education governance.⁷⁸

As supreme law, the Constitution is seen by these commentators to create a framework within which (higher) education is to be promoted, and key provisions (academic freedom, institutional autonomy and rights to education) protected.⁷⁹ Supplementary arguments are made:

- A university, regarded in law as a ‘juristic person’, is a bearer of rights including academic freedom, and can enforce these rights against the state;
- Some argue that academic freedom and university autonomy cannot be completely separated and that the latter is the collective exercise of academic freedom;
- Although they do not consider that the protection of academic freedom and institutional autonomy depends upon universities being, or not being, organs of state, the sources referenced opine that public universities *are* organs of state, as defined in Section 239 of the Constitution, because they perform a public function and act in terms of legislation;
- As organs of state, universities are bound by the Bill of Rights so that any infringement of these rights must be justified in terms of the applicable limitation provisions;
- They are also bound by the constitutional scheme of co-operative *government* and intergovernmental relations (Section 41) which provides that organs of state must co-operate in mutual trust and good faith and adhere to agreed procedures: when the state is directed to take legislative measures, organs of state are bound by these.

Thus, co-operation between organs of state is seen in these analyses to imply dialogue between the higher education sector and government during the framing of legislation and after its enactment, though final authority lies with the government of the day. Co-operation is *not* seen to imply ‘a passive or simply reactive stance to legislation on the part of the higher education sector when that legislation affects it directly, nor an absence of critique on other measures in which it can legitimately claim expertise’.⁸⁰ Ruth Jonathan finds that such contest is perfectly feasible if it is understood that in instances where the sector comes into conflict with the ‘state’, this is not to indicate a difference between higher education and the ‘constitutional state’ but rather a difference between higher education institutions and those parts of the ‘institutional state’ that enact and implement law and regulation.⁸¹ She points out that while academics may expect a right to *prevail in argument* only in reference to their central expertise, they unquestionably have a right and a collective duty to speak on the steering of higher education, consistent with the constitutive values on which higher education depends to fulfil its role as ‘engine of reform’.⁸²

The Task Team supports this understanding of the ‘state-sector’ relationship in some central respects. It agrees that universities are guided by their duty to the public good, and their responsiveness to society, within a constitutional framework of national goals. It concurs that universities and academics must speak out freely on the regulation of higher education as informed by their close knowledge of higher education’s enduring and evolving purposes and functions. However, in the absence of any test in the courts, the Task Team has difficulty accepting that the constitutional notion of co-operative government – insofar as government and universities are concerned⁸³ – is identical or intrinsically connected with co-operative governance. An

interpretation that deems universities organs of state potentially blurs the boundary between ‘constitutional’ and ‘institutional state’ (see distinction made in paragraph above) and has finally seemed to the Task Team inconsistent with its interpretation of higher education’s accountability to society as a third party (more fully discussed in Section 2.5). Moreover, the Task Team believes that academic endeavour, like the judiciary and the media, requires independence. This is not to assert that ‘independence’ is identical with institutional autonomy, which can under some circumstances undermine academic work (discussed in Sections 2.3 and 2.4); and accordingly the Task Team disagrees that institutional autonomy can be understood as the collective exercise of academic freedom. The Constitution allows that academic freedom vests in ‘everyone’ (see Section 2.3.1) and so, in the Task Team’s view, vests in individual academics before it vests in the university. Nevertheless, the university as an institution must retain that degree of freedom which leaves it able to protect free enquiry from potential state and market incursion, and does not risk aligning it with imperatives of the ‘institutional state’ which – under imperfect circumstances or malign influence – may not be constitutional.

A second route to understanding the ‘state-sector’ relationship in higher education is ‘a social compact route’. Here André du Toit analysed the functioning of co-operative governance after 1997 to conclude that the model broke down around a set of ‘fault lines’ in the process of restructuring South African higher education.⁸⁴ Some strong institutions exercised their capacities for autonomous action very well – but sometimes for officially unintended purposes; while other, weaker institutions sometimes had to be salvaged from their own incapacity and lack of effective self-regulation. Some institutions have resisted liberalising reforms and the creation of academic quasi-market conditions as threats to the core values and functions of the university; others have seized on them as opportunities for entrepreneurial higher education activity. A third fault line has formed around different expectations of what redress and equity entail. Du Toit is concerned that these fault lines, which derailed the original putative consensus around co-operative governance, are not symptomatic of a transitional phase, but will still be in place once higher education restructuring is complete. He suggests that the ‘missing link’ in the holistic interactive process of co-operative governance may be just such a sector-wide higher education forum proposed by the NCHE report in 1996.⁸⁵

The Task Team – while it specifically commissioned research into institutional autonomy as a ‘social compact’ – is ultimately cautious about seeing higher education governance in terms of a compact that is ‘made’, ‘un-made’ or ‘re-made.’⁸⁶ The Task Team notes that Du Toit analyses many potential options for the form that a social compact may take: explicit or implicit, formal or informal; usually involving multiple elements and dimensions; and always linked to particular and evolving contextual conditions. However, the Task Team believes that in policy and practice, the temptation may be great to fix a compact formally and somewhat inflexibly and so lead to detrimental consequences. Some evidence for this is given by the fact that the consensus/compact ‘fixed’ by the *White Paper* unravelled not four years later. The Task Team accepts that the balance between autonomy and accountability will be precarious in shifting conditions, and that mechanisms to engage with the conditions can only be beneficial.

This is precisely the emphasis of a third route to framing the ‘state-sector’ relationship, which enquires into the meanings of co-operation, contestation, contention and their enactment in higher education governance. At issue is the extent to which a lasting equilibrium in relations between society, government/state and higher education sector is attainable or productive. Viewpoints which see higher education governance as a terrain of contention do not dispute that co-operation is desirable; however, they submit that contestation is not only inevitable but continual, and that if co-operative governance is interpreted as meaning the achievement of enduring equilibrium in higher education, then it has in view a false ideal. Rather the goal should be to create an enabling environment where the sector’s stakeholders are sufficiently empowered continuously to engage each other in order to achieve temporary equilibriums. Kristina Bentley, Adam Habib and Seán Morrow recommend that strategic reforms be made, especially inside autonomous institutions, so as to have the systemic effect of dispersing power to academics and their institutional managers, the better to contend with other actors, including technocrats in government.⁸⁷ The authors’ recognition that reform is ‘messy’ appears to attribute empowerment less to the detail of once-off reforms, than to the realistic needs of accommodating shifting circumstances and diverse voices. Steven Friedman and Omano Edigheji propose a dynamic model of contention as best adapted to governance of a sector which meets its accountability to society in large part through the pursuit of free enquiry:

... [A]ttempts to develop a framework which would resolve the tension between the need to ensure that higher education institutions remain accountable to the public, and the requirement that intellectual freedom be preserved, are exhausting and ultimately futile. ... More importantly, perhaps ... the search itself is certain to obstruct the quest for accountability and freedom. ... Seeking to freeze the boundaries is ... a profoundly anti-democratic quest⁸⁸

This is so for a range of reasons which they cite. It removes ‘a vital area of public life from the free processes of deliberation’. The definition of the public good ‘is never settled’. The ‘balance of power in society at any given time will determine who is interested in determining the relationship between higher education and society and who among them has the power to do so’. Also, ‘[t]hose who seek to maintain the barriers are equally likely to rely on formulae’ as those who wish to pierce the barriers.⁸⁹ Theirs is indirectly an assessment that the prevailing policy of co-operative governance is unrealistic in expecting vested interests to be entirely set aside in favour of the public interest – when the parameters of that interest are contestable.

The Task Team is persuaded by the argument that no one party can know how, or should have the sole power, to draw a fixed boundary between higher education and society, or between academic freedom or institutional autonomy and accountability. It believes that any party claiming to know how to do this – or vested with unilateral power to do so – may in practice suppress necessary engagement and the free expression of difference in open debates.

2.2.3 Co-operation, engagement and contention

The Task Team considered a strongly-held view that the *policy framework* of co-operative governance should be revised, because it is flawed by inherently assuming levels of consensus which cannot exist. This view argued for a need to move away from co-operative governance and towards a model of free engagement between actors holding differing positions aimed at reaching bargained compromises. This approach would recognise that differences of interest and perspective are inevitable and that healthy engagement between higher education stakeholders should not seek to dissolve difference but to reach workable compromises between differing positions. However, the preponderant view was that it was strategically inappropriate to pronounce at this point on the need for a new policy framework, when, in the first instance, clarifications of the *concept* and *status* of co-operative governance could be recommended to promote effective co-operation between higher education actors (summarised Conclusion 1).

First, the Task Team takes co-operative governance, as a policy framework, to be a policy choice but not a constitutional imperative (also see Conclusion 5). Certainly, co-operation between higher education actors in the service of national goals is of the utmost importance, and autonomous higher education institutions and others must act with this in mind. But co-operation is not deemed an obligatory framework of intergovernmental relations between organs of state (regulators and universities) as constitutionally defined.

Second, the Task Team does not view co-operative governance as co-steering, co-governance, co-determination, or shared governance of higher education. In a democratic society, the elected government is mandated to make policy and allocate resources. The Minister of Education is the final authority in governance of the higher education system, while obliged by law under most circumstances to consult with the sector, its institutions and its stakeholders, and to take advice from the CHE where prescribed or warranted. At institutional level, the university's Council has final authority in the autonomous higher education institution, while being obliged to fulfil its fiduciary duties to the institution and the public, to secure the concurrence of the Senate in certain academic matters, and to elicit and consider the advice of the Institutional Forum. Consistent with the norms of a democratic society, higher education actors are free to make decisions within their powers and higher education sectoral bodies/institutional stakeholders are free to participate in policy-making and implementation while advocating their interests.

Third, however the higher education policy framework may be formulated (i.e. as 'co-operative governance', or under some other rubric), co-operation in both principle and practice is a critical element of how higher education functions in, and relates to, a democratising society. To state this is not to promote an illusory ideal of harmony and consensus as a good in itself. It is to underscore the importance of participation and continuous engagement between higher

education actors, for an accountable exercise of academic freedom and institutional autonomy. While ‘co-operative governance’ explicitly calls for a balance to be struck between autonomy and accountability, it is mistaken to assume that such a balance can be struck endlessly on the basis of ‘partners’ who set aside their vested interests. The Task Team believes that this tension has to remain open to negotiation in changing circumstances, and on a foundation of principle. In its view, such a version of co-operation can be supported on the one hand by building solid conceptual bases for academic freedom, institutional autonomy and accountability, and on the other by creating processes that enable empowered stakeholders, and establish fora to facilitate and encourage continuous engagement. This chapter addresses both as it continues.

2.3 Academic Freedom

2.3.1 Status of academic freedom in South Africa

Section 16(1) of the South African Constitution⁹⁰ provides that each citizen has the right to freedom of expression – this includes academic freedom and freedom of scientific research. Significantly for the Task Team’s consideration of academic freedom in relation to higher education, this right applies not to institutions of higher learning or to academics specifically, but is held by ‘everyone.’⁹¹ This foundational statement therefore enhances the potential benefits offered to South African society by a renewed concept and practice of academic freedom on the part of the academy.

Although Section 16(1) is framed as a negative right to free expression, the overall framework of the Constitution lays the foundations for a society based on democratic values, social justice and fundamental human rights.⁹² This implies that rights are necessarily accompanied by duties, including free speech as a duty and precondition for the good society.⁹³

Members of the academy thus at one and the same time have the right to conduct academic practices in ways that recognise their autonomy, but they also have a duty to do so in such a way as to recognise various social or common goods [such as] ...the right of access to education ... the need to redress past injustices and a lack of representivity in the academy, and the need to reflect on the content of the curriculum [in] the post-apartheid context.⁹⁴

There is in addition some authority that the constitutional right of academic freedom confers a positive duty upon the state to promote research and teaching by providing functional academic and scientific institutions, or at least to provide the financial and organisational support required to give positive content to the right of academic freedom and scientific research.⁹⁵

Certainly it is clear that academic freedom is a core value of contemporary South African society. As already noted (Sections 1.1 and 2.1), this importance was accepted by the *White Paper* which adopted academic freedom as a higher education policy principle. Yet its particular formulation of academic freedom (i.e. ‘the absence of outside interference’⁹⁶) follows directly upon the TB

Davie ‘paradigm’ already identified by the Task Team (Section 2.1) as problematic in the current context.

Any attempt to fashion a new approach to academic freedom in post-apartheid South African higher education must, in the Task Team’s view, meet five requirements:

- It must facilitate the production of present and future social goods in a fashion that is congruent with the imperatives of the Constitution;
- It must articulate the relationship between academic freedom, intellectual responsibility and social accountability,⁹⁷ as consistent with the constitutional framework;
- It must move beyond the TB Davie approach which was self-selective in making no mention, for example, of research, or of the freedom of students to learn;⁹⁸
- It must protect the freedom of expression of academics – and naturally also of students – from undue sanction by their own institution: there is a risk that any institution enjoying an unfettered right to decide who shall learn and who teach (in the name of institutional autonomy), will exploit a collateral ‘right’ to decide that people espousing unpopular views – in general, or in the view of the university administration – should be disciplined;⁹⁹ and
- It must account for the relative freedoms – and vulnerabilities – of different groups within the academy.¹⁰⁰

On the way to a renewed conceptualisation and practice of academic freedom as advocated here, the Task Team has found it important to identify and assess existing threats to academic freedom which could undermine it just as easily in future – threats which were readily identified by HEIAAF submissions, research and participants in HEIAAF debates (see Section 1.3.2):

Internationally, state repression – whether in the form of pervasively repressive authorities or ‘occasional government crackdowns in an atmosphere of constraint’¹⁰¹ – is frequently identified as the chief actual or potential threat to academic freedom, and this condition was well-known in apartheid South Africa. While the post-apartheid democratic dispensation has altered that state of affairs, this legacy provides at least one explanation of why apprehensions about state ‘interference’ carry a certain charge in our context.

Even in the absence of an interfering state, government and its regulatory agents exercise undeniable power through interpretation and procedural control over the academy, manifesting in policy and its instruments. In the HEIAAF enquiry, the bureaucratic arm of government was seen to have particular potential to threaten academic freedom when overreaching efforts to consolidate power and control within the system in the name of particular goals (e.g. ‘efficiency’).

University governors and bureaucrats may also infringe academic freedom, although, as in the case of government and its agents, they do so only under certain circumstances. If institutional Councils and management hierarchies lean towards corporate, functional and utilitarian understandings of the conditions under which knowledge is to be produced and transferred,

they are at risk of closing off open-ended forms of enquiry. The risk naturally extends to circumstances in which academics and their administrations differ on the manner in which institutional and academic transformation is to be achieved.¹⁰² This idea is further discussed below and in Section 2.4.

The unregulated intrusion of market forces can violate the potential offered by academic freedom. As global and local market conditions shape (or even threaten to shape) academic qualifications and the nature of research, they are likely to favour – and certain parties may actively sponsor – particular outcomes, limiting open-ended investigation and possibly discouraging free speech. Of concern is a potential alliance between government and market in the name of such ‘goods’ as efficiency and labour market supply, which may foster forms of performance accountability skewed towards narrow and short-term imperatives, rather than the wider and longer-term public interest. This too is further discussed in Section 2.4.

Academic freedom in the contemporary South African higher education context is threatened by unreformed institutional cultures, taking such forms as: ‘inscribed racism and xenophobia, lip service to transformation of faculty, unreformed curricula’.¹⁰³ Where academic freedom articulates with social context, it is self-evident that its responsible exercise cannot perpetuate these.

Individual – especially senior – academics who undertake consultancy and commodified research may threaten academic freedom by imposing on colleagues research (and even teaching) agendas which curtail their freedom of research and thought. It is also possible for individual academics to violate the academic freedom of others by such means as gender, age and ideological discrimination.

From this listing, it is plain to the Task Team that threats to academic freedom are both external and internal to the academy: moreover, these threats are both intermeshed and potentially counterpoised, in that the one might potentially serve as remedy for the other. A reformulation of academic freedom for South African higher education must offer ways to counter these threats and to support a robust culture of academic freedom inside institutions and in state and society.

2.3.2 Conceptualising academic freedom for contemporary South African higher education

The *Lima* (1988) and *Dar es Salaam* (1990) *Declarations* on academic freedom call it ‘the freedom of members of the academic community, individually or collectively, in the pursuit, development and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing.’¹⁰⁴ The *Kampala Declaration* (1990) states that ‘the intellectual community has the responsibility to struggle for and participate in the struggle of the popular forces for their rights and emancipation [and] ... is obliged to encourage and contribute to affirmative actions to redress historical and contemporary inequalities based on gender, nationality or any other social disadvantage’.¹⁰⁵ The global UNESCO-World Bank Task Force on

Higher Education and Society (TFHES, 2000) says academic freedom is ‘the right of scholars to pursue their research and teaching and to publish without control or restraint from the institutions that employ them’. Without such freedom, this particular Task Force claims, ‘universities are unable to fulfil one of their primary functions: to be a catalyst and sanctuary for new ideas, including those that may be unpopular’.¹⁰⁶

These definitions suggest to the Task Team that any codification of academic freedom must gain the public’s trust in the social value of academic work, while also staying the hand of political, functional and hierarchical power. This is not to say that such power has no place: each is associated with its own set of accountabilities, as more fully discussed in Section 2.5. But it is to say that

... the nurturing of the academy’s constitutive values is at a premium in so far as they underpin or enrich its core activities. Safeguarding that premium is the ultimate responsibility of the academy, a responsibility more than simply delegated to it by government through legislation or via the mediation of a statutory body – a responsibility constitutive of the academy itself.¹⁰⁷

Nevertheless, the academy should not be alone in defending academic freedom and should welcome the expression by others in society of what they require of it; after all, higher education institutions will ‘enjoy relative immunity from the state incursion they fear only if they convince an influential spectrum of society that they are fulfilling a socially useful purpose’.¹⁰⁸ The task of re-crafting academic freedom in South Africa is therefore eased by the Constitutional commitment to building a deliberative democracy:¹⁰⁹ deliberation by the citizenry on fundamental moral questions and choices facing society. For the Task Team, accepting this as a point of conceptual departure disqualifies the purist conception of ‘academic freedom’ – namely, wholly unencumbered seeking and speaking of the truth – as an optimal formulation of academic freedom for the context. First, the purist position was always more mythical than factual. As previously discussed (Section 2.1), the TB Davie formulation enabled South Africa’s liberal universities to hide truths while claiming the right to enjoy academic freedom. Secondly, and more importantly, South Africa’s Constitution is a clear and unambiguous enunciation of a commitment to deliberative democracy that is shared by the country’s people and state authority.

The Task Team is convinced that, if it rests on the South African Constitution, the reformulation of academic freedom promises to yield all round and future benefits. This is because the ‘greatest contribution the academy makes to empowering a society ... is ... through what and how universities teach’¹¹⁰ [and research]. The HEIAAF enquiry has advanced strong support for this claim, as summed up, for example, in a discussion by Ruth Jonathan:¹¹¹ First, academic freedom is necessary for the proactive exercise of expertise and critique towards transforming society – and the reproduction of these for successive generations. Second, the practice of academic freedom does not only entail ‘defence’: it also demands a proactive exercise of academic freedom by academics, students and higher education institutions, matched to the needs of a democratic society. Third, academic freedom is necessary to ensure that the social responsiveness of higher

education towards the whole of society is maintained, rather than being fashioned by notions like the national interest and the narrow requirements of the market. Critically, in the Task Team's view, if academic freedom is to be exercised so as to provide these benefits, it requires reciprocity between institutions of higher education and the society they serve. And, in turn, this requires responsibility: the academy should enjoy its freedom on the basis of demonstrating that intellectual effort is expended in order to engage accountably with the needs of society.

The position of the state in this pivotal exchange is set down by Currie and De Waal:

At the core of the right to academic freedom is the right of the individual to do research, to publish and to disseminate learning through teaching, without government interference. The right to academic freedom vests in individual academics and not the university. In fact, a university's decision-making bodies, such as its Council or Senate, may be as prone to infringing academic freedom as organs of state. In practical terms, however, academic freedom would be a hollow ideal without institutions such as universities... If the state could prescribe to universities that no research critical of the government may be funded by the university or that no researchers critical of the government may be appointed, academic freedom would be left stranded.¹¹²

But for this exchange to be acceptable, its compass needs to be wider than the institutional autonomy-centred formulation which was embedded in the 'paradigmatic' TB Davie approach and in the surprisingly narrow formulation of the *White Paper*. Indeed, while academic freedom is essential for scholarly labour, and is guaranteed by the Constitution, institutional autonomy (not so guaranteed in the Task Team's view – see Section 2.2.2) may under certain conditions undermine it. As social institutions (see Sections 1.3.2 and 2.2.2), higher education institutions are obliged to support the constitutional right of academic freedom, as well as to be effective, efficient and equitable, development-oriented, impartial, fair and ethical, transparent, representative, and so on (these values the *White Paper* as a whole certainly underscores¹¹³).

Yet how, in practice, do scholars give effect to academic freedom and how do autonomous higher education institutions support academic freedom? Here the Task Team engaged with the view elaborated by André du Toit in his HEIAAF research that academic freedom is a concept that encompasses a number of constituent elements. Within the academy, Du Toit points out,¹¹⁴ academic freedom is conventionally exercised through two practices constitutive of the values of the academy.

First, there is 'scholarly freedom': the 'negative freedom' of individual scholars – including students – to teach, learn, research and publish without externally imposed restraint. The Task Team notes that, consistent with the Constitution's framing of academic freedom as the right of 'everyone', scholarly freedom affords protection to individual academics. Senates, as institutional bodies, are bound to uphold the right of individual academics to freedom of expression and freedom of scientific research.¹¹⁵

Second, there is 'academic rule': the 'positive freedom' of groups of academics to exert their authority over academic affairs in university governance – e.g. through such collegial forms of

academic governance as Faculty Boards, Senates and their committees – as well as through mainstays of academic functioning in an institutional context which have hierarchical elements, such as the professorial chair and the academic department. The Task Team notes that academic rule too has a student component: students participate collectively – e.g. through the SRC, its structures and its representation – and individually, in academic governance. Students' participation in academic rule is based on their membership of the academic community and must be for the benefit of the institution's academic functions, rather than for their sectional interests (which can naturally be pursued through other avenues).

According to Du Toit, the notion of academic rule does not require that academics be in charge of non-academic affairs: it does require that academic affairs be recognised as the core function of the university and that academics (especially through the Senate as custodian of scholarly values) have the final say in these.¹¹⁶ Institutional managers, and governors in the Council, should contribute towards an internal defence of academic freedom practised through scholarly freedom and academic rule, by upholding core academic values; but may in practice work against it by giving preference to more functional values.¹¹⁷

The Task Team is of the view that the defence of scholarly freedom and academic rule must be seen in close conjunction with the exercise of democratic accountability by academics and institutions alike, since claims to the unqualified enjoyment of scholarly freedom and academic rule can also be used to mask or leave intact unprofessional academic practices. The Task Team's position is that a rigorous engagement with the conceptions and practices of scholarly freedom and academic rule by the academic community itself is necessary for the consolidation of academic freedom and its credible defence in South African higher education.

As a whole, the HEIAAF enquiry has suggested different but not incompatible avenues for consolidating academic freedom and free speech in the contemporary South African university and society. Although the Task Team did not take a position on the individual suggestions, these avenues illustrate the sorts of ideas which will give substance to the engagement.

The first is an approach of continuous engagement using a variety of channels. Academics, students and institutional administrations would – university by university or collectively, formally or informally – agree, monitor and if necessary reach new accords about key tenets and practices which protect the academic, the institutional and the public interest. In the category of key practices, for example, Du Toit advocates¹¹⁸ a more rigorous and demanding system of academic tenure to promote the independent exercise of qualified and professional scholarship; as well as strong academic staff associations as supports to professionalism, tenure and effective interaction between academics, managements and other actors.

A second approach to consolidating academic freedom focuses pragmatically on the empowerment of academics through such strategic shifts as improved academic remuneration, academic unionism and entrepreneurial academic engagement with society. Bentley, Habib and

Morrow¹¹⁹ argue that where academics are able to create positions of power for themselves, they should have firmer ground on which to stand in defending academic freedom within their institutions and in society.

A third approach is codified and sectoral: the FXI in its submission made suggestions for: an audit of all legislation, regulations and rules at institutional level relating to universities' conditions of service, rules governing student activities on campus and all rules and by-laws impacting on academic freedom; a freedom of expression code; and mechanisms of enforcement such as an ombudsperson of academia.¹²⁰

For the Task Team, the essential points here are that an effective practice of academic freedom could be supported by a range of potential forms of empowerment of academics, students and other stakeholders, and their freedoms at sectoral, institutional and academic levels of governance; and that relationships between institutional managers, academics and students should reinforce scholarly freedom, accountable academic rule and a climate of free expression inside higher education institutions (see Conclusion 13).

As an encompassing basis for a reformulated concept and practice of academic freedom in South African higher education, the Task Team proposes that academic freedom be configured by the Constitution; by scholarly freedom and academic rule exercised accountably by academics (including students) in relation to society; and by institutional autonomy exercised by governors and managers so as to support the constitutional right and duty of academic freedom, as well as constitutive academic values (see Conclusion 2).

The first element reinforces the binding link between the Constitution and the rights and duties of academic freedom, especially the roles of the academy in promoting and participating in a deliberative democracy, and in responding proactively to social conditions. Reciprocally, the state is bound not only to promote and uphold academic freedom but to support its purposes in the academy.

The second element reinforces the link between the rights and duties of academic freedom, and the nature of higher education accountability in a democratising South Africa (these ideas are developed in Section 2.5). In the name of the public good, the state is obliged to call the academy (and the university) to account for the exercise of higher education functions and the academy is bound to fulfil its constitutional obligations. Academics are further bound to enact academic freedom through the practice of scholarly freedom (free enquiry as a present and future social good) and academic rule, which requires deliberation and judgement in matters of teaching, learning and research.

The third element reinforces the link between institutional autonomy and the accountable exercise of academic freedom and core academic functions. These ideas are developed in the discussion of 'substantive autonomy' in Section 2.4.

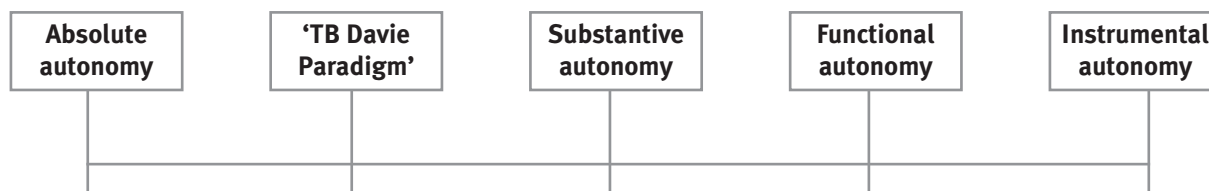
The Task Team is convinced that the development of constructive co-operative relationships between government, regulatory bodies and higher education institutions, academic interests, and the interests of society, will be well served by further deliberating on the formulation of academic freedom set down in these paragraphs. The debate on the substance of academic freedom can never be complete: South Africa's own history illustrates conclusively that circumstances, boundaries, needs and accountabilities change. But the importance of academic freedom for a prospering, self-renewing society is incontestable.

2.4 INSTITUTIONAL AUTONOMY

The Task Team has sought a conceptualisation of institutional autonomy best adapted to core requirements in the contemporary South African context, namely: to support academic freedom as a constitutionally-enshrined value of our society; and to facilitate accountability to state and society under conditions of transformation.

2.4.1 *Institutional autonomy as substantive autonomy*

Alternative concepts of institutional autonomy, arising at various points in the HEIAAF debates and research, can be figured on a continuum, as below. The Task Team understands that there is no universal understanding or practice of institutional autonomy.¹²¹



At one pole of the continuum is the (hypothetical) *absolute autonomy* position that universities should be completely free of external influence. This position is virtually impossible to locate in practice, and was at no point advocated in the HEIAAF debate. Universities have traditionally served a range of social and public purposes and are always in interaction with society and with the state in its broadest sense (not only government in its role of public funder).

The next point on the continuum is characterised in the South African context by the *TB Davie paradigm*, which takes as central to institutional autonomy the right of academic self-government in accordance with academic values, and sees this as coterminous with freedom from external interference. It is a view of institutional autonomy which interprets academic freedom as a negative right and so easily conflates academic freedom and institutional autonomy.¹²²

Next is a position which places a high value on the *substantive autonomy* of universities. This too takes the right of academic self-government in accordance with academic values to be central to institutional autonomy, but – unlike the formulation above – explicitly acknowledges coexisting

rights, duties and obligations. These may be the coexisting rights and duties of government (e.g. to steer higher education transformation), or of academics, where academic freedom is seen as a positive right to conduct academic practices freely but also as a duty to provide higher education in a manner consistent with its status as a social good. HEIAAF research analyses of institutional autonomy posit substantive autonomy as most conducive to a context of transformation, as examined in detail below.

The *functional autonomy* position is found towards the opposite pole of the continuum. Here,

... what matters is whether the university, taken as an institutional whole, is able to function independently without undue interference by external parties or forces. Functionally it is irrelevant whether the university, in its internal governance structures, maintains academic freedom, in the sense of scholarly freedom and academic rule, or not. In other words, a university might well have functional institutional autonomy while internally dismantling academic rule and restricting scholarly freedom in various ways.¹²³

The risk of a form of institutional autonomy which departs from core academic values is seen to be growing in a higher education context in which governments emphasise the ‘performativity’ of universities and internal administrations become increasingly dominated by corporate management styles.

At the other pole of the continuum is an *instrumentalist view of autonomy* which renders institutional autonomy redundant, and the freedoms of academics and students inside the institution potentially void, because the university’s purposes and governance come to be wholly aligned with the political goals of government and/or of government aligned with the market. This typically occurs in contexts of state interference in higher education (South African higher education under apartheid was so characterised by the NCHE). Post-independence higher education systems in some African countries have also been classified as such, where the concept of the ‘development university’ allowed political leadership to formulate the university’s social role. An instrumentalist view of autonomy does not inhere automatically in a state control model of higher education governance: although technically state control might be viewed as the opposite of absolute autonomy, there is no in-principle reason why academic freedom should not flourish in these systems.¹²⁴

In the HEIAAF enquiry, one set of understandings of substantive autonomy considered how context necessarily shapes the concept and practice of autonomy ‘from the outside in’. Here, Ruth Jonathan argues for the autonomy of higher education institutions, and for academic freedom, as necessary and democratically accountable means for ‘both influencing and facilitating movements in the public good agenda’.¹²⁵ So, the autonomous university is a locus to develop and apply expertise and critique in the service of society and its evolution; the collective voice of academics is necessary for assertion in policy-making of the constitutive values on which higher learning depends for the public good; the university as institution ideally protects the intellectual space needed for the development of interdisciplinary and unbounded knowledge

required for transformation; and it also safeguards formal equality of opportunity by upholding admission standards and making academic appointments in relation to the indirect benefits they bear to society.¹²⁶ Steven Friedman and Omano Edigheji explore institutional autonomy in the context of democratic governance and requirements of (public) accountability. They argue that, among the tasks for which higher education institutions should remain accountable is their role in preserving academic freedom (the independent exercise of academic functions) against potential threats or arbitrary power both external and internal.¹²⁷

A second set of understandings of substantive autonomy in the HEIAAF enquiry considered how the nature and practice of autonomy must be shaped ‘from the inside out’, beginning with reinforcing the conditions required for scholarship (to that extent the means of consolidating academic freedom and of consolidating substantive autonomy are often the same – see overlapping material in Section 2.3.2.) André du Toit argues that, where a shift from a substantive to a functional conception of autonomy occurs, an executive management no longer fully committed to the core values of the academic and scholarly enterprise may come to constitute a threat to academic freedom, including by aligning with a government’s drive for selective forms of university performance at academic freedom’s expense.¹²⁸ In his view, this may also take the form of collusion with ‘nationally defined “fitness of *purpose*” [of higher education institutions] ... which could spell the end of substantive institutional autonomy’.¹²⁹ For Du Toit, what is important is ‘the extent to which universities are accorded, or manage to maintain, substantial autonomy in circumstances where that would *not* be expected’.¹³⁰ He insists that substantive autonomy should be based not on any unspecified notion of ‘trust’ but on institutions who exercise that autonomy accountably in relation to the benefits of scholarship for society. Thus, institutions wishing to secure support for their autonomous status from state and society would best do so by bolstering academic freedom from within (supporting initiatives to professionalise scholarship, to embed an academic tenure system based on strong scholarly qualifications, and to institute a system-wide academic staff association). External engagement (Du Toit speaks more specifically of an ‘external compact’) between executive management and the state – supported in practice by an intermediate system-wide representative forum of higher education institutions – and interlinked internal engagement (an ‘internal compact’) between management and academic faculty within particular universities, would align universities’ external and internal accountabilities.¹³¹

The strategic analysis of Kristina Bentley, Adam Habib and Seán Morrow can be seen as referencing particular strategies for accountable autonomy in the university’s external relations, proceeding from internal agreements about what is necessary for an effective practice of academic freedom. They propose four strategic reforms for the empowerment of stakeholders – not least academics: efforts to secure a demographic and ideological plurality of stakeholders inside and outside the university, so as to promote critical engagement and reflective discourse; diversification of institutional income streams to service both communities and ‘resource-endowed stakeholders’; institutional and academic cultures that reward scholarship and intellectual productivity through improved academic remuneration, and so close ‘the value gap’ between academics and their

administrations; and entrepreneurial academic activity which focuses not only on the social engagement dimension of academic work (attention to the immediate and future needs of the society in which that work takes place), but also on academic unionism as a support to the exercise of academic freedom.

The Task Team is struck by the convergence in the HEIAAF research around substantive autonomy as the most valid conceptualisation of institutional autonomy for South African higher education at this time (while differing on occasion with detailed views contained in individual reports).¹³² It finds the conceptualisation robust, and endorses it in these terms (summarised in Conclusion 3).

- Substantive autonomy is a conceptualisation which promotes both the public good and the constitutive values of the academy, viewing the exercise of the latter as integral to higher education's social role and accountability.
- Substantive autonomy conceives the practice of institutional autonomy to be necessarily linked to a defence by institutions¹³³ of academic freedom as exercised by scholars, students, academic colleagues, and even public intellectuals.¹³⁴
- Substantive autonomy conceives the practice of institutional autonomy to be necessarily linked to the substantive goals of society (rather than to functional institutional goals of e.g. 'independence' or 'discipline', or to political or market goals of e.g. 'efficiency' or 'market responsiveness'). It acknowledges the unique nature and identity of the university, as entirely distinct from the 'firm'.
- Substantive autonomy recognises that threats to academic freedom may originate from inside institutions, as well as from outside them, and that autonomy is substantive only to the extent that it is proof against both. It provides a useful lens for examining claims and concerns – whatever their grounds and whoever the claimant - as to the source of infringements of academic freedom and institutional autonomy, and as to the location of lapses of accountability.
- Substantive autonomy provides a viable platform for the (re-)building of trust between society, state and higher education sector, especially on the basis that government, higher education institutions and academics recognise their distinctive accountabilities in line with their distinctive functions in an environment of social and economic transformation.
- Substantive autonomy recognises mutual and correlative rights, duties and accountabilities on the part of the academy, institutional leadership, government and society to ensure that higher education is governed to the public good. In this way, the concept is consistent with the comprehensive formulation of academic freedom identified by the Task Team as necessary (Section 2.3.2).

2.4.2 Substantive autonomy and modes of co-operation

Notwithstanding the strong case made here for substantive autonomy, it cannot be deemed a consistent practice in South African higher education currently. The Task Team makes this

finding on the basis of two sets of concerns and claims. To begin with, higher education institutions and other stakeholders claim that some aspects of steering by government impinge directly on the exercise of academic values, freedoms and expertise, or are seeking to shape the higher education system according to market or political imperatives. In addition, there is growing unease around prohibitions on the freedom of speech of academics, students and non-academic staff¹³⁵ by some institutional managements (as well as other actors on occasion). Modes of co-operation inside institutions and the sector, and between institutions and government, should actively consolidate substantive autonomy. Means to do so can be suggested.

First, it must be recognised that the system, sectoral, institutional and academic spheres of governance do not substitute one for the other. Instead each supports the other in ensuring that higher education's various social and public roles are fulfilled and its particular freedoms preserved. Broad directions in policy-making to the public good must be reached with due co-operation between actors, always respecting their distributed roles and responsibilities. (See Conclusion 13).

Second, some ongoing or accessible mechanism or process to evaluate the substantive orientation of institutional autonomy, in relation to academic values and in relation to national policy goals, is warranted. Here, effective governance could be promoted in practice by an intermediate system-wide process, or possibly a representative forum or specifically constituted fora from time to time, for the purposes of interaction between higher education institutions and their members, government, regulatory agencies and other sectors of society. Advantages of this would include the continuous building of relationships and mutual trust between actors; stronger prospects for maintaining consensus on underlying policy principles, even under the shifting conditions of transformation; and heightened awareness by all parties of the practical value and importance of the (interconnected) practice of academic freedom, institutional autonomy and accountability. (See Conclusion 10).

Third, the kind of process and/or fora mentioned above could further be supported by sectoral initiatives to promote and give effect to sectoral and institutional self-regulation, along the lines already advocated by HESA leadership. Advantages would include more consistent evaluation of, and attention to, cross-cutting issues, as well as advocacy of fully developed understandings of academic freedom, institutional autonomy and accountability and their concrete implications at institutional level (e.g. the importance of academically-driven leadership). (See Conclusion 13).

A final issue should be noted. It is generally understood that higher education institutions are not homogeneous but are of different types, with differentiated missions, circumstances and capacities. In South Africa, higher education policy calls for differentiated institutions within a single co-ordinated system and large-scale institutional restructuring between 2001 and 2005 had this aim explicitly in view. In practice, individual characteristics of each institution's 'substantive

autonomy' are therefore inevitable, and are defined by the institution, first, in its process of determining its mission and, thereafter, as it validates the 'fitness of purpose' of that mission with government and regulators.¹³⁶ But there are questions to be asked. Can categories of policy (e.g. admissions, teaching, research, human resources, finance, etc.) be placed along a continuum, as variants of institutional autonomy were placed earlier in this chapter, so allowing for institutions to have more or less autonomy in one policy terrain than in others? Or, can some institutions be given more autonomy in specified areas than other institutions, depending on their types and missions? Another question is whether differentiated action on the part of government would support substantive autonomy as it has been defined here, or whether it would tend rather to address the functional dimensions of autonomy (e.g. 'efficiency', 'market responsiveness'). Thus, even in the event that conceptual renewal is successfully achieved with respect to academic freedom, autonomy and accountability, the Task Team believes that a rigorous enquiry into the implications for policy of differentiated autonomous institutions is needed in South African higher education. The Task Team is aware that HESA,¹³⁷ the CHE and others have begun to argue the case that more attention to questions of institutional differentiation is in the interests of effective system governance and transformation, and supports the furtherance of their early initiatives in this area.

2.5 Accountability

At the beginning of the HEIAAF enquiry, and also in the HEIAAF submissions, accountability in South African higher education was relatively under-explored, when compared with academic freedom and institutional autonomy. Even in policy, public accountability is rather narrowly defined by the *White Paper* as a demonstration by institutions to governors, government, and to broader society, that they have used public money for the effective achievement of public policy goals.¹³⁸ The Task Team has tried to fill these gaps by exploring the distinctive nature of accountability in contemporary South African higher education and proposing ways in which it might best be facilitated.

2.5.1 *Renewing conceptions of accountability*

In their analysis of public accountability, Friedman and Edigheji find that 'narrow' definitions rely on a literal sense of 'accounting for' or 'counting up': here accountability can be construed as basic bookkeeping and may effectively *insulate* institutions from being held accountable by society.¹³⁹ In contrast, 'broad' definitions reference a wider answerability for actions and behaviour. 'Soft' versions limit themselves to explanation and justification for decisions, while 'hard' versions potentially sanction or reward actions taken. These various classifications are not mutually exclusive:

A reliance on 'soft' accountability alone is unlikely to be possible in practice, given the acutely public nature of higher education: the fact that higher education institutions are constituted by statute illustrates that they will always be subjected to a degree of 'hard' accountability through law and regulation. ... [But] the need to preserve intellectual independence speaks to a need to take seriously forms of 'soft' accountability.¹⁴⁰

Thus, equilibrium in the forms of accountability applied is necessary so that they are not applied at the ultimate expense of intellectual activity. This risk may arise, for example, in the context of instrumental agendas imposed upon higher education by political or other authorities. Alternatively, accountability may be too crudely interpreted because governments lack the specialist knowledge or the capacity, or are too remote from higher education institutions' processes, to come to grips with their internal workings sufficiently to ensure effective accountability.¹⁴¹ This is a particular risk in higher education systems that lack the resources for 'rational planning and control'.¹⁴² A second set of risks relates to whether or not accountability is truly public. A focus on public accountability in higher education steering is appropriate in a democratic society, to ensure this key public activity remains within the realm of public debate, deliberation and intervention.¹⁴³ But the will of society is not identical with the will of the majority party in government (since voters are not required to endorse every policy position a political party adopts).¹⁴⁴ A third set of risks turns on the issue of whether or not higher education's accountability supports academic, or some other set, of values. A narrow focus on public accountability leaves academics vulnerable to incursions on their freedom by their own administrations, especially under the impetus of economic or political power holders. For all these reasons, an understanding and assertion of accountability in higher education must go deeper than establishing answerability by institutions to the government of the day, or conformance to the requirements of regulatory authorities. The conception of public accountability as formulated in South African higher education policy currently tends in this more restricted direction and would usefully be broadened.

The Task Team has found valuable and accepts a delineation in the HEIAAF enquiry of higher education accountability as differentiated, multi-layered and multi-purposed. It comprises:

- Collegial, or intellectual, or scholarly, or professional accountability (especially in the academic and institutional contexts). Peer review is one resilient tradition whereby academics hold one another to intellectual account. However, it must be conceived as extending beyond disciplinary expertise. 'Intellectual responsibility' requires that scholars are accountable for relating their work to 'the agenda of ... transforming ... institutions, converting them from colonial to national institutions'.¹⁴⁵ Scholars and scientists are also employees of the university and therefore accountable to its administration with respect to e.g. professional conduct and agreed administrative procedures. In addition, substantial funding from public and/or private sources demands sound procedures for financial accounting in respect of academic work.¹⁴⁶
- Functional and hierarchical accountability (especially in the context of bureaucracy and management). Competencies and duties are vertically structured so that 'each official is answerable to the next level of superior rational-legal authority'.¹⁴⁷ Hierarchical accountability also applies in the academic domain, alongside egalitarian collegial relationships – e.g. through such mechanisms as the professorial chair and the academic department, which authenticate scholarly credentials.¹⁴⁸
- Political and public accountability (especially in the context of democratic politics). On the

principle of democratic representation, representatives are accountable to their constituencies for carrying out the mandates and policies on which they were elected. However, ‘the classic dilemma of democratic accountability ... relates to the dual meanings of “representation” as either binding an agent to determinate mandates or empowering that agent with discretionary powers to act on behalf of his principals’.¹⁴⁹ In the governance of South African higher education institutions, this complexity of political/public accountability plays out in the duties of (especially external) Council members who, while they represent a spectrum of constituency interests, do not act as mandated stakeholder representatives, but rather as lay governors taking decisions in the institutional and the public interest.¹⁵⁰

- Financial and fiduciary accountability (especially in the context of enterprise and also of public monies). This relates to the sound management of financial expenditures which is due to ‘relevant stakeholders and ultimately to the public at large’.¹⁵¹ The Councils of South African higher education institutions hold financial and fiduciary accountability for the use of public funds by their institutions and report annually to the DoE in this respect.¹⁵²

The Task Team understands that financial and fiduciary accountability may be very differently apprehended by Councils, depending on whether they view institutional autonomy to be substantive or functional, and that this may have problematic systemic effects.¹⁵³ Under extreme circumstances, a functional approach to autonomy may lead to a complete breakdown in the accountability (professional, functional, public and financial) of a higher education institution, and to gross failures of higher education governance, management and core functions. The Minister has given explicit indications that, where the practice of academic freedom and institutional autonomy by higher education institutions does not generate accountable actions, then, in government’s view, sectoral self-regulation, external regulation or ‘objective oversight’, or a combination of these, are required to restore an acceptable balance between autonomy and accountability.¹⁵⁴

The Task Team’s view that higher education accountability is multi-dimensional raises the question of whether or not one of these dimensions ‘trumps’ the others. One perspective in the Task Team was that public (or social) accountability must trump the others, and that scholarly/professional accountability – especially where exercised as an exclusionary system of peer judgements based on self-reflexive expertise, rather than on social obligations – could be construed as incompatible with it. This position argues that, far from safeguarding academic freedom, peer review is often a severe threat to it. This occurs when academics holding a particular view use peer review to exclude from accredited journals the work of colleagues who challenge the conventional wisdom – often without a reasoned defence of their decision. It is argued that the practice is widespread and ensures that unconventional views are excluded from mainstream journals in Northern countries. Consistent with its view that the practice of scholarly freedom and academic rule must be accountable (see Section 2.3.2), the Task Team agrees that a vigorous defence of academic freedom requires a reassessment of peer review which would seek to ensure that all views are given expression and that reviewers are obliged to account for their decisions by, at the very least, explaining them fully.

However, most Task Team members felt that there was no inherent incompatibility between scholarly and social accountability: peer review is an enduring self-regulatory tradition of excellence in academia (an established mechanism of ‘academic rule’) and is also accorded this status by the national quality assurance dispensation in the interests of academic quality. These Task Team members were wary about pronouncing in general terms on which kind of accountability takes precedence; this depends on context and circumstances (e.g. in a case of plagiarism, scholarly accountability must prevail). All Task Team members were in agreement, however, that a viable conceptualisation of accountability in South African higher education should draw multiple elements within a broad frame encapsulating the reciprocal accountabilities of academics, institutions, government, state and society.

African declarations on academic freedom (the 1990 *Dar es Salaam* and *Kampala Declarations*) do this under the rubric of ‘social responsibility’. They interpret education as an aspect of human emancipation, rather than as an instrument of development; and re-assert the right of academics to generate their own conception of national interests and societal needs while insisting on an approach that is ‘community-based.’¹⁵⁵ The social responsibility view of higher education accountability valorises obligations and responsibilities on academics not as a quid pro quo for the right of academic freedom, but as a mutually inclusive web of social obligations¹⁵⁶. Genuine academic citizenship of this kind is seen as providing authentic evidence to citizens that independent intellectual activity is important to them and so requires defence.¹⁵⁷ The Task Team finds all of these ideas applicable for South African higher education.

Moreover, the HEIAAF research has generated a closely contextualised conceptualisation which likewise hinges on the free exercise of intellectual endeavour in the service of the public good. Ruth Jonathan argues the underpinnings of *democratic accountability* as a conceptualisation that buttresses, rather than constrains, academic freedom and institutional autonomy in South African higher education:

[S]ince higher education has a vital role to play in empowerment, it is unsurprising that those who steer it should have a close interest in its response to change. On the other hand, since that vital role depends upon the academy holding fast to academic freedom and autonomy, deploying them in the service of intellectual endeavour itself as well as in the service of that endeavour’s contribution to the public good, then the academy in its turn has not just the right but also the responsibility to keep a critical eye on all forms of steering. ...[D]efences of academic freedom and of institutional autonomy might, contrary to current unease in some quarters, be on particularly firm ground in a democratic South Africa, provided only that they are not asserted as rights of immunity but are defended as constitutive democratic duties.¹⁵⁸

So, the concept of democratic accountability (summarised in Conclusion 4) is not oriented around national goals for transformation only, but also inheres in an effective defence and practice of academic freedom and substantive institutional autonomy.

2.5.2 *Reconceived accountability: implications for practice*

What means can be found to realise democratic accountability in South African higher education? ‘Consumer choice’ holds higher education accountable via the market, but reduces the relationship to one between users and providers of higher education and is therefore not a democratic form of accountability at all. More viably, higher education institutions can be held directly to account by straightforward regulation – so long as regulatory controls have been tested in society. This means that ‘citizen voice’ must be articulated in decision processes at system level through stakeholder representation and wide-ranging consultation (the principle applies for policy-making at institutional level too).¹⁵⁹

For the Task Team, the most viable route to democratic accountability is co-operation in higher education governance founded on continuous engagement to air competing interests and evaluate evolving circumstances. This is a processual notion of accountability because, as already discussed (Sections 2.2.2 and 2.2.3) the *content* of democratic accountability cannot be fixed, but is ‘perpetually shifting and constantly the subject of negotiation [as] a mutually liveable outcome is sought’.¹⁶⁰ This means that the allocation of accountability, and institutionalised forms of accountability, must be constantly monitored, evaluated and (re-)negotiated to ensure they are appropriate and effective. (See Conclusion 4 and Conclusion 10).

In this regard, the Task Team proposes, first, that government should formally review how successfully it is meeting the requirements of its democratic accountability in relation to higher education.¹⁶¹ In the first instance, this democratic accountability incorporates the constitutional obligation upon government – as upon others - to promote and uphold academic freedom. A further crucial element of government’s accountability is the *provision of resources* to higher education institutions to ensure they are able to fulfil their share of accountability for meeting public goals, and on terms which are conducive to the exercise of academic freedom.¹⁶² A third element of government’s accountability is that of *attitude or stance*: ‘a willingness to explain itself to society [and] to accept the discipline of justifying its own behaviour when it seeks to impose accountability’.¹⁶³ A fourth element of government’s accountability is the necessity that government have adequate and sustainable *capacity to track accountability*.¹⁶⁴ An additional element of government’s accountability may be a willingness to *regulate higher education in differentiated ways* adapted to differentiated institutional missions and capacities – without detracting from the need for a set of minimum criteria as a basis for quality assurance. (See Conclusion 11).

A second set of Task Team proposals has to do with institutionalised forms of accountability, existing and new.

One suggestion is that higher education institutions, and other higher education stakeholders, should act on their opportunity to *make representations directly to Parliament*. One idea in the

HEIAAF debates was that higher education accountability to society, rather than to the executive arm of government, might be aided through formal annual and/or other reports by higher education institutions to Parliament scrutinised by the Portfolio Committee on Education or a special subcommittee, and made publicly available.¹⁶⁵ Friedman and Edigheji took the view that accounting directly to Parliament would allow institutions to conduct public engagement and so broaden public debate on their role. With respect to the idea of higher education institutions' submitting formal reports to Parliament, the Task Team notes that formal reports are already submitted by Councils to the DoE, with the Minister in turn held accountable by Parliament and its Portfolio Committee. For the Task Team, the promotion of further engagement in the system would perhaps be better achieved by encouraging higher education institutions, and other stakeholders, to make a variety of representations to the Portfolio Committee on their own initiative. (See Conclusion 10).

An *intermediate higher education forum (or fora)* would serve to mobilise structured engagement to bolster higher education accountability and its dynamic mode. There were variants on this idea in the HEIAAF debate:¹⁶⁶ for the Task Team, the essence of the proposal is that higher education governance must be allowed to be interactive, using a choice of formal and informal channels as needed. At institutional level, continuing debate on such issues as have fallen within the ambit of the HEIAAF enquiry could, for example, be encouraged through the establishment or enhancement of academic freedom committees, or structures with a related purpose. (See Conclusion 10).

The Task Team believes that the accountability of higher education institutions must be strengthened through the continued *promotion of accountable governance at system, sectoral and institutional levels*. In 2002, the CHE made policy proposals to the Minister of Education on exactly this (Section 2.2.2 and endnote 74), yet sectoral and institutional debate continues to be preoccupied with persistent kinds of difficulty and failure (fiduciary failures of Council, marginalised Senates and Institutional Forums, etc.). HESA has specifically advocated the idea of a sectoral code of governance, the development of which would begin to unpack the practical implications of institutional self-regulation.¹⁶⁷ (See Conclusion 13).

The Task Team recommends especially that a *mechanism to promote the accountability of Councils* be identified. Building the fiduciary capacity of Councils has been a perennial theme of South African higher education governance commentaries and initiatives in recent years,¹⁶⁸ and recent findings by HESA and the HEIAAF enquiry have reiterated the need for such things as: more inclusive constituency representation (e.g. religious leaders, school principals, leaders of grassroots women's groups) on Councils to enhance accountability without increasing government control; better induction of Council members to clarify the roles and responsibilities of members; and annual self-evaluation by Councils.¹⁶⁹ An independent reference group convened by HESA on the issue of senior staff remuneration made the following important observations:

Councils are not accountable to any individual, group or body for remuneration decisions made, just as they are not accountable to a specified party in any other area. Although Councils must submit an annual report to the DoE, there is no mechanism for interrogating or remedying particular ... decisions. Defining a workable accountability mechanism for Councils is a complex and sensitive issue in South African higher education, given the need to keep accountability and autonomy in balance. A sectoral code of governance ... might be made to function effectively as [a] 'peer review mechanis[m]'. Yet the quality of governance ... would benefit from the identification of a suitable accountability mechanism to close the gap between public and sector.¹⁷⁰

In recent years, the Minister of Education has met occasionally with Chairs of Council to discuss the nature and imperatives of Council governance. Meetings of this nature could best serve a proxy function for Councils' accountability: operating not on the basis of a regulatory imperative, but rather of a strategic agreement to support good system and institutional governance and to mobilise peer review. The structure of the meetings should convey the collaborative nature of the venture, intended to maintain a balance between autonomy and accountability and not to suggest any inappropriate collusion between Council Chairs and the Minister to the exclusion of other parties. Considerations here could include: appropriate allocation of convenor and secretariat functions; collaborative and comprehensive agenda-setting; attendance expanded to include not only the Minister and Chairs of Council, but other Council members as drawn from different constituencies; and attention to ensuring that the work of the forum serves to reinforce policy, legislation, operative codes of conduct and the expertise and capacity of Council members to fulfil their role. (See Conclusion 13).

3 THE NATURE, MODE AND IMPACT OF HIGHER EDUCATION REGULATION

This chapter analyses and evaluates the regulatory environment of higher education in South Africa after 1994 and generates conclusions and recommendations for policy and practice, for the consideration of the CHE. It begins by outlining the broad evolution of state steering of higher education, and then recapitulates the framework of principles by which the Task Team proposes to evaluate the trajectory of steering. The chapter examines that trajectory in more detail through a review of the main features of policy development and implementation, and responses to these. Finally it suggests means for facilitating a regulatory environment in which the purposes, goals and accountabilities of higher education can be negotiated and achieved through the co-operation of all actors.

3.1 The trajectory of steering

In practice, government has primarily steered the transformation and development of the higher education system since 1997 by means of three levers: planning, funding, and quality assurance, as well as by amendments to the legislative framework. In policy terms, the Task Team has found progressively clearer delineation of the concept of 'steering' from broad signals in the NCHE report, to sharper definition in more recent DoE policy statements. Central questions for the Task Team have been whether this progressive development represents a concurrent weakening of government's commitment to co-operation in higher education governance; and whether the shift has been accompanied by violations – actual or perceived – of academic freedom and institutional autonomy, or lapses of government accountability for a healthy system balance.

The evolution in government's defining and giving effect to steering can be summed up as follows:

- The NCHE report (1996) did not explicitly define steering, although its description of a goal – directed funding mechanism implicitly pointed in this direction. The NCHE did explicitly advocate a state-supervised system of higher education governance (co-operative governance) which was adopted by the *White Paper*.
- The *White Paper* (1997) stated that the principles it outlined (including academic freedom, institutional autonomy and public accountability) would establish the practice of steering. It indicated that the steering approach would incorporate a national plan as a framework for institutional planning; as well as a goal-oriented and performance-driven funding mechanism intended to result in more equitable access, improved quality of teaching and research, increased student progression and graduation rates, and greater responsiveness to social and economic needs. It also flagged government's intention to introduce enrolment planning.¹⁷¹ The Task Team has found it useful to remind itself that, at the time the *White Paper* was adopted, government did not have a clearly thought-out strategy for restructuring higher education. Neither did institutions necessarily have the capacity or the incentive to further policy goals on their own – and the sector made no collective input to the planning process between 1997 and 2001. This set of circumstances provided the backdrop for the NPHE in 2001, widely regarded as marking a shift in government's mode of steering higher education (see Section 3.2.2).
- The NPHE (2001) stated that indicative system-wide targets, and strategic mechanisms including

planning (national plan and three-year rolling institutional plans) funding (a new formula and earmarked funding), an ‘appropriate regulatory framework’, and ‘incentives and sanctions’, would be the principal levers for steering higher education. It was silent on the fit between these and co-operative governance, although it reiterated the *White Paper’s* emphasis on the balance to be maintained between institutional autonomy and public accountability and declared that ‘the Ministry will not ... allow institutional autonomy to be used as a weapon to prevent change and transformation’.¹⁷²

- The announcement of the new funding framework in 2003 confirmed funding as a key steering lever. The framework incorporated an annual Ministerial Statement in which the Minister would review higher education trends and indicate changes in funding allocations. This apparent power for unilateral decision-making was sharply contested by the sector and a concession was made by the Ministry that major changes to the Ministerial Statement would be subject to consultation with the sector and the CHE.¹⁷³
- A 2005 DoE presentation on government funding and planning stated explicitly that: ‘provision is made in the [*White Paper* and *Higher Education Act*] for ... government to use three inter-related steering mechanisms: quality assurance, funding and planning’.¹⁷⁴ It was already widely accepted in higher education that this was the case.

While this trajectory can be traced, the parameters of steering – its optimal degree, its fixed boundaries, and the extent of its reach from the macro – to the meso - or micro-levels – have never been defined. One of the things the Task Team has had to consider is whether such parameters can or should be defined. Certainly, steering has remained a relative concept allowing for a large variation in interpretation by different actors. This was evident to the Task Team in its reading of HEIAAF submissions, and in its range of interactions.¹⁷⁵ Such ‘relativity’ poses a challenge for finding a basis on which to evaluate steering; yet at the same time leaves the way open for the boundaries of steering to be negotiated co-operatively in an evolving higher education environment.

In this chapter, the Task Team utilises its contextualised conceptualisation of higher education governance, academic freedom, institutional autonomy and accountability (as elaborated in Chapter 2) as a framework of principles for evaluating steering to date and making suggestions for the future. To recap, key tenets of this evaluative framework are:

- Co-operation between higher education actors in the service of national goals is of the utmost importance, and both government and autonomous higher education institutions must act with this in mind (Section 2.2.3).
- Continuous engagement between actors is facilitative and supportive of co-operation and of a dynamic balance between autonomy and accountability, for the enhancement of both and for the safeguarding of academic freedom (Section 2.2.3).
- The effective practice of academic freedom entails a vigilant defence of this constitutional right, including by government; as well as a proactive exercise of the duties of academic freedom by academics, students and higher education institutions, matched to the needs of a democratic society (Section 2.3.2).

- A substantive practice of institutional autonomy promotes the public good and the goals of society, as well as academic freedom and the constitutive values of the academy (Section 2.4.1).
- A democratic conception of higher education accountability hinges on the free exercise of intellectual endeavour in the service of the public good. This involves differentiated elements of accountability exercised by various parties (academics, students, managers, Councils, government) (Sections 2.5.1).

3.2 The impact of steering and regulation after 1994

3.2.1 Legislative changes

The *Higher Education Act* of 1997 gave legal effect to a policy framework of co-operative governance and a system mode of state steering (or ‘supervision’). After its promulgation, the Act was amended every year between 1999 and 2003.¹⁷⁶ Alongside progressive policy development, these amendments have given content to steering and have sometimes had implications for academic freedom, institutional autonomy and (public) accountability – although, in the Task Team’s view, they have not arisen from a conscious engagement by government with these principles.

- The Minister was empowered to appoint an Administrator for a public higher education institution in which financial or other maladministration has occurred (1999), and an Administrator was later empowered to take over the functions of a Council deemed to have resigned (2002). At the time, some higher education institutions interpreted these amendments as having negative implications for institutional autonomy, although the HEIAAF submissions did not highlight them as particularly problematic. The DoE views these provisions as protecting the public’s interest in the proper governance of individual institutions and fulfilling the Ministry’s mandate to ensure that institutions do not act unaccountably or collapse altogether.¹⁷⁷
- Every public higher education institution was required to secure the approval of its Council and, under certain circumstances, the concurrence of the Minister, to enter into a loan or overdraft agreement or to develop infrastructure (2000). A 2002 amendment noted that the records kept by institutions must be furnished in a manner ‘prescribed’ (rather than ‘determined’) by the Minister - and 2003 regulations so prescribed in detail.¹⁷⁸ Commentary at the time warned of the dangers of setting general limits on all institutions irrespective of their financial condition, rather than specific limits on particular institutions in unique circumstances; and some assertions of micro-management were levelled against the DoE. A few years on, there seems to be wide acceptance that standard approval and reporting provisions support the consistent public accountability of institutions.
- The Minister was given sole authority to establish a higher education institution, after consultation with the CHE, notice in the Government Gazette and appropriation of the necessary funds from Parliament (2001). The Minister was also empowered to determine

the ‘seat’ (physical location) of a university and Private Acts of Parliament, which had established some universities, were repealed. Government’s counter to arguments that institutional uniqueness would be lost was that Institutional Statutes allowed for customisation. In its memorandum on the 2001 Amendment Bill, the Ministry noted the need to bring legal certainty to the operational areas of institutions, especially as proliferation of satellite campuses was undesirable in a single, co-ordinated system.

- Provisions were made for mergers and incorporations. These included allowing for the establishment of interim councils for new, declared or merged public higher education institutions (2001); and clarifications about labour and student matters arising from mergers (2002) and incorporations (2003).

The Task Team has found it easy to discern behind these amendments government’s motive of securing improved higher education accountability as triggered by particular developments in the environment (e.g. institutional governance crises, restructuring imperatives). From their reactions to the amendments, it appears that higher education institutions were troubled, first, by government’s apparent assumption that accountability is to be achieved by central directive in preference to any other means; and, second, by the systemic application of ‘correctives’ to all institutions where many have not defaulted. The contest has therefore been around the proper poise between autonomy and accountability, rather than any perceived violations of academic freedom. For the Task Team, the abating of contestation about the legislative amendments over time suggests that government has been more effective in explaining its motives after the fact, than in diligently pursuing transformation by co-operative means. In addition, government’s departure from co-operative means in the case of amending the *Higher Education Act* has been accompanied by similar departures in other aspects of steering (illustrated and discussed in the following sections). This has contributed to a cumulative sense amongst higher education institutions – illustrated for example in some HEIAAF submissions¹⁷⁹ – that government’s commitment to consultation has weakened after 1997, and that lack of consultation has, at times, approached unacceptable levels. In counterbalance, the Task Team recalls the particular dynamics of the period between 1997-2001 (see Section 3.1) and the imperfect interplay between sectoral and institutional levels of governance which rendered effective self-regulation in higher education extremely difficult.

3.2.2 Planning

Steering by planning has principally involved the non-sequential and partly overlapping processes – especially since 2000 – of restructuring the higher education institutional landscape; academic programme and qualifications planning; and student enrolment planning. The details of unfolding events, with which the Task Team is acquainted, are chronicled elsewhere.¹⁸⁰ Here, the Task Team confines itself to noting its key observations about the process, as informed by perspectives arising in the course of its enquiry, and to formulating an interpretation of these.

The Task Team observes, first, that decisions made by the Ministry about mandatory mergers and incorporations of higher education institutions followed a preliminary period of system consultation: the Minister requested the CHE to provide recommendations on the optimal size and shape of the higher education system in order to solicit public comment, and the CHE did so in June 2000.¹⁸¹ However, ultimate decisions did not appear to flow from sustained system consultation, or from optimal consultation with individual (especially affected) institutions. Sectoral concern about interventionist steering which – in this instance – unquestionably made an impact on institutions' autonomy, was therefore inevitable. For its part, the Ministry took the view that the NPHE was the culmination of a six-year period of consultation, and that the focus now had to be on implementation.¹⁸² This displayed the Ministry's limited faith in the ability of the sector as a whole to reconstitute the institutional landscape by itself, or proactively. The CHE's central recommendation - that a differentiated higher education system based on different institutional mandates and types would reduce fragmentation and enhance co-ordination and sustainability - was rejected in favour of NPHE strategies for programme and infrastructural co-operation, and for institutional incorporations, mergers and the development of new institutional forms. Strong sectoral criticisms of National Working Group (NWG) proposals¹⁸³ to reduce the landscape from 36 to 21 institutions were made, including: that the NWG had focused too narrowly on mergers; that the consultative process was inadequate; that the decisions were unduly informed by political considerations; that the data upon which the recommendations were based were inaccurate; and that the benchmarks and performance indicators utilised were inappropriate. The Ministry, in its response to the NWG recommendations,¹⁸⁴ endorsed the NWG's approach and method, rejecting the concerns and criticisms mentioned. It accepted the NWG's proposals with a few exceptions, in which cases it provided its rationale for alternatives, based on broad areas of strength and weakness of individual institutions within a region. (These rationales continue to attract criticism: e.g. some would question why South Africa's largest and most industrialised city, Johannesburg, has two public universities and no designated university of technology.) The Minister, having considered the submissions received in response to the call for public comment at the time, and having sought CHE advice and Cabinet approval, announced his final restructuring decisions on 9 December 2002.¹⁸⁵

The Task Team's second observation is that the legislated merger process departed, albeit temporarily, from the policy tenets of co-operative governance. For example, interim councils were appointed by the Minister and excluded students and staff, with the exception of three members of the interim management who had no voting powers. Interim councils were obliged to operate in terms of a standard institutional statute set by the Minister. While these legislative provisions might have been necessary and understandable for functional reasons, they were misaligned with other aspects of policy.

Third, the Task Team observes that institutions involved in mergers have experienced intense forms of disruption and have perceived policy to be unclear about key aspects of higher education's future. This underlines the fact that steering of restructuring has been centrally driven

and sometimes unduly politically influenced. The Ministry cannot be accused of having failed to assist: It established a Merger Unit within the HEB of the DoE and published guidelines for the operationalisation of the merger process.¹⁸⁶ It leveraged a Treasury commitment to provide necessary financial resources, in the form of more than R3 billion announced in the 2003 Medium-Term Expenditure Framework (MTEF) Budget Review. Yet merged institutions feel they have had to cope simultaneously with merger and a stream of new policy and procedural developments, leaving them at a disadvantage to institutions unaffected by merger. Government support to merging institutions has been deemed to be overly bureaucratic and prescriptive, especially with regard to the drawing down of funds. In their HEIAAF submissions, some institutions pointed out unforeseen complexities in the mergers which gave rise to problematic aspects of government involvement. These included tensions around academic and financing issues, together with accusations of DoE micro-management.¹⁸⁷ Others commented that the policy implications of differentiation in the new institutional landscape (universities of technology, comprehensive institutions) have not been dealt with,¹⁸⁸ giving rise to inadequate or even contradictory guidance to these institutions as they have sought to define their missions.

Institutional restructuring highlighted inevitable concerns about infringements of institutional autonomy, although the higher education sector broadly understood and supported the need for transformation of the higher education landscape. The Task Team notes as a fourth point, however, that programme and qualifications planning was perceived as a different order of intervention which limited academic freedom, institutional autonomy and entrepreneurial response¹⁸⁹ and, as such, was highly controversial. Certainly, the DoE's PQM exercise gave strong signals of intensified steering of the system. Undertaken in 2002 as a means of ensuring institutional diversity through mission and programme differentiation, the PQM was not conceived as a once-off intervention, but rather the first of ongoing adjustments, streamlining and rationalisation. PQM profiles for each institution were finalised in August 2003 – after some consultation and CHE advice as to criteria used – with stipulations including that, from 2003, only approved programmes would qualify for funding; that, from 2003, no new programmes would be funded in satellite campuses established outside the 'seat' of an institution; and that the continued funding of identified programmes from the 2004/2005 financial year would be subject to the affected regional institutions' jointly reviewing and submitting programmes for collaboration and rationalisation. In addition, a range of determinations were made in respect of distance education to reverse the proliferation of distance education programmes offered by contact institutions. Many explanations are advanced for the strong sectoral reaction against the PQM, including the rational (the exercise took place without a new academic policy for the higher education system in place, and pre-empted the implementation of a quality assurance system), the principled (the PQM intervened directly in what institutions teach, but with little recourse to academic expertise on the matter), and the more emotional and political (institutions who had ventured into distance education and off-main-site campuses felt their attempts to expand access in line with policy objectives were being contrarily punished; former technikons and historically disadvantaged institutions experienced the PQM as an unwarranted curbing of their opportunities for growth and development in a new higher education environment). All

such reasoning cannot easily be dismissed as invalid and perceptions of unaccountable system intervention and development, bordering on interference and violation of academic freedom, are unsurprising. The DoE itself has acknowledged limitations of the PQM exercise in relation to its disjuncture from quality assurance; uneven and in some cases inaccurate available data; and the need for a more nuanced understanding of graduate outputs by field of study in relation to labour market requirements. In mitigation, it can be said that the PQM has offered the sector effectiveness and efficiency gains, clarifying the inventory and classification of institutional programme and qualification offerings, and highlighting some instances of past subsidy overpayments. But in the Task Team's view, this does not excuse problematic aspects of the process as already described.

If the PQM provided a most unsatisfactory example of steering using the planning lever, the student enrolment planning process has – in the Task Team's fifth and final observation – provided more hopeful signals. This aspect of planning has aimed to steer the system toward the NPHE's target enrolment distribution in the humanities / business and commerce / and science, engineering and technology, of 40% / 30% / and 30% respectively; to match enrolment plans with resources available to higher education; and to optimise higher education efficiency and effectiveness. The data certainly indicated adjustments were needed. Between 2000 and 2003, system enrolments grew by 22%; block grant allocations grew by 7% (a decline of 13% in Rands per teaching input unit); full-time-equivalent (FTE) academic staff numbers involved in teaching and research increased by 6%; and cohort studies by the DoE showed that, of the students who had enrolled at the start of 2000, 50% had dropped out by the end of 2004.¹⁹⁰ Yet DoE proposals in 2004 – especially the notion of 'enrolment caps' – sparked a negative sectoral reaction. Institutions accepted enrolment planning in principle, but disagreed markedly with the undifferentiated approach that was followed and with the fact that capping was to be introduced retrospectively. The sector argued that the proposals were not sufficiently attuned to national and regional human resource needs, did not take into account different institutional contexts and missions, and were at odds with the goal of expanding access. In 2005, on advice from the CHE, the Ministry accepted the need for a differentiated enrolment planning approach, committing the DoE to discussions with individual institutions. These engagements were positively received and early in 2007 all institutions received notification of their enrolment targets (instead of 'caps') for the period up to 2010. Concern persists that there is no clarity as to consequences of significant over-enrolments in particular fields for an institution. Institutions arguably have little control over individual decisions by prospective students, which cumulatively could translate into over-enrolments in specific fields; while the blocking of enrolments could trigger student unrest. The DoE has for several years mooted a national higher education information and applications service (NHEIAS) as a solution to such problems, but some institutions have steadfastly resisted the idea as an erosion of their autonomy with respect to admissions. This aspect of enrolment planning arguably remains unresolved.

The Task Team's overarching interpretation of its observations about steering through planning is that contestation has centred on the autonomy-accountability balance and not, with the notable

exception of the PQM, around violations of academic freedom. Expressed another way, the question as to whether systemic goals always trump institutional visions and missions remains unsettled, certainly from an institutional perspective. While institutions have, in the final analysis, been shy of declaring outright instances of government interference, and while they have acknowledged the need for strong forms of state regulation to address the large task of reconstruction, the overall tenor of their critique is that government's mode of implementation has been too centralised, oftentimes opaque, too technically and managerially oriented, and inadequately attuned to social, resource, regional, local and institutional contexts. Potential improvements for steering practice are plain: enhanced communication and consultation by government, and continuous engagement between all parties, would serve to build trust, to render steering more amenable to feedback and to flag unintended consequences for timeous correction. Negotiated outcomes between individual institutions and the DoE as it plans a differentiated system are increasingly important. It is also true that higher education institutions could be more proactive in shaping the discourses of planning and implementation,¹⁹¹ and so deflect charges by government and other stakeholders of dragging their heels in the work of transformation.

Evaluated against the Task Team's framework of principles for higher education governance, the planning trajectory can be viewed as having fallen short of employing all potential opportunities for consultation and engagement. It has often been preoccupied with the efficiency of higher education. It has also been weighted more heavily on the side of meeting national goals translated into performance targets, automatically assumed to equate to the public good, than on defending such elements of academic freedom as scholarly freedom and a substantive practice of autonomy which the Task Team views as social goods in their own right (see Section 2.3.2 and 2.4.1). This would seem to be the heart of the difficulty with the PQM exercise, which directly shaped the offering of academic programmes by public higher education institutions, yet used imperfect and incomplete frameworks and bases of academic expertise in order to do so. Given the Task Team's argument that academics and universities must be sufficiently free to develop the future knowledge needs of society (but see the discussion in Section 2.3), it is clear to see how lapses of democratic accountability on the part of government – and ultimately on the part of universities acting under state directive – might occur in such circumstances. The critique that government planning decisions are based on poor information has been frequently made. In the Task Team's view, this is a critique that must be taken seriously, and not brushed aside. A partial validation that has been offered for the choice of a system of state steering (rather than state control) in the South African higher education system, is that available data is simply not comprehensive or accurate enough for command-and-control.¹⁹² This makes it all the more important that government seek to access (differentiated) information through channels of consultation and engagement and to apply its findings as flexibly as required.

3.2.3 Funding

In its consideration of funding as a steering lever, this section focuses on Task Team observations and interpretation, while the details of policy developments and frameworks are

provided in other sources.¹⁹³ The principal feature of steering in this area has been the development and implementation of a new funding framework (from 2004, replacing the old SAPSE funding system which continued to be in force between 1994 and 2003). The increasing use of earmarked allocations, and alterations in the configuration of the income sources of higher education institutions, must also be considered significant.

The Task Team understands the new funding framework to have intentionally moved institutions' developmental trajectories further from the ambit of fully autonomous decision-making and more within the ambit of national imperatives as defined by the state (and Constitution). There can be no quarrel with this as a principle, although practical reverberations for institutions may sometimes be unwelcome. The shift is well illustrated by certain features of the framework. For example, national norms and benchmarks now inform the funding of teaching and research outputs. Also, block grant allocations have decreased as a proportion of the total allocation to institutions, in favour of increased proportions for earmarked funding, including allocations for the National Student Financial Aid Scheme (NSFAS). Institutional Councils have sole discretion over the spending of block grant allocations, as determined by FTE student enrolments, teaching outputs, research outputs, and also including specified institutional grants; while expenditure of earmarked funding is regulated by the DoE in terms of the achievement of associated goals. Finally, the funding framework is closely interlinked with the planning model and involves three steps: first, the Minister of Education determines national policy goals and objectives; thereafter, institutions develop three-year institutional rolling plans¹⁹⁴ responding to these policy goals and objectives; and third, interaction occurs between institutions and the Ministry resulting in the amendment or approval of the plans, triggering the release of funds based on the amount of funding available for that particular year.¹⁹⁵ The new funding framework's approach has represented a significant break with the former SAPSE funding formula¹⁹⁶ which did not seek explicitly to steer the higher education system towards national priorities, but rather regulated institutional choices through other means.

Also noteworthy as a means of steering funding, in the Task Team's view, has been the introduction of a new higher education management information system (HEMIS) in the late 1990s. Based on individual student records, HEMIS allows the DoE to do far more penetrating analyses, including student cohort studies, for individual institutions and the higher education system as a whole. It has heightened the public accountability of institutions by insisting on the importance of correct institutional data on which financial allocations are to be based (at risk of sanctions).

Third, the Task Team observes that the new funding framework encompasses an annual Ministerial Statement on Higher Education for the MTEF period in which the year in question falls, and that this has been, and remains, the subject of some disquiet. It was envisaged that the Statement would contain a review of key trends in higher education and indicate any changes to be made in determining the allocation of funds to the different categories of the

funding framework.¹⁹⁷ Institutions were and are apprehensive that the mechanism potentially opens the way for the Minister to unduly direct institutional affairs, even though the finalised funding framework commits the Minister to prior consultation with the sector and the CHE before major changes are made. To begin with, there is no clear definition of what constitutes a ‘major change’. Then, through the annual Ministerial Statements, the Minister has indeed introduced some significant longer-term changes in the funding allocations of institutions. These include increases in earmarked funding as a proportion of the total allocation; and the introduction of new categories of earmarked funding.¹⁹⁸

The sector has welcomed the recent mobilisation by the Minister of significant new funds for higher education, including for capital infrastructure. It is, however, of great concern to the sector that there has been no effective consultation on government’s prioritisation exercises that have resulted in the allocation of funds to the different components of the funding framework and to new categories of earmarked funding.

In particular, the Task Team notes growing trepidation on the part of some that such cases signal the beginning of direct interventions by the Minister in favour of particular institutions, without consultation with the sector. Thus, some allocations of institutional restructuring funds are seen to have been announced, rather than explained, by the DoE, leading to unease about possible political favour and even the possible condoning of poor management in some instances. In 2007, the Minister informed institutions individually of allocations termed ‘infrastructure and efficiency funding’, to a total of some R3 000 million in the period 2007/8 to 2009/10. While institutions were invited to make submissions for this funding, the eventual basis for the allocation of the funds was not explained. That portion of funds arising from the rounding-off of percentage allocations in the block grants, and retained by the Minister to respond to unforeseen developments during the given year, has also been allocated on occasion without due transparency: unannounced allocations in 2006 to four institutions with Schools of Engineering have been questioned.

Fifth, the Task team observes that shifts in the income trends of higher education institutions have problematic implications for academic freedom, institutional autonomy and accountability. An analysis of income trends for higher education institutions in the period 2000-2005 shows that government subsidies, as a proportion of total institutional income (excluding NSFAS and funds for restructuring) declined from 50% to 43%.¹⁹⁹ Tuition fees, as a proportion of total income, increased from 21% to 29%, while income from other or third-stream sources remained almost constant and changed from 29% to 28%. Over the years, third-stream²⁰⁰ income from publicly-funded sources such as the Technology and Human Resources for Industry Programme (THRIP) managed by the National Research Foundation (NRF) for the Department of Trade and Industry (DTI), the NRF Innovation Fund, NRF other programmes, Medical Research Council (MRC) and the Water Research Commission (WRC) have been considerable, amounting to more than R2 500 million in the period 1994-2006.²⁰¹ In the Task Team’s view, it is a matter of concern that income from tuition fees has escalated, given government’s stated aim of making higher

education more accessible for disadvantaged students. At the same time, the setting of tuition fees has long been an institutional prerogative and unless a proposed national policy framework for fee-setting were to be accompanied by an increase in government subsidies, a negative reaction could almost certainly be expected from the sector. Third-stream income does not solve this dilemma, as each item is usually designated in terms of specified outcomes allowing for few deviations (risking restrictions on academic freedom). Earmarked funding, too, is an unsatisfactory substitute for adequate subsidy funding. Institutions increasingly under pressure to make ends meet will likely gladly accept such grants as are offered; but here autonomous decision-making and/or institutional self-regulation could be compromised, especially where institutions fail to communicate internally the consequences or motivations for academic planning choices.

The Task Team is aware, as it interprets this set of observations, that public funding in an era of increased demands for higher education accountability internationally, and especially in the South African context of transformation, will inevitably – and not without justification – be used to change the behaviour of public universities. For this reason, it seems to the Task Team that, where institutional claims as to curbs on their autonomy by the funding framework currently arise, these might best be interpreted as a reaction to government insistence on higher levels of accountability in particular areas. It is notable, however, that institutional concerns about steering via funding do not at present emphasise incursions on academic freedom, nor even unduly emphasise perceived threats to their autonomy. Rather they focus on anxiety about a form of financial steering which fails to accommodate institutional differences and individual needs; which renders institutional academic activities vulnerable to the consequences of decreasing subsidy; which grants the Minister a large degree of freedom to change (within the context of the MTEF) the definitions and values of the funding framework's components with minimal or no consultation; and which is unnecessarily opaque and hence potentially subject to questioning of motives.²⁰²

Viewed within the rubric of the Task Team's framework of principles for evaluating steering, these constitute concerns about the extent to which government is exercising *its* democratic accountability for developing the higher education system, all the more acute given the centrality of adequately and judiciously distributed financial resources in that process. Also, left unaddressed, lack of transparency by government in funding matters could lay the ground for eventual forms of unwarranted direct government interference in the affairs of higher education institutions. Unquestionably, in the Task Team's view, where government allocates money for specific purposes – rather than as a block grant – it must proactively explain why it does so and be willing to engage in dialogue with higher education institutions on its funding decisions.

3.2.4 Quality assurance

Steering through quality assurance is most often equated in South African higher education with the work of the Higher Education Quality Committee (HEQC) from 2001 onwards, and this has

certainly been the focus of the Task Team's review. However, the Task Team is aware that efforts to secure quality necessarily began with legislative and policy frameworks for standards-generation and standards-setting – especially through the South African Qualifications Authority (SAQA) which, in terms of the 1995 *SAQA Act*,²⁰³ implements the National Qualifications Framework (NQF) and oversees the development of a co-ordinated external quality assurance system. The Task Team has further noted the particular status and mandate of the HEQC, as a standing sub-committee of the CHE deemed accredited by SAQA as the Education and Training Quality Assurer (ETQA) for the higher education band of the NQF.²⁰⁴ Specifically, the HEQC assures higher education quality through programme accreditation (the accreditation of public and private providers to offer stipulated learning programmes leading to NQF-registered qualifications); audit (the review and evaluation of quality assurance policies and systems of all public and private providers of higher education); and quality promotion and capacity development (activities to institutionalise a quality culture in higher education and strengthen requisite quality capabilities).²⁰⁵ Finally, the Task Team has familiarised itself with the HEQC's particular definition of quality, namely: fitness of purpose (quality in the context of national goals for the higher education system); fitness for purpose (quality in relation to institutional mission); value for money (quality judged in relation to the full range of higher education purposes set out in policy); and transformation (quality that develops the capabilities of individual learners for personal enrichment, as well as the requirements of social development and economic and employment growth).²⁰⁶

For the Task Team, it is important to observe at the outset that steering through quality assurance differs from steering through planning and funding in four fundamental respects which have shaped experience of it. First, the CHE-HEQC, rather than the DoE, regulates quality assurance as an independent statutory body. Second, the HEQC has since inception operated on the principles that higher education institutions retain primary ownership of quality and that all policy frameworks are extensively consulted with the sector and its stakeholders.²⁰⁷ Third, while planning and funding have always (even in distorted forms) been a feature of the South African higher education system, quality assurance arrangements before 2001 were highly uneven and fragmented, notwithstanding the efforts of various structures.²⁰⁸ Fourth, the HEQC's function is explicitly a dual one of developing system and institutional capacity to provide quality, as well as one of requiring institutional accountability for academic quality. Many would argue that DoE steering via planning and funding also has a developmental, as well as an accountability, dimension; yet planning and funding rationales have been largely based on the achievement of efficient, effective and equitable system performance as aspects of improved accountability. The HEQC has in addition to these aspects made capacity development into an explicit policy goal. Presumably for a mix of reasons arising from these four factors, HEQC steering appears to have been perceived by the sector as relatively more acceptable than some of its DoE equivalents.²⁰⁹ Moreover, many in the sector accept that the HEQC's work has begun positively to alter institutional awareness, behaviours and operations in relation to quality. They comment²¹⁰ that audits have helped to foster a greater link between institutional planning, resource allocation and quality assurance. Initiatives like the re-

accreditation of MBA and teacher education programmes have made the general public, employers and students more aware of quality issues and of institutional responsibilities in this regard. In both the public and private provider sectors, more attention and resources are being given to policies, structures and capacity for quality assurance. Institutional staff responsible for quality assurance are playing a greater role in planning structures.

However, the Task Team observes as its second point that the distinctive nature of steering through quality assurance has not rendered the HEQC immune from concerns and allegations that its work infringes or endangers academic freedom and institutional autonomy; and that it is part of a set of regulatory arrangements that facilitate interference in the arena of responsibility of institutions and/or academics. Thus, regulations for the approval of new programmes – involving SAQA, the HEQC, at times the co-operative accreditation work of professional councils and Sector Education and Training Authorities (SETAs), as well as the DoE – are seen in some HEIAAF submissions as constituting an unacceptable set of bureaucratic barriers in the educational process. Institutional and other stakeholder submissions emphasise concerns about the role-confusions and bureaucratic burdens resulting from the process.²¹¹ It has not always been clear to the Task Team to what extent institutions conflate excessive bureaucratic procedures and demands, lack of regulatory co-ordination among multiple agencies, and actual violations of academic freedom or autonomy.

There have also been allegations²¹² that the HEQC has shifted from its early emphasis on capacity development to a tougher accountability regime, especially as its accreditation work (including the national reviews) got under way. It is true that, notwithstanding a developmental commitment, the HEQC has withdrawn accreditation of sub-standard programmes and deployed strategic and operational links with planning and funding, in order to reinforce the goals of policy and to support institutions in working accountably towards their achievement. This has involved a dual focus, for example, on the fitness of purpose of institutions and their fitness for purpose; and on equity as a counterpart of quality. While ‘fitness for purpose’ is a familiar definition of quality in South African higher education as in other national systems, ‘fitness of purpose’ has been more contested, with some seeing this definition as a potential infringement on their autonomy, while others have regarded it more positively as the natural corollary of the transformation imperative. The HEQC itself notes in its submission that its second cycle of institutional audits (on which it will embark in 2010) is likely to ‘highlight more issues around accountability than the first cycle ... [T]he HEQC will have to make audit judgements about institutional achievements on the basis of quality improvement plans arising from the first cycle: this may result in renewed contestation as to appropriate areas of institutional autonomy and academic freedom and may, in turn, give rise to questions around the true potential for self-regulating institutional systems of quality assurance (at the very moment that some institutions will be anticipating achieving this status)’.²¹³

Furthermore, the Task Team noted concerns expressed at the CHE 2007 Consultative Conference, to the effect that the current reasonably ‘benign’ steering of the HEQC could turn malign under certain conditions. These could include: a heightened accountability drive on the part of the HEQC (whether or not under some kind of directive from government) demanding checklist

compliance by institutions, to the neglect of the developmental function of quality assurance processes; the exclusion from quality assurance processes – whether at system or institutional level – of particular voices, including those of students and academics; the growth of an excessive and expensive quality assurance bureaucracy; and a change in the current consultative and accessible approach of the HEQC.

In addition to the sets of concerns described above, the Task Team’s third observation is that the discussion at the Consultative Conference included remarks about the importance of external quality assurance for furthering transformation. It was stated that academics could not use objections to quality assurance measures as a ‘mask’ for avoiding societal needs and demands for higher education transformation. It would seem to the Task Team that the active engagement of academics in quality assurance processes and issues would be the best way of mediating any such risk. Quality assurance should not be allowed by the HEQC, or by institutions, to become nothing more than a technical ‘managerial’ device, which curtails necessary academic freedom and institutional autonomy while adding little value to academic processes and objectives. The strategies and steps required to embed quality assurance in a substantive practice of autonomy at different system levels and by different actors (as earlier recommended by this report) must be addressed by the HEQC as part of its deepening understanding of its regulatory steering role.

As part of the HEIAAF process, both SAQA and the HEQC made individual submissions and the Task Team finds it useful to note their principal perspectives, observing that these advocate the co-operative achievement of quality by regulators and institutions in a manner apparently consistent with the Task Team’s conceptualisations of continuous engagement and accountability. Thus,²¹⁴ SAQA maintains that, within its mandate of implementing the NQF, it has explicitly attempted to provide a space for critical engagement regarding the principles of institutional autonomy and academic freedom in higher education. In its view, public accountability is no threat to these principles, but rather represents a key element in the emerging roles and responsibilities of higher education institutions in a new context. For its part, the HEQC²¹⁵ contends that an authentic conceptualisation of quality assurance in higher education is one that affirms the core values of the academy (scholarship, free enquiry, critique), rather than subordinating these to imposed external values. It conceives institutional autonomy to be the right of institutions to govern themselves without undue and unreasonable intervention from any external party, while always remaining accountable to the public, to students and other stakeholders, meeting certain particularities common to universities the world over (e.g. Senates), and necessarily complying with applicable laws and regulations. The HEQC asserts that, while some may argue that a programme accreditation system constitutes in-principle infringement of institutional autonomy and academic freedom because it places external limits on academic self-government, holding institutions to account for a set of minimum standards in respect of academic programmes is appropriate and necessary in the context of a transforming system. This is especially true where expert peers have been substantially involved in the construction and judgement of the standards. The Task Team has itself argued that self-government is no automatic guarantor of academic freedom and accountability, and that the enjoyment of such freedoms

goes hand in hand with societal obligations (in this case, the obligation to observe minimum standards not determined completely internally within the institution).

On the basis of its various sources of information, the Task Team has reached the following interpretation: Quality assurance as a regulatory form potentially comes closer to infringing upon processes at the heart of academic decision-making than either planning or funding, since it involves making judgements – and judgement calls – about what is academically acceptable. Yet, if conducted within proper and agreed boundaries, it can add value to the academic process. For this reason, it has to be conducted with great care, especially in a society where the content of academic and other freedoms pertinent to the substantiation of democracy is still being established. The relatively low levels of contestation around quality assurance as a steering lever signal that there have been no explicit violations of academic freedom and institutional autonomy up to now – and much appears due to the HEQC’s largely consultative style and stated intentions to balance improvement and accountability roles, and build a culture of self-managed evaluation to support self-accrediting institutions. As noted earlier, the absence of a quality-assured basis for PQM decisions was one of the reasons why that exercise was seen to verge on interference, and future such decisions would benefit from this perspective. However, the HEQC must remain vigilant about the possibly negative implications and impact of its work for academic freedom and institutional autonomy. The achievement of HEQC intentions must be monitored – especially by the main actors themselves: the agency and institutions – in the first instance through their alertness to maintaining the consultative and engaged mode of steering which the HEQC has so far sought to inculcate. The HEQC may also want to review, at an appropriate time, its policies and operational systems to ensure that the commitment to academic freedom and institutional autonomy is clearly conveyed, understood and operationalised, and to ensure that periodic engagement with academic communities on these issues becomes part of the HEQC’s tracking of the impact of its work. The Task Team takes the view that it is a valid concern for the system and for institutions, that (substantive) institutional autonomy be safeguarded in the presence of an external quality assurance dispensation. On the other hand, an external dispensation which engages as many stakeholders as it can in the discussion and the implementation of the transformative dimensions of quality offers genuine possibilities for developing higher education’s sense of its democratic accountability, and for a ‘reformulation in action’ of the rights and duties of academic freedom.

3.3 Consolidating the regulatory environment

The Task Team has evaluated the trajectory of state steering of higher education with such questions in mind as: whether and to what extent the mode of state steering has changed since the mid-1990s; whether steering has turned into state interference, thereby violating academic freedom and institutional autonomy; and whether there is a need to rethink the mode of steering, e.g. in terms of the parameters and limits of steering, and the relationship between regulatory steering and consensus-building. The Task Team’s enquiry has provided its own indicative answers. Steering does not appear to have routinely become interference or to have regularly

violated academic freedom and institutional autonomy. Yet there have been undeniable shifts – subtle and not so subtle – in government’s mode of steering. State demands on institutions have proliferated, often in a peremptory manner; there have been instances of government approaching interference, raising considerable alarm; and red flags as to future dangers have been raised. Some modifications of the steering approach would therefore benefit the development of higher education and ease discomfort in the sector, thereby strengthening systemic willingness to uphold principles of co-operation and democratic accountability, while asserting the importance of academic freedom and substantive autonomy.

In arriving at its conclusions about how to consolidate the regulatory environment, the Task Team finds the following issues and dynamics also to be significant:

First, perceptions and claims as to government ‘interference’ have held a much higher profile at other moments after 1994 – and perhaps especially between 2001 and 2004 – than they do at the time of writing this report (early 2008). The year 2001 marked the unveiling of the NPHE, and the institutional and programme restructuring it set in train. Naturally events which dismantled established institutions and vetoed existing and new programme offerings in practice, led to high levels of sectoral anxiety, however committed the sector may have been to transformation in principle. The Task Team has noted the less-than-ideal consultative processes and one-size-fits-all approaches that exacerbated these perceptions, and the thin line trodden most notably by the PQM between steering and interference. Since then, the mood of the sector has, in the Task Team’s understanding, shifted somewhat. The mergers are beginning to settle, although many challenges of academic identity and quality remain. Government has embarked on a more differentiated and nuanced approach to matters like enrolment planning, responding positively to criticisms and concerns of an early generic approach imposed in what appeared to be a unilateral fashion. The establishment of HESA as a single sectoral body has marked the advent of an improved working relationship between that body, the DoE and the CHE. There has been an enhanced flow of funds to the system – albeit with questions over the rationales for allocation of funding. Institutions have been much absorbed of late by ‘bread-and-butter’ issues forced into the open by aspects of the new funding framework and enrolment planning. Yet, in the Task Team’s opinion, within a consolidating system, the rudiments of improved trust in parts of that system, and a new pragmatism operating at institutional level, are all factors which make the HEIAAF investigation more rather than less relevant. Efforts towards conceptual clarity and objective assessment and critique of steering can only serve to enhance system development and bases for co-operation, while also sustaining a focus on what constitutes an enabling regulatory environment at a time when institutions may have become distracted by their individual concerns from system critique.

Second, it is apparent that even if flagrant instances of government interference are hard to pinpoint, there are consistent factors at play which do impact negatively on the regulatory environment and which could serve to undermine academic freedom, a substantive practice of institutional autonomy and democratic accountability – on the part of government and higher education institutions – in the longer run. These include constrained capacity, all the way from

limited state resources for ongoing, in-depth consultation with institutions, through sometimes shaky available data for robust decisions, to fiscal and human resource constraints. There is poor co-ordination across government departments and inside higher education, leading to such anomalies as earmarked funds to develop pockets of higher education in the absence of a comprehensive human resource needs analysis; and a PQM in advance of an embedded quality assurance system. There has been general system-change overload that has placed severe burdens on institutions, and in relation to which a uniform regulatory insistence makes little sense. These examples suffice for the purpose.

Third, the Task Team cannot ignore that a new species of threat to the health of higher education has emerged, which does not necessarily reside in the relationship between state and sector. Much of the HEIAAF debate which took place in public fora, and not a little of the enquiry's expert research opinion, dwelt on the danger posed to academic freedom by a 'managerialist' institutional ethos – whether instilled via Councils or managers themselves. One part of this threat has to do with the intertwined nature of threats posed by governments and institutional administrations in thrall to considerations of competitiveness, entrepreneurialism and efficiency, and who present related policies as necessarily in the public or the institutional interest. A second part of the threat has to do with constraints on the free speech rights of academics and students by institutional managements – including in relation to contestations around the nature of institutional transformation (as discussed in Section 2.3). In the course of the HEIAAF enquiry, many from the academic community felt that the most direct threat to academic freedom at this juncture came from within institutions rather than from government. All of this means that violations of academic freedom, substantive autonomy and dimensions of accountability can arise inside higher education institutions as well as outside them, and that systems of regulation - and of consultation - must take both sources of danger into account.

Fourth, the Task Team has had to consider how an effective regulatory environment might be facilitated on an *ongoing* basis, so that the purposes, goals and accountabilities of higher education can be achieved through the co-operation of all actors. Here it is necessary to anticipate the likely unfolding of the higher education policy trajectory in the short and medium terms – and any implicitly problematic aspects. In the strategic plan for the DoE 2007-11,²¹⁶ also incorporating strategic objectives for the financial year 2007-08, the Minister indicated such priorities as:

- Regulatory support, including further amendments to the *Higher Education Act*; provision of an appropriate policy framework for the PQM; policies for enhancing research output; finalisation and transitional implementation of the Higher Education Qualifications Framework (HEQF); and review of regulations for the registration of private higher education institutions.
- Institutional support, including capacity building for student leadership, Institutional Forums and Councils.
- Monitoring and evaluation of system equity, access, diversity, outputs and the restructuring process; the strengthening of systemic and institutional performance indicators; a revised

framework for the monitoring of finances; and approval and monitoring of student enrolment planning targets.

- Development of a single student application system (i.e. NHEIAS).

While references here to capacity development in support of good institutional governance are positive, there is little sense of an approach of continuous engagement with institutions in the process of developing regulatory areas (e.g. the confident reiteration of the idea of NHEIAS does not register great sectoral discomfort with the idea up to now). A preoccupation with indicators and targets is evident, without reference to the corresponding demands of capacity and differentiated policy for their implementation. While the Task Team is well aware that increased consultation by government and greater levels of capacity in the system are not in themselves a permanent guarantee of protection against violations of academic freedom and institutional autonomy, or of heightened accountability across the system, they represent key areas of improvement that should not be ignored.

Fifth and finally, the Task Team – in the very act of recording in this report its own conclusions about conceptual clarifications which would strengthen higher education governance, and about the nature of shifts in state steering since 1997 – understands that different and unequivocal judgements about whether or not the mode of steering has changed for the worse, and what is necessary for effective steering at this point, might well be made on the basis of where one stands in relation to some of the issues listed below. For the Task Team, it is important to recognise that these remain at present unresolved issues which its own investigation cannot hope to dispel at a stroke. It therefore cites them as likely signals for where ongoing contestation is likely to occur and where engagement will need to be made productive:

- The policy of co-operative governance: On a minimalist view, government may believe that it has consulted sufficiently with the sector to enable it to proceed with what it sees as its own sphere of decision-making. On a maximalist view, institutions may believe that government departs on occasion from the policy framework of higher education and interferes in areas of decision-making that are appropriately those of institutions.
- The distinction between transformatory steering and steady-state steering: Under a view which sees higher education transformation as far from complete, intensive forms of state steering may be deemed necessary for some time to come. Under a view which sees higher education in a steady-state phase now that large transformation interventions have been put in train, it may be possible to alter the mode of steering. This would entail giving institutions more interpretative authority and necessary support to enable them to make the key decisions in their core-function jurisdictions, within the framework of agreed constitutional imperatives, national system-level goals, quality and other requirements.
- The meaning of ‘consultative steering’: This could mean endless rounds of consultation as well as consultation on every big and small issue, with the attendant risk of inaction/paralysis. For good governance and effective goal achievement, some might say the system needs to develop and agree at least a basic sense of what regulators are obliged to consult on and the steps necessary when the regulator ends the consultation (e.g. some

communication to the sector on rationale for decisions made, plans for tracking the area of greatest concern to institutions, willingness to take corrective action, drawing on sector expertise where relevant, etc.). Others might argue that commitment to a balance between consensus-building and regulatory steering means that the balance itself is always subject to renegotiation and redefinition.

- The distinction between policy proliferation and its accompanying burdens, and actual/potential violations of academic freedom and institutional autonomy or lapses of accountability: Cases that have approached violation (e.g. PQM) give due warning that vigilance must be maintained in respect of this distinction.
- Overlapping spheres of responsibility of the different regulators and how these should be negotiated: Indications are that institutions might have accepted the PQM exercise more favourably if quality judgements had been invoked as the basis of decision-making. This raises the question as to whether the HEQC can regulate the academic domain more justifiably and acceptably than government and under what conditions (e.g. use of duly accountable forms of peer review).

Against the background of this set of preparatory observations, the Task Team's conclusions as to recommended improvements in steering (summarised in Chapter 4 as Conclusion 5, Conclusion 9 and Conclusion 12) are:

First, the Task Team recognises government's right and responsibility to lead system-level change. Yet it cautions against any view that government has the only authoritative grasp of what is required of higher education in a context of transformation and democratisation. At the same time, it is true that higher education itself does not always speak with one voice and often looks first to vested institutional or sectoral interests. The effective achievement of policy goals is not possible without an enabling measure of consensus-building between government, sector and other actors on key policy goals and their primary implementation steps. As preliminary requirements, policy-makers should carefully distinguish between constitutional imperatives and policy choices when making and implementing policy, and all stakeholders must remain alert to the extent to which choices maintain a balance between contending imperatives, principles, rights, obligations and institutional capacities consistent with the South African Constitution.

Second, the Task Team is firmly of the view that some modifications of the prevailing steering approach by government would benefit the overall development of higher education. Key amongst the recommended changes are:

- A renewed commitment to genuinely co-operative means of policy-making and implementation, in preference to increased reliance by government on directive as the means of choice. This is in a context that recognises government's right to set policy in the final instance, and that there are limits to consultation, but also recognises the importance of government's remaining open to continuous engagement on key areas of contestation or concern. This could be done through existing structures and organisations, as well as possibly through new forms of engagement;

- Constant alertness to the implications of policy and implementation for academic freedom, institutional autonomy and accountability;
- Continuation of the use of processes that facilitate negotiated outcomes with individual institutions as part of the planning and funding of a differentiated higher education system; and
- Proactive and transparent communication on government decisions, including funding allocations.

In principled terms, such adjustments of higher education steering have the potential to give greater content to co-operation, academic freedom, substantive autonomy, democratic accountability and an appropriate autonomy-accountability balance, as recommended by the Task Team in this report. In practical terms, enhanced communication and consultation by government, and continuous engagement between all parties, would serve to build trust, to render steering more amenable to feedback and to flag unintended consequences for timeous correction. Co-operative conceptualisation and implementation of steering levers can only be to the advantage of higher education development and does not preclude vigorous contention or the exercise of legitimate authority. In empowerment terms, consultative steering is necessary, amongst other factors,²¹⁷ to overcome differentials in power relations both between state and sector, and inside institutions, and thus to buttress the exercise of academic freedom, substantive autonomy and democratic accountability.

Third, the Task Team recommends a set of framing conditions as consistently important for an effective regulatory environment. These include:

- Recognition by both the government and stakeholders that the open expression of differences in dialogue is an essential means to reaching agreement and that acknowledging difference should at all times be acknowledged as a necessary and healthy element of engagement: co-operation should result from bargained compromises between parties which recognise the right of all stakeholders to contribute freely to decisions;
- The development of appropriate system-wide representative structures for academic and other stakeholders to enable optimal consultation and engagement;
- Available capacity for optimal consultation and engagement between government, the sector and its stakeholders;
- Co-ordination between different government departments and agencies;
- A better alignment of the three principal steering instruments so as to strengthen the logical connections between different aspects of policy development, notwithstanding the reality that policy development is iterative, linked to monitoring and evaluation, and subject to consequences both intended and unintended;
- An early warning system in relation to potential violations of academic freedom and institutional autonomy, and lapses of accountability – by any party: the CHE could play a central role through its advice function – on the basis of its monitoring of trends and

developments in higher education, it is well placed to identify problem areas and looming threats through engagement with all relevant stakeholders, facilitating dialogue and providing advice to government as requested or proactively where necessary;

- Robust systems for monitoring and evaluation, and reliable data sources: there should be regular use of monitoring information and data to be able to take corrective action, and this may dispense with the need for continuous consultation on every issue;
- Where reliable data and systems are not achievable, good channels and processes of engagement to access information and perspectives;
- Transparency and due process; and
- Government accountability as a counterpart to the accountability of higher education institutions, including accountability for the promotion of academic freedom and for the provision of adequate resources for public higher education provision.

Fourth, while the Task Team believes that certain characteristics and framing conditions of steering are most likely desirable for an enduring period (see above), it also believes that the substantive scope and limits of steering cannot be determined in advance or in a fixed way, and that the mode of regulation should remain flexible. The Task Team advocates a mode of regulation that is multilateral rather than unilateral, giving due acknowledgment to the leadership of the Ministry but involving institutions and sector bodies in an effort to develop the greatest possible consensus wherever possible, around all aspects of policy, in all stages of a policy development and formulation process that is conceived of as iterative rather than as a consultation event. Implications here include:

- Although strong state steering may be appropriate in the context of an unevenly capacitated and inequitable system, the degree of state power and the nature of steering mechanisms must themselves be the subject of discussion between government, higher education institutions and other actors;
- Ongoing evaluation of the efficacy of steering, through engagement, is essential and is deemed a more viable instrument than alternatives from time to time proposed (e.g. 'sunset clauses' pre-emptively set);
- While government can legitimately set limits to consultation, it is counter-productive unduly to foreclose consultation or engagement when tensions run high.

Fifth, the Task Team believes that higher education institutions and HESA have a responsibility to be proactive, and not only reactive, in shaping the discourses of planning and implementation. The challenges posed in the past for transformation, and the effective steering of transformation, by low levels of sectoral and institutional initiative have been pointed out (see Sections 3.1 and 3.2.1), and it is desirable to avoid repetition of such circumstances. In addition, genuine sectoral and institutional commitment to self-regulation (see Sections 2.4.2 and 2.5.2) logically involve forward-thinking contributions to good higher education governance.

Finally, the Task Team recommends that gains can be made in relation to particular forms of steering:

- In relation to steering through legislative amendments: Government should recognise that it may not always be appropriate to deal with mismanagement and governance difficulties in particular institutions through measures which target the whole higher education system as a ‘problem case’. The key criterion for blanket stipulations should be system-wide gains in accountability.
- In relation to steering through planning: Planning in support of an integrated yet differentiated system must take an approach that is appropriately system-wide, subsectoral and individual (institutional) as required.
- In relation to steering through funding: A baseline and ongoing assessment of the collective impact of funding categories (block grants and earmarked funds) is required. Furthermore, government should be willing to engage in dialogue with higher education institutions, and other stakeholders where necessary, on funding choices and should explain its decisions and allocations.
- In relation to quality assurance: The consultative and engaged mode of steering which the HEQC has so far sought to inculcate must be sustained so that a substantive practice of institutional autonomy is safeguarded in the presence of an external quality assurance dispensation, and as a means to developing higher education’s sense of its democratic accountability and the interlinked rights and duties of academic freedom. Appropriate monitoring of the mode of steering through quality assurance could include review by the HEQC at an appropriate time of its policies and systems to ensure that the commitment to academic freedom and substantive autonomy is clearly conveyed, understood and operationalised.

4 CONCLUSIONS AND RECOMMENDATIONS

4.1 Summing up the HEIAAF enquiry

The HEIAAF Task Team's terms of reference required it to produce for the CHE a report on the nature of the involvement of government and regulatory bodies in contemporary South African higher education, in relation to various conceptions of academic freedom, institutional autonomy and public accountability and their efficacy for higher education transformation and development, and amid concerns that steering had become interference.

In this report, the Task Team has addressed the brief by assigning its attention to two principal areas. First, in Chapter 2, it sought to generate a contextualised conceptualisation of higher education governance, academic freedom, institutional autonomy and accountability. Then, in Chapter 3, it utilised that framework of principles to analyse and evaluate higher education steering and the regulatory environment. The main findings arising from this work were set out section by section as the report proceeded. Here they are recapitulated as a succinct record of the Task Team's conclusions and recommendations. Underpinning issues and arguments to support these are explored in the body of the report. The Task Team consequently strongly urges not reading this chapter alone as the conclusions and recommendations may well be read simplistically outside their proper contexts.

The positions summarised here constitute the agreements of Task Team members. On a few issues, unanimity among members could not be achieved and alternative views are noted in the report. Readers who wish to familiarise themselves with these positions will find them recorded in the preceding chapters.

The Task Team believes that the key contributions of its report are the following:

- Demonstrating agreement among key constituencies about the value and importance of academic freedom, institutional autonomy and public accountability for both higher education and society but with clear differences as to the content and parameters of these concepts as well as differences in priority and emphasis;
- Highlighting the centrality of continuous engagement among various role-players, given the different, even conflicting, understandings, applications and practices of the above notions, in order to ensure effective higher education governance and the progressive development of higher education;
- Cautioning against a conflation of constitutional imperatives and higher education policy choices, and ensuring that the latter do not contradictorily undermine those imperatives;
- Substantiating a necessary separation between the concepts of academic freedom and institutional autonomy and, in so doing;
- Clarifying the exercise of academic freedom as both the right to free enquiry and the duty to pursue free enquiry for the good of society, and

- Clarifying that the value of institutional autonomy to higher education and society also lies in its support for and facilitation of academic freedom;
- Delineating higher education accountability as a multi-dimensional set of roles and duties to be exercised as compatible with the needs of both intellectual freedom and of a transforming sector in a democratising society;
- Linking a renewed conceptualisation of academic freedom, institutional autonomy and accountability to recommended concrete conditions that would improve the mode of steering and regulatory interventions – especially capacity and channels for communication, engagement and feedback.

The HEIAAF process in its entirety (as described in Chapter 1) touched upon many questions of a conceptual and theoretical nature, as well as on particular policy and governance matters, which the Task Team has not necessarily selected for special attention in this report.²¹⁸ The interested reader can therefore pursue a wide variety of themes in the HEIAAF submissions, commissioned research, and other project documents, with the assistance of the many indications, annotations and references that the Task Team has included here. The Task Team hopes that these debates will receive continuing attention in South African higher education. It also finds that certain of these themes could provide the substance of a further in-depth (especially empirical) research agenda, including:

- The implications of global developments for academic freedom, institutional autonomy and accountability in South African higher education, e.g. pertaining to world trade in educational services and to continued rapid technological change;
- The role of the market and other manifestations of neo-liberal economics in South African higher education and their part in constraining academic freedom, institutional autonomy and accountability whether of higher education institutions or of government and regulatory agencies;
- Current mechanisms used by government to give effect to its accountability for higher education and how these might be modified or expanded where required;
- Improved co-ordination between the activities of different regulators of higher education, including improved handling of overlapping spheres of responsibility;
- The role of government departments and agencies, as well as donors and corporate sponsors, in potentially curtailing academic freedom by directing funds to selective projects and thematic areas;
- The nature and sources of threats to academic freedom inside higher education institutions and strategic interventions to address these;
- The implications of violations of freedom of speech for academic freedom, especially but not exclusively inside higher education institutions;
- The necessary conditions and responsibilities of critical freedom as exercised by academics (and students) and the implications for academic freedom of self-imposed censorship; and
- The implications of institutional differentiation for steering, governance and regulation.

4.2 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS OF THIS REPORT

4.2.1 *Recommended framework of principles*

The Task Team's conclusions with respect to the four key concepts of co-operative governance, academic freedom, institutional autonomy and democratic accountability are the following:

Conclusion 1: Co-operation in higher education governance

Clarifications of the concept and status of co-operative governance would promote effective co-operation between higher education actors:

- Co-operation between higher education actors in the service of national goals is a critical element of how higher education functions in, and relates to, a democratising society;
- The relationship between government and higher education institutions is not equivalent to co-operative government by organs of state as constitutionally defined;
- Co-operation in higher education governance is not equivalent to co-governance by various actors (at either system or institutional levels);
- Consistent with the norms of a democratic society, higher education actors at all levels are free to participate in policy-making, to make decisions within their powers and to advocate their interests;
- While the policy of 'co-operative governance' explicitly calls for a balance to be struck between autonomy and accountability, it is mistaken to assume that such a balance can be struck indefinitely among 'partners' who entirely set aside their vested interests; rather
- Effective co-operation and participation require continuous engagement in changing circumstances, while based on a foundation of agreed principles.

Conclusion 2: Academic freedom

A reformulated concept and practice of academic freedom should encompass three interrelated elements:

- The first is the binding link between the Constitution and the rights and duties of academic freedom, especially the roles of state and academy in promoting deliberative democracy and responding to social conditions;
- The second is the link between the rights and duties of academic freedom and the responsibility of both state and higher education to serve the public good: the state must call the academy and institutions to account for the exercise of higher education functions; academics and institutions must practice scholarly freedom (free enquiry as a present and future social good) and enjoy academic authority (deliberation and judgement in matters of teaching, learning and research) in close conjunction with their exercise of democratic accountability;
- The third is the necessarily substantive and supportive link between institutional autonomy and the accountable exercise of academic freedom and core academic functions.

Conclusion 3: Substantive autonomy

Institutional autonomy in the contemporary South African context of transformation should promote both the public good and the constitutive values of the academy, which are integral to higher education's social role and accountability ('substantive autonomy'.) Substantive autonomy:

- Is necessarily linked to an institutional defence of academic freedom as exercised by scholars, students and academic colleagues;
- Is necessarily linked to the substantive goals of society, and not only to functional institutional goals, or to political or market goals;
- Recognises that threats to academic freedom may originate from within higher education institutions, as well as from outside them, and that autonomy is substantive only to the extent that it is proof against both; and
- Recognises mutual and correlative rights and duties, including distinctive accountabilities, on the part of the academy, institutional leadership, government and society, to ensure that higher education is governed for the public good.

Conclusion 4: Democratic accountability

Accountability in contemporary South African higher education is differentiated, multi-layered and multi-purposed, and extends beyond answerability to political or regulatory authorities. 'Democratic accountability' encompasses collegial and scholarly, functional and hierarchical, financial and fiduciary, and political and public accountability – as well as social responsibility. It asserts academic freedom and substantive institutional autonomy as constitutive democratic duties, necessary for the free exercise of intellectual endeavour to the public good. The content of democratic accountability is dynamic, determined continuously through engagement and responsiveness to evolving circumstances.

4.2.2 Recommended consolidations of higher education steering, governance and co-operation

The Task Team recommends a range of concrete improvements in the steering of higher education and in the good governance of higher education at various levels (system, sectoral, institutional and academic). It believes these are achievable through adjustments of overall approach, focus, capacity and modes of interaction, as well as through an orientation around democratically accountable policy and action, by all higher education actors. In this respect, the Task Team's conclusions are the following:

Conclusion 5: Steering and the constitutional context

Policy-makers should carefully distinguish between constitutional imperatives and policy choices when making and implementing policy, and all stakeholders must remain alert to the extent to which choices maintain a balance between contending imperatives, principles, rights, obligations and institutional capacities consistent with the South African Constitution.

Conclusion 6: Proposed modifications of steering approach

Some modifications of the prevailing steering approach by government would benefit the overall development of higher education by giving content to co-operation, academic freedom, substantive autonomy and democratic accountability; by serving to build trust, to render steering more amenable to feedback and to flag unintended consequences for timeous correction; and by allowing for empowered interactions between state and sector, and between institutional stakeholders. These modifications include:

- A renewed commitment to genuinely co-operative means of policy-making and implementation, in preference to increased reliance by government on directive as the means of choice;
- Constant alertness to the implications of policy and implementation for academic freedom, institutional autonomy and accountability;
- Continued use of processes that facilitate negotiated outcomes with individual institutions as part of the planning and funding of a differentiated higher education system; and
- Proactive and transparent communication and/or negotiation on government decisions and funding allocations.

Conclusion 7: Framing conditions for steering

Framing conditions consistently important for an effective regulatory environment include:

- Recognition by both the government and stakeholders that the open expression of differences in dialogue is an essential means to reaching agreement and that acknowledging difference is a necessary and healthy element of engagement;
- The development of appropriate system-wide representative structures for academic and other stakeholders to enable optimal consultation and engagement;
- Available capacity for optimal consultation and engagement between government, the sector and its stakeholders;
- Co-ordination between different government departments and agencies;
- A better alignment between the three steering levers, allowing for logical connections between them in processes of iterative policy development, linked to monitoring and evaluation of consequences, both intended and unintended;
- An early warning system in relation to potential violations of academic freedom and institutional autonomy, and lapses of accountability: the CHE could play a central role through its advice function;
- Robust systems for monitoring and evaluation, and reliable data sources;
- Where reliable data and systems are not achievable, good channels and processes of engagement to access information and perspectives;
- Transparency and due process; and
- Government accountability as a counterpart to the accountability of higher education institutions, including accountability for the promotion of academic freedom and the provision of adequate resources. (See Conclusion 11).

Conclusion 8: Mode of regulation

While certain characteristics and framing conditions of steering are likely to be required for the long term, the substantive scope and limits of steering cannot be determined in advance or as fixed quantities. The mode of regulation should therefore remain flexible. This means it must be multilateral rather than unilateral, acknowledging the leadership of the Ministry while involving institutions, sector bodies and other stakeholders; should keep the greatest possible consensus in view, without forcing consensus or claiming illusory consensus; and should be iterative. Implications here include:

- Although strong state steering may be appropriate in the context of an unevenly capacitated and inequitable system, the degree of state power and the nature of steering mechanisms must themselves be the subject of discussion between government, higher education institutions and other actors;
- Ongoing evaluation of the efficacy of steering, through engagement, is essential; and
- While government can legitimately set limits to consultation, it is counter-productive unduly to foreclose consultation or engagement when tensions run high.

Conclusion 9: Effective steering in relation to specific instruments

Gains can be made in relation to particular forms of steering:

- In relation to steering through legislative amendments: Government should deal in a targeted way with mismanagement and governance difficulties in particular institutions rather than through measures which target the whole higher education system as a ‘problem case’. The key criterion for blanket stipulations should be system-wide gains in accountability and effectiveness.
- In relation to steering through planning: Planning in support of an integrated yet differentiated system should be appropriately system-wide, subsectoral and individual (institutional) as required.
- In relation to steering through funding (block grants and earmarked funds): A baseline and ongoing assessment of the collective impact of funding categories is required. Furthermore, government should engage higher education institutions and other stakeholders around funding choices and provide a more transparent account of its decisions and allocations.
- In relation to quality assurance: The consultative and engaged mode of steering which the HEQC has so far sought to inculcate must be sustained so that a substantive practice of institutional autonomy is safeguarded in the presence of an external quality assurance dispensation. Appropriate monitoring of the mode of steering through quality assurance could include review by the HEQC at an appropriate time of its policies and systems.

Conclusion 10: Co-operation, contention and continuous engagement

Higher education’s contributions to South African society and the meanings of the public good, and transformation in higher education are still evolving. Specific modes of co-operation and participation are needed to support continuous engagement, especially around contending

perspectives, among higher education institutions, and between institutions, government, regulatory agencies and other stakeholders. These should include flexible forms of engagement, as well as some institutionalised channels, such as:

- Representations by higher education institutions and stakeholders to the parliamentary Portfolio Committee on Education, so as to broaden public debate on higher education's purposes and goals in South African society;
- A system-wide higher education process and/or forum (or fora) to mobilise dialogue between actors; and
- The establishment or enhancement of academic freedom committees, or similar structures, in higher education institutions.

Conclusion 11: Government accountability in higher education

Government should review its approaches and strategies for giving effect to its democratic accountability in relation to higher education. This democratic accountability incorporates a) the constitutional obligation upon government – as upon others – to promote and uphold academic freedom. In addition, government's accountability includes b) the provision of resources to higher education institutions to ensure that they are able to fulfil their share of accountability for meeting public goals, on terms conducive to the exercise of academic freedom, c) a willingness to explain its decisions and actions to other higher education actors and society, and d) adequate and sustainable capacity to track accountability by institutions and others.

Conclusion 12: Proactive sectoral contributions to steering

Higher education institutions and organisations like HESA have a responsibility to be proactive, and not only reactive, in shaping the discourses of planning and implementation. Self-regulatory initiative and forward-thinking contributions to higher education governance are to be encouraged as supportive of transformation, and the effective steering of transformation.

Conclusion 13: Sectoral, institutional and academic governance

Accountable governance must continue to be promoted at sectoral and institutional levels, including by the following means:

- All higher education actors should recognise that system, sectoral, institutional and academic spheres of governance do not substitute one another, but rather support each other through distributed roles and responsibilities;
- Sectoral self-regulation initiatives are consistent with institutional autonomy that is substantive and accountable, and sectoral commitment to self-regulation should be encouraged by government, regulatory bodies and especially by higher education institutions and sectoral bodies;
- Higher education accountability can and should be improved by sustained attention to persistently problematic areas of institutional governance, especially by institutional leadership and institutional governance structures themselves;

- A mechanism should be identified to close the gap between university Councils and society, to which they are democratically accountable, while fitting within the framework of an autonomy-accountability balance in the higher education system; a well functioning and transparently operating forum of Council and Ministry members could serve as a proxy for a regulatory instrument in this regard;
- An effective practice of academic freedom could be supported by a range of potential forms of empowerment of academics, students and other stakeholders and their freedoms at sectoral, institutional and academic levels of governance;
- Relationships between institutional managers, academics and students should reinforce scholarly freedom, academic rule and a climate of free expression inside higher education institutions; sectoral codes of practice and self-regulation could be considered for the additional protection of free speech rights.

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WRITTEN SUBMISSIONS TO THE HEIAAF TASK TEAM BY JUNE 2007²¹⁹

Stakeholder and Abbreviated Name	Category
Academic and Professional Staff Union, University of South Africa (APSA UNISA)	Stakeholder body
Brown, David, University of KwaZulu-Natal (Brown UKZN)	Individual
Central University of Technology (CUT)	Higher education institution
Du Toit, André (Du Toit)	Individual
Fester, Eugene (Fester)	Individual
Freedom of Expression Institute (FXI)	Civil society body/voluntary NGO
Higher Education Quality Committee (HEQC)	Sectoral/higher education body
Higher Education South Africa (HESA)	Sectoral/higher education body
Institutional Forum, Tshwane University of Technology (IF TUT)	Stakeholder formations
Institutional Forum, University of Zululand (IF UZ)	Stakeholder formations
Mahlangu, Simon, member of Institutional Forum representing disabled students and staff, University of Pretoria (Mahlangu IF UP)	Stakeholder formations

Stakeholder and Abbreviated Name	Category
Mangosuthu University of Technology (MUT)	Higher education institution
National Council of Provinces, Select Committee on Education and Recreation (Arts and Culture, Science and Technology, Sport and Recreation) (NCOP)	Government
National Research Foundation (NRF)	Research development agency
National Tertiary Education Staff Union (NTESU) National Tertiary Education Staff Union	Stakeholder body
National Union of Technikon Employees of South Africa (NUTESA)	Stakeholder body
North-West University (NWU)	Higher education institution
Rhodes University (RU)	Higher education institution
South African Qualifications Authority (SAQA)	Sectoral/higher education body
South African Students' Congress (SASCO)	Stakeholder body
Stellenbosch University (SUN)	Higher education institution
Stuart Saunders (Saunders)	Individual
Tshwane University of Technology (TUT)	Higher education institution
University of Cape Town (UCT)	Higher education institution
University of Johannesburg (UJ)	Higher education institution
University of KwaZulu-Natal (UKZN)	Higher education institution
University of Pretoria (UP)	Higher education institution
University of South Africa (UNISA)	Higher education institution
University of the Free State (UFS)	Higher education institution
University of the Witwatersrand (Wits)	Higher education institution
University of Venda for Science and Technology (Venda)	Higher education institution
University of Zululand (UZ)	Higher education institution
Walter Sisulu University for Technology and Science (WSU)	Higher education institution

ENDNOTES AND REFERENCES

- 1 RSA 1996: Section 16.
- 2 DoE 1997: Section 1.23.
- 3 The full set of principles is: equity and redress; democratisation; development; quality; effectiveness and efficiency; academic freedom; institutional autonomy; and public accountability. DoE 1997: Sections 1.17-1.25.
- 4 NCHE 1996.
- 5 RSA 1997.
- 6 MoE 2001.
- 7 Given in: CHE 2002. This policy report was informed by commissioned research: Hall, Symes & Luescher 2002.
- 8 See: CHET October 2004.
- 9 Jansen August 2004.
- 10 Notably the work of John Higgins and André du Toit - see: Higgins 2000; Du Toit 2000a; Du Toit 2000b; Du Toit November 2004; Du Toit March 2005. Also see: UCT October 2005 (Submission), pp. 1-8.
- 11 CHE October 2005a.
- 12 CHE October 2005b.
- 13 A fifth commissioned report was reviewed at an early draft stage; this served to confirm rather than advance empirical findings on the status of co-operative governance as investigated by the CHE in 2002. See: Maharasoa, Mahlomaholo & Xuma 2006.
- 14 Jonathan 2006.
- 15 Friedman & Edigheji 2006.
- 16 Bentley, Habib & Morrow 2006.
- 17 Du Toit 2007.
- 18 See: CHE March 2006; CHE May 2006a; CHE May 2006b; CHE May 2006c; CHE June 2006a; CHE June 2006b; Adesina 2006; Du Toit 2006; Freund 2006; Habib 2006; Hall 2006; Kaya 2006; Maharasoa 2006; Malherbe 2006; and: Waghid 2006.
- 19 Invitations were extended to individuals from business, civil society, the judiciary and higher education; those who attended were drawn from higher education and civil society.
- 20 The extensive HEIAAF archive capturing these processes and outcomes is accessible via the CHE's web site: <http://www.che.ac.za/documents/d000114> (accessed August 2008).
- 21 A listing of the submissions is provided in the Bibliography: Submissions are referenced in this report by an abbreviation and page reference(s) in parenthesis. Abbreviations used are indicated in the relevant section of the Bibliography, and also in the list of Acronyms and Abbreviations at the beginning of this report.
- 22 Citing the time of the submissions process as its main reason, HESA offered a viewpoint prepared for the universities' sectoral body in 2003, rather than an original submission. In addition, HESA's Executive Committee met with Task Team members (6 February 2006).
- 23 Details of individuals and institutions can be found in the table of submissions included in the Bibliography.

- 24 The DoE made no formal submission, on the basis that its final and formal positions are given in prevailing policy and legislation. However, in a discussion with the Task Team (23 March 2006), the DoE outlined its views of the roles of government and higher education institutions in co-operative governance.
- 25 In this report, submissions' critiques of specific steering instruments are referenced in Chapter 3. The overview in this section deals with the broader perspectives.
- 26 See: UNISA, p. 2 for a schematised example.
- 27 Loyiso Nongxa proposed the idea of university as 'village fountain' (*'umthombo'*): a fountain of knowledge that is treasured and protected by the community because it demonstrably serves their needs. Keynote Address by Loyiso Address at the HEIAAF Regional Forum in Port Elizabeth, 2 June 2006. See: CHE June 2006b: 7.
- 28 Discussant Response by Peter Vale at the HEIAAF Regional Forum in Port Elizabeth, 2 June 2006. See: CHE June 2006b: 8ff.
- 29 Jonathan 2006 includes examination of: i) distinctions to be drawn between state and government in analysing the state/higher education relationship (section 1); the nature of higher education's contributions to the public good in relation to growth and development, equity, and empowerment (sections 2 and 3); the role of 'the market' (competition, entrepreneurialism and managerialism) in influencing higher education and its governance for the worse and – potentially – for the better (section 4); and the influence of South Africa's past and present on evolving debates around academic freedom, institutional autonomy and accountability (section 5).
- 30 Friedman & Edigheji 2006 includes discussion of: problems attached to the notion of 'public accountability' in the South African context and in general, especially as these relate to conceptions of 'public', of academic freedom and of institutional autonomy (sections 1-3); a typology of variant conceptions and forms of accountability and how these might be applied (section 4); 'the market as problem' for accountability (section 4.1); and potential open-ended and institutionalised channels of engagement to support higher education accountability (section 6).
- 31 Bentley, Habib & Morrow 2006 includes, in addition to its elaboration of ideas for strategic reforms (section 3): a detailed comparative historical discussion of academic freedom in Africa (section 1); and a theoretical discussion of the interlinked rights and duties of academic freedom, related to the African and South African contexts (section 2).
- 32 Du Toit 2007 includes: a conceptual discussion of constitutive elements of academic freedom, in relation to the development of the modern research university in different contexts (sections 1.2 and 1.3); a conceptual discussion of institutional autonomy, in relation to different conceptions of the university and the source of potential threats to academic freedom (section 1.3); an analytical discussion of a 'social compact approach' as a means of interrogating academic freedom, institutional autonomy and accountability (section 1.4); a review of comparative historical, socio-political and academic contexts influencing social compacts for university autonomy (sections 2.1 and 2.2); a discussion of compacts around individual constitutive elements of academic freedom, including a discussion of the influence of the 'managerial revolution' (sections 2.3-2.5); an examination

of institutional autonomy as a social compact in the South African case, including a discussion of ‘fault lines’ that have arguably led to a breakdown of co-operative governance, as well as illustrating different variants of ‘managerialism’ at work (section 2.5.4); and conclusions suggesting potential resolution of tensions between academic freedom, autonomy and accountability in the South African context through ‘interlinked internal and external compacts’ (section 2.6).

33 See: Luescher 2007a.

34 First, the Task Team probed particular constitutional issues: the public law expertise of Prof Rassie Malherbe had been made available to the Task Team (see e.g.: UJ October 2005 (Submission); and Malherbe 2006); additional expertise was accessed via a report commissioned from Prof Nic Olivier (Olivier 2007), and from a written critical analysis of the issues by Task Team member Justice Dennis Davis. Second, the Task Team sought a viewpoint on the nature and development of steering and the regulatory environment after 1994: this was commissioned from Dr Rolf Stumpf (Stumpf 2007). Third, a perspective on the academic freedom of students was provided to the Task Team by Mr Thierry Luescher (Luescher 2007b).

35 See e.g.: Bentley Habib & Morrow 2006: Section 1 (African comparative context); Du Toit 2007: passim, especially Section 2.2 (African, American, British and European comparative academic cultures); Friedman & Edigheji 2006: Section 4.1 (accountability in comparative context); and: Jonathan 2006: Section 4 (global and market contexts).

36 See e.g.: Du Toit 2007: Section 2.3.1, for a discussion of loss of ‘hegemony of academic scholarship’. Also see Section 2.3.2 of this report.

37 See: Altbach 2005, for an overview of the range of contemporary challenges to academic freedom in Africa and other parts of the world.

38 See e.g.: CHE October 2005b: Appendix A; and: Bentley, Habib & Morrow 2007: Section 2.

39 See: *The Dar es Salaam Declaration* 1990; and *Kampala Declaration* 1990.

40 UNESCO 1998.

41 See: UNCESCR 1999.

42 Ruth Jonathan (see: Jonathan 2006: 2) has argued that the concepts are ‘mutually constitutive’ as well. The Task Team argues in this report that this is not always the case – e.g. in its view, institutional autonomy is not necessarily constitutive of academic freedom (see e.g.: Sections 2.3 and 2.4).

43 Jonathan 2006: 60. Jonathan expands: ‘Of the twenty-one universities, eleven were originally reserved for “white” students (perhaps 10% of the *population* age-cohort), four English-medium universities, six Afrikaans-medium and one dedicated to distance education. These remained predominantly “white”, despite some relaxation on admissions in the 1980s. Of the remaining ten universities, six were intended for “African” students and located in “bantustans” or self-governing territories and two urban institutions were reserved for “Coloured” and “Indian” students. These latter universities admitted larger proportions of “African” students from the 1980s. Of the fifteen technikons, seven were intended for “white” students, five for “African” students and one each was provided for “Indian” and “Coloured” students. One distance education institution was designated for

“non-white” students. Comment seems redundant.’ Institutions for African students were established between 1959 and 1988; institutions designated for either Coloured or Indian students were formally established in the 1960s, although in some cases their origins predated this. See: CHE 2004: Section 2.1.

- 44 The Academic Freedom Committees 1974: 3.
- 45 See: Jonathan 2006: 60ff; Asmal March 2005; Badat 1999; Hendricks & Vale 2005; Reddy 2004.
- 46 André du Toit has observed that they ‘approximated the British pattern of state-university relations during the halcyon era of respect for university autonomy to an extent that belied the basic legal and practical dependence of South African universities on the state. Arguably the South African state fostered an elite consensus allowing a measure of institutional autonomy to (white) universities disproportionate to their constitutional position or social clout’. Du Toit 2007: 102-3.
- 47 Badat 1999; Reddy 2004.
- 48 CHE 2004: Section 10.1.
- 49 The exact TB Davie formulation is: ‘Our freedom from external interference in (a) who shall teach, (b) what we teach, (c) how we teach, and (d) whom we teach’. In more detail, it stated that: ‘we desire at all times (a) to be permitted to appoint our staff on the grounds of their fitness by scholarship and experience for the research and teaching for which they are needed, (b) that the staff duly appointed shall teach the truth as they see it and not as it be demanded by others for the purposes of sectional, political, religious, or ideological dogmas or beliefs, (c) that the methods of teaching shall not be subject to interference aimed at achieving standardisation at the expense of originality or orthodoxy at the cost of independence, and, lastly, (d) that our lecture theatres and laboratories shall be open to all who, seeking higher knowledge, can show that they are intellectually capable of benefiting by admission to our teaching and are morally worthy of entry into the close intimacy of the great brotherhood which constitutes the wholeness of a university’. As cited by Higgins 2000: 106.
- 50 See the use of the term ‘paradigmatic’ in: Du Toit March 2005; and: Asmal March 2005.
- 51 DoE 1997: Section 1.23. (Emphasis added.)
- 52 Du Toit March 2005: 2.
- 53 Du Toit March 2005: 1.
- 54 Jonathan 2006: 63-4.
- 55 Jonathan 2006: 66.
- 56 Du Toit 2007: 105.
- 57 See e.g.: UCT October 2005 (Submission): Introduction; Hall 2006; and: Du Toit May 2006 (Submission): 1-2.
- 58 See: Olivier 2007: 36-39; and: CHE 2004: 176.
- 59 DoE 1997: Sections 3.5-3.7.
- 60 Hall, Symes & Luescher 2002: 38.
- 61 RSA 1997: Section 45.
- 62 RSA 1997: Section 41A(1).

- 63 DoE 1997: Sections 3.33, 3.45-3.46; RSA 1997: Sections 24, 25, 39(3), 41A-47. Section 41A of the *Higher Education Act* is as amended in 1999 and 2001.
- 64 DoE 1997: Sections 3.15 and 3.31.
- 65 These include: providing policy advice to the Minister (independently, or in the light of CHE advice); advising on the state of institutional transformation; monitoring the performance of the system; and capacity-building. See: DoE 1997: Sections 3.31, 2.13, 2.17, 2.80, 4.23.
- 66 It has been argued that the CHE's range of functions conflates distinctions to the detriment of the system, especially because of inherent tensions between advisory, research, consultancy, and monitoring functions and the executive function of quality assurance. See: Luescher 2007a: Section 3.4.
- 67 DoE 1997: Section 3.33.
- 68 DoE 1997: Section 3.34.
- 69 RSA 1997: Section 41(1)-(3); RSA/DoE 2003. The current annual and financial reporting regulations emphasise: compliance with good corporate governance standards (the King Code), compliance with stringent accounting standards (Generally Accepted Accounting Practice), liability for accountable, effective and efficient use of public funds, and collecting comparable information within and between institutions, enabling identification of trends and flagging of issues requiring attention. The annual report prepared by institutions for the DoE is a public document intended to be available to all stakeholders of the institution.
- 70 RSA 1997: Section 26(2).
- 71 DoE 1997: Sections 1.24-1.25.
- 72 At that time, Professor Kader Asmal.
- 73 Published in CHE 2002. Section 5 summarises the recommendations.
- 74 In brief, these were: Institutional autonomy could be more effectively exercised in the public interest if there were more highly-specified provisions for Council composition and size, appointment and terms of office, committee structures and delegations, and mechanisms to consolidate fiduciary capacity. Adjustments to the scope, role, composition, chairing and linkages to Council of the Institutional Forum would better allow its advice on transformation to be heard and acted on by a properly fiduciary Council. Institutional review of the composition and functioning of Senate, to ensure that it fulfils its purposes of maintaining academic standards, defending academic freedom in teaching and research, and playing a forward-looking role in policy formulation, would serve to counter Senate's all too frequent marginalisation by Council and management alike.
- 75 CHE 2002: 42.
- 76 CHE 2002: 41.
- 77 For a discussion of sectoral responses to 'conditional autonomy', see: CHE October 2005b: 16-17. HEIAAF submissions also comment on this (e.g. UP, p. 20; IF TUT, p. 9).
- 78 See in particular: UJ October 2005 (Submission); Malherbe 2006; Jonathan 2006: Sections 1 and 2; and: Olivier 2007.
- 79 'Since the twin primary duties of a state are defence of the polity and the wellbeing of its citizens, the *education* of citizens is a *public* as well as a private concern. ... Those twin requirements in a democracy ensure that education is a *social practice* (not, as is sometimes

misunderstood today, merely a social service, like say housing or health care).’ Jonathan 2007: 1-2. (Original emphasis.)

80 Jonathan 2006: 7.

81 Jonathan 2006: 6-8.

82 Jonathan 2006: Section 2.

83 Obviously, co-operative governance in higher education pertains across a broad range of stakeholders, not only these actors.

84 Du Toit 2007: Section 2.5.4.3.

85 Du Toit 2007: 120.

86 Du Toit 2007 coins these terms.

87 Bentley, Habib & Morrow 2006: Section 3.

88 Friedman & Edigheji 2006: 22, 26.

89 Friedman & Edigheji 2006: 22-24.

90 RSA 1996.

91 The interim Constitution of 1993 (Section 14) provided that every person shall have ‘the right to freedom of conscience, religion, thought, belief and opinion which *shall include academic freedom in institutions of higher learning*’ (emphasis added). The 1996 Constitution instead guarantees freedom of expression – including academic freedom – to ‘everyone’ (Section 16(1)).

92 RSA 1996: Preamble.

93 See: Du Toit 2000a for a discussion of the ‘republican conception’ of free speech as a positive duty.

94 Bentley, Habib & Morrow 2006: 17.

96 DoE 1997: Section 1.23.

97 See: Adesina 2006; Du Toit 2006; and: Kaya 2006.

98 See: Du Toit 2007: 13; and: CHE June 2006b (Keynote Address by Loyiso Nongxa): 4ff. Also see: Bentley, Habib & Morrow: 15, as an example of a proposed list of the rights covered by academic freedom.

99 See: Friedman & Edigheji 2006: 4-5.

100 See: Hall 2006; Waghid 2006; and: Du Toit May 2006 (Submission).

101 Altbach 2005: 18. Altbach lists (pp. 17-18) a number of recent international examples of state repression of academic freedom.

102 The difficulties are such that it may become difficult to distinguish between the respective impact of ‘managerialism’ and ‘authoritarianism’ (a topic this report has not directly explored). Academics and administrators may respectively view the same contest as a case of restrictions on free expression, or as a case of insubordination by an academic employee(s). Well-known cases involving academics Caroline White (UKZN), Robert Shell (RU) and Ashwin Desai (UKZN) all illustrate this. See: Freund 2006; Bentley, Habib & Morrow 2006: 1, 11, 21; Friedman & Edigheji 2006: 5; Du Toit 2007: 24.

103 Adesina 2006: 4-5.

104 According to these two declarations, members of the academic community include all those who teach, study, do research, or simply work in academic institutions. See: *The*

- Lima Declaration 1988; The Dar es Salaam Declaration 1990.*
- 105 *Kampala Declaration 1990: Articles 22 and 25.*
- 106 TFHES 2000: 60.
- 107 Jonathan 2006: 10.
- 108 Friedman & Edigheji: 26.
- 109 Set out in the decision of the Constitutional Court in *S v Mamabolo* 2001 (3) SA 409(CC) at para 37.
- 110 Jonathan 2006: 40.
- 111 Jonathan 2006: 19-22.
- 112 Currie & De Waal 2005: 370-1.
- 113 DoE 1997: Chapter 1.
- 114 See Du Toit 2007: Sections 1.2, 2.3.3 and 2.4.3. Following Graeme Moodie, Du Toit interprets institutional autonomy (freedom from external interference in the running of higher education institutions) as a third constituent part of academic freedom as a composite ideal; the Task Team prefers to conceive institutional autonomy as a support to academic freedom, as discussed.
- 115 See: Malherbe 1993: 683.
- 116 Du Toit 2007: 15, 36-7. The *Higher Education Act* legitimates this idea, deeming the Senate accountable to the Council for academic and research functions and requiring Senate concurrence for certain Council decisions. See: RSA 1997: Sections 27 and 28; and also see: Section 2.2.1 of this report.
- 117 Du Toit 2007: Sections 1.3.4 and 2.5.3.
- 118 Du Toit 2007: 71, 87.
- 119 Bentley, Habib & Morrow: Section 3.
- 120 FXI June 2007 (Submission): 2
- 121 See, for example, HEIAAF submissions: SASCO, pp. 11-15; UKZN, pp.1-2. Also see: CHE June 2006a.
- 122 See for example, HEIAAF submissions: UCT, pp. 1-8; Du Toit, pp. 1-3. Also see: CHE May 2006b.
- 123 Du Toit 2007: 35.
- 124 Du Toit 2007 discusses extensively the nature of continental European state-control systems, observing that: '[T]he Humboldtian vision of the university as an enlightened self-governing community of scholars found its logical home and effective protection of academic freedom by being incorporated as part of the rational administrative order of the nation-state. ... Of course, this civic protection of academic freedom only applied to the extent that the state itself was committed to the constitutional principles of ... enlightened autocracy.' (p. 53)
- 125 Jonathan 2006: 15.
- 126 See: Jonathan 2006: 19-22 and 33-39.
- 127 Friedman & Edigheji 2006: 8, 16-17.
- 128 Du Toit 2007: Section 1.3.4 and Section 2.5.
- 129 Du Toit 2007: 118. (Original emphasis.) 'Fitness of purpose' is a term used especially by the HEQC to signify the degree of fit between an institution and national goals.
- 130 Du Toit 2007: 39. (Original emphasis.)

- 131 Du Toit 2007: Section 2.6.3.
- 132 E.g. the Task Team does not concur with Jonathan's view that universities are organs of state; it sees institutional autonomy as a support to academic freedom rather than a constitutive element as conceived by Du Toit; it sees the need for some caution in promoting a strategy of institutional income stream diversification as recommended by Bentley *et. al.*, etc.
- 133 Where a higher education system is not predicated upon autonomous institutions (e.g. state control systems), then effective higher education governance necessarily involves more direct forms of state sponsorship of academic freedom. In the Task Team's view, the state's necessary role as guarantor of academic freedom applies under any model of higher education system governance.
- 134 For a discussion of the role of public intellectuals in relation to academic freedom, autonomy and accountability, see: Jonathan 2006: 19-20, 42.
- 135 The HEIAAF submission by FXI, for examples, details prohibitions on the free speech of academics, students *and* non-academic staff.
- 136 Means for this exist, e.g. three-year rolling plans/enrolment plans submitted to the DoE; HEQC institutional audit cycles and institutions' quality improvement plans arising from these; the monitoring of institutional profiles in relation to sectoral trends by the CHE.
- 137 See: HESA 2007: 24-26.
- 138 DoE 1997: Section 1.25.
- 139 Friedman & Edigheji 2006: 15.
- 140 Friedman & Edigheji 2006: 16-17.
- 141 Friedman & Edigheji 2006: 10, 12-13.
- 142 Hall, Symes & Luescher 2002: 87-88.
- 143 Friedman & Edigheji 2006: 4-5.
- 144 Friedman & Edigheji 2006: 12.
- 145 Du Toit 2006: 4.
- 146 Du Toit 2007: 123.
- 147 Du Toit 2007: 122.
- 148 Du Toit 2007: Section 2.4.1.
- 149 Du Toit 2007: 122.
- 150 Hall, Symes & Luescher 2002: 33, 41, 66-69, 74-76.
- 151 Du Toit 2007: 123.
- 152 In recent years, reporting requirements have attempted to align Council governance with good corporate governance (codified in the King Code of Corporate Practices and Conduct), although the distinctiveness of university Councils and corporate Boards remains a factor influencing the nature of their respective accountabilities. See: King 2002: 20-41. In its Section 1.3, the King Code recommends that the principles it sets out should be adapted appropriately by state and public enterprises.
- 153 'On the substantive conception of institutional autonomy, accountability is primarily defined inwards with regard to the protection of scholarly freedom and academic rule. ... If business or corporate interests are strongly represented on the Council ... then the actual content of the fiduciary accountability could be informed by notions of making the university a more efficient enterprise in market-oriented terms. The overseeing body could

- also be constituted more on stakeholder principles ... but in that case, more political and democratic notions of accountability would come into play along with a more instrumental view of the university on which institutional autonomy is subordinate to developmental or political purposes.’ Du Toit 2007: 127-8. This finding was supported by empirical examples in the research of Hall, Symes & Luescher 2002: Chapter 3.
- 154 ‘It has been distressing to note and act on serious if not criminal governance and fiduciary lapses at some of our institutions. ... Some of our institution leaders have treated public finances as their personal accounts. Others have failed to give institutional leadership. In some institutions academics appear to have little pride in original intellectual work[;] plagiarism and unscholarly academic practices do not enhance the profile of the sector and ... HESA must act speedily to address these lapses and *avoid state intrusion in academic affairs*. ... The financial lapses have convinced me that stronger objective oversight mechanisms must be established to protect public finances and the reputations of honest hard working vice chancellors and academics.’ Pandor May 2007: 6. (Emphasis added.)
- 155 Shivji 1994: 302.
- 156 See: Adesina 2006: 3.
- 157 See: Friedman & Edigheji 2006: 30-31.
- 158 Jonathan 2006: 75-76.
- 159 See Friedman & Edigheji 2006: 17, for a fuller discussion of direct accountability, ‘citizen voice’ and ‘citizen choice’.
- 160 Friedman & Edigheji 2006: 25-26.
- 161 One HEIAAF submission noted with concern that government has to date not formally and systematically reviewed its policies. ‘Under these conditions, opportunities to engage directly with government on institutional experiences have been limited. [C]ritical voices tend to be ignored and caricatured as self interested posturing.’ See: UNISA, p.4.
- 162 HEIAAF submissions on this issue emphasised that under-resourcing of the sector by government poses the single greatest danger to higher education’s exercise of its social and public functions and its provision of academic quality; and that enabling incentives would better leverage higher education accountability than regulation and directives. See: MUT, p.3; RU, p.11; UFS, pp.11-12; UP, pp. 14-15; Wits, p. 2; IF TUT, p., 9; NUTESA, p.2. See Section 3.2.3 of this report for further comment on the importance of adequate state finance for higher education.
- 163 Friedman & Edigheji 2006: 28. Such ‘willingness to explain’ is a useful preventative to occasional or perceived arbitrariness on the part of government, as cited by some HEIAAF submissions in relation, for example, to funding decisions and relations between governments and institutional Councils – see: NWU, p. 1; Venda, p. 1; UP, p.13; Wits, pp. 1-2; NUTESA, p.1.
- 164 Risks posed for accountability by inadequate capacity in this respect are mentioned in Section 2.5.1.
- 165 See for example: UJ October 2005 (Submission): Annexure H; and: Malherbe 2006.
- 166 See: Du Toit 2007: 120 (re a forum for cross-sectoral debate); Jonathan 2006: 10 (re the function of the CHE as a conduit for dialogue); and CHE 2006c: 1-2 (remarks by

- Ihron Rensburg re the use of a range of intermediary channels).
- 167 HESA 2007: Preface (p. 4). The establishment of a code of governance to be adopted and applied by public higher education institutions formed part of the CHE's effective governance recommendations. See: CHE 2002: 49. HESA, as the unified higher education sectoral body established after this recommendation was made, is in a good position to advocate the code.
- 168 Various programmes have been initiated, for example, by the Centre for Higher Education Transformation (CHET), the Committee for Technikon Principals (CTP), the South African Universities Vice-Chancellors Association (SAUVCA) and HESA (notably its Higher Education Leadership and Management (HELM) programme).
- 169 See: HESA 2007: 34-35; and: Friedman & Edigheji 2006: Section 6.2.
- 170 HESA 2006: 25.
- 172 See: MoE 2001: Sections 1.5 and 1.5.1.
- 173 Although it can be noted that the CHE was not consulted on this concession, nor informed that this would be the procedure followed.
- 174 DoE March 2005.
- 175 Memorably, at the 2007 CHE Consultative Conference, rapporteur Prof Joe Muller noted that regulators ('foxes'), institutional managers ('dingoes') and academics ('chickens') had non-corresponding views on what constituted interference, rather than steering.
- 176 The Amendment Acts are listed in the Bibliography. Exhaustive referencing to sections and paragraphs has been omitted here for simplicity.
- 177 Views expressed at a meeting between members of the HEIAAF Task Team and the DoE, 23 March 2006.
- 178 RSA/DoE 2003.
- 179 See e.g.: NWU, p. 1; UP, pp. 20-21, 39; Venda, p. 1; UNISA, pp. 3-4; Wits, pp. 1-2; WSU, p. 3; Nutesa, p. 1.
- 180 See, e.g.: CHE 2004: Chapter 3; and Stumpf 2007.
- 181 CHE 2000.
- 182 MoE 2001: Section 1.6.
- 183 NWG 2001. The National Working Group was established by the NPHE to investigate and advise the Minister on how to consolidate the higher education landscape.
- 184 MoE 2002.
- 185 MoE 9 December 2002 .
- 186 MoE April 2003.
- 187 E.g. TUT, p. 2-3; NTESU, p. 2; SASCO, p. 24.
- 188 E.g. UFS, p. 3; MUT, p.4.
- 189 E.g. MUT, p. 4; WSU, p. 4; UP, p. 12; Unisa, p. 3; Wits, p. 1; Venda, p. 2.
- 190 CHE 2007: Section 3.3.
- 191 This suggestion was explicitly made by the Commission on Planning at the CHE Consultative Conference in November 2007.
- 192 Hall, Symes & Luescher 2002: 87-8.

- 193 See: e.g.: CHE 2004: Chapter 11; and: Stumpf 2007.
- 194 It is not clear what format three-year rolling plans are to take in future. Institutions involved in mergers did not submit such plans over the past few years, instead submitting Institutional Operating Plans to aid assessment of whether the institution would indeed constitute a 'going concern'. All institutions, however, have had to submit three-year student enrolment plans and it is likely that future three-year rolling plans will take this form.
- 195 MoE December 2003: Section 1.7
- 196 The SAPSE formula was used to fund historically white universities from 1983. It was gradually applied between 1985 and 1996 to historically black universities and technikons. See: CHE 2004: Section 11.1.
- 197 I.e. between block grant and earmarked allocations, and within block grant allocations between teaching input, teaching output, research output and institutional factor allocations.
- 198 Initially three main categories of earmarked funding were foreseen: for institutional redress; for student financial aid; and for initiatives related to improving throughput and completion rates, increasing research outputs, improving postgraduate enrolments, and for capital works. The Ministerial Statement 2004-2006 indicated three categories of earmarked allocations: For NSFAS; for interest and redemption on government approved loans on fixed capital expenditure; and for foundation programmes (academic development programmes for students). Funds for institutional restructuring were allocated separately. In recent years, smaller earmarked allocations for purposes such as teacher education and assisting institutions which had incorporated campuses of the former Vista University, were included. The last Ministerial Statement added allocations for the clinical training of health professionals, for the Higher Education Institutes in Mpumalanga and the Northern Cape, and for the African Institute for Mathematical Studies.
- 199 'The percentage is lower than the OECD average and lower than the contribution in most other African countries. Within the South African system, the last figures available for the period before the recent merger of higher education institutions show that direct state funding comprised a smaller proportion of total funding for historically white than historically black institutions ... and that third-stream income was correspondingly more important for the former than the latter.' Bentley, Habib & Morrow 2007: 26. Also see: CHE 2006a: Section 6.2.
- 200 Private and public income from grants, donations and gifts; income from contract research, sale of goods and services, and commercialisation of intellectual property.
- 201 Stumpf 2007: Section 4.6.3.
- 202 See: HEIAAF submissions, e.g. TUT, p. 5; IF TUT, pp. 4-5; UP, p. 14; Venda, pp. 1-2; CHE 2004: Section 11.3.2; and Stumpf 2007: Section 4.6.
- 203 RSA 1995.
- 204 A number of professional bodies and Sector Education and Training Authorities (SETAs) also have - or claim - quality jurisdiction over universities, clouding the regulatory field somewhat.

- 205 The HEQC has capacity development as an explicit policy goal, although this is not included in its mandate as stipulated in the *Higher Education Act*. See RSA 1997: Section 5(c)(i)-(iii); and CHE 2001: Section 4 and 7.
- 206 The HEQC's mandate, goals and definition of quality are set out in full in: CHE 2001.
- 207 See: HEQC May 2007 (Submission), p. 4.
- 208 These other structures include the Certification Council for Technikon Education (SERTEC) (in the technikon sector from 1986), the Quality Promotion Unit of SAUVCA (in the university sector from 1995), SAQA and its structures (from 1995), and various professional councils which are in some cases statutory bodies of long standing.
- 209 The Task Team gained this impression from HEIAAF submissions and from the discussion at the CHE Consultative Conference in November 2007.
- 210 Such comments were made, for example, by participants in the Quality Assurance Commission of the CHE Consultative Conference in November 2007.
- 211 See e.g.: RU, p. 8; TUT, pp. 6-7; IF TUT, p. 5; Venda, p. 3; Nutesa, pp. 3-4.
- 212 Some views and information provided in this paragraph arise from a meeting between the Task Team and representatives of the HEQC Board, 23 March 2006.
- 213 HEQC May 2007 (Submission), p. 12.
- 214 See: SAQA, pp. 3-25.
- 215 See: HEQC, *passim*, especially pp. 5-6 and pp. 9-10.
- 216 RSA 2007.
- 217 As noted elsewhere in this report, potential ideas here include (c.f. Du Toit 2007; Bentley, Habib & Morrow 2006): professionalisation of the academic enterprise, a strong academic tenure system, a system-wide academic staff association, diversified institutional income sources kept in balance, institutional cultures that reward intellectual engagement and promote academic entrepreneurialism, etc.
- 218 The Task Team may have excluded themes and topics, or addressed them only in passing, for such reasons as: it has wished to ensure a manageable focus in this report; it has sought to address main issues highlighted in its terms of reference while highlighting associated or implicit issues where necessary; it has not always had sufficient material to hand, or sufficient time and resources, to pursue additional/suggested lines of enquiry; etc.
- 219 Most submissions have been posted with due permission on the CHE web site, which also includes a tabulated overview of their contents:
<http://www.che.ac.za/documents/d000114> (accessed August 2008). Submissions are referenced in this report by an abbreviation and page reference(s) in parenthesis.



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