PROMOTING GOOD GOVERNANCE IN SOUTH AFRICAN HIGHER EDUCATION

**Council on Higher Education Governance Task Team
Policy Report**

May 2002

Acknowledgement

ISBN: 1-919856-29-3

Published by the Council on Higher Education

Website http://www.che.org.za

Table of Contents

Table of Figures

PREFACE

As a result of increasing concern around the governance of higher education institutions, at the beginning of 2001 the Council on Higher Education (CHE) established a Task Team on governance at higher education institutions. The Governance Task Team was requested to undertake an investigation with three main objectives:

- To describe and analyse the state of governance at higher education institutions with special focus on the role of university councils, senates, institutional forums and management and the relationship between these four structures
- Establish whether, how effectively and with what consequences co-operative governance had been implemented at public higher education institutions in South Africa
- Make recommendations on how to improve efficiency, effectiveness and accountability in higher education governance.

The investigation was to be conducted within the framework of the principles, values and goals defined for higher education in various policy documents.

Arising out of his own concerns, at a meeting with the CHE in May 2001 the Minister of Education requested the CHE to advise him on the governance of higher education institutions by June 2002, giving new urgency to the work of the Task Team.

After the CHE approved a carefully designed project proposal, the Governance Task Team was extended to include non-CHE members with special expertise on and experience of higher education governance. Prof. Martin Hall of the Centre for Higher Education Development at the University of Cape Town and Ms. Ashley Symes, an independent consultant, were commissioned to conduct research under the supervision of the Task Team.

The Governance Task Team met as required to discuss and approve the methodology for the research, draft reports of the researchers and their final report. The actual work of the task team started in September, with a meeting to discuss the extent and methodology of the research proposed by the consultants.

This document contains the summary policy analysis, proposals and recommendations of the CHE on the governance of higher education institutions. It is the result of detailed empirical research and the considered analysis of South African higher education policy as well as international trends. A major Research Report that contains the details of the analysis is being published alongside this document and is available from the CHE in print and electronic forms.

The CHE views this document as a substantial contribution to the debate on governance and as a productive intervention at the level of governance policy. It welcomes stakeholder and scholarly engagement with this policy document and the Research Report.

I thank all Governance Task Team members for their tremendous contribution to the overall investigation and especially this document. I also extend the CHE's deep appreciation to Prof. Hall, Ms. Symes and their team for their excellent work. Finally, I must acknowledge the generous support of the British Department for International Department and the Ford Foundation for this project and this document.

At a moment of impending further transformation of higher education through the reconfiguration of the institutional landscape, good governance is and will be a crucial and vital element for successful

transformation. The CHE trusts that this report will contribute to a revitalisation of governance procedures and structures at higher education institutions and through this to the realisation of national policy goals.

The CHE invites submissions and responses to this document until 19 August 2002. Thereafter, the CHE will analyse all comments and prepare its formal proposals and advice to the Minister of Education on the governance of higher education institutions.

All comments must be addressed to Dr Lis Lange, Project Manager, Council on Higher Education, PO Box 13354, The Tramshed, 0126; or by email to lange.l@che.ac.za by 19 August 2002.

Prof. Nick Segal
Convenor, CHE Governance Task Team

INTRODUCTION

The Council on Higher Education Governance Task Team had three objectives:

- To describe and analyse the present state of governance in public higher education institutions in South Africa;
- To evaluate the concept of "co-operative governance";
- To make recommendations on how to improve efficiency, effectiveness and accountability in higher education governance.

In order to provide focus, the Task Team's scope was limited to the role of Councils, Senates and Institutional Forums, the relationship between these three structures, and the relationship between the public higher education institutions and the state. The public higher education sector was taken as comprising the 21 universities and 15 technikons that were operating in South Africa in 2001 and early 2002 (although the number of institutions will be reduced by mergers that have already been announced, and by further institutional combinations that will be announced in the future).

In meeting its brief, the Task Team commissioned a detailed study of current policy, comparative international practice, and governance in a sample of higher education institutions. The results of this study are available in a full research report, and underpin the Task Team's conclusions and recommendations.[1]

This report sets out the Task Team's conclusions and recommendations.

Chapter 2 summarises trends in South African higher education governance since 1994, in the context of international developments. The Task Team concludes that there has been a steady convergence between local imperatives in governance and international trends, with the result that many of the issues that face South African higher education are shared with other parts of the world.

Given its brief, the Task Team concentrates in particular on the concept of co-operative governance which, it notes, was an important part of the South African "settlement", enabling the basis of reconstruction of the deeply fractured system of education inherited from the apartheid years.

The Task Team identifies bicameral governance as the basis of South Africa's higher education system – the shared accountability for governance by lay members of Councils who act as trustees in the public interest, and the academic staff of universities and technikons, represented through Senates. While Council has authority over an institution, it must work in partnership with Senate in the academic area – a relationship that is clearly specified in current legislation. This bicameral arrangement defines the role of the Vice-Chancellor, who is accountable to both Council and Senate.

The Task Team notes that the Institutional Forum is established as a statutory, standing advisory committee. There is, however, confusion about the role of the Institutional Forum, which some still regard as a continuation of the Broad Transformation Forums of the early 1990s.

---

[1] Hall, M., A. Symes and T.M. Luescher (May 2002). Governance in South African Higher Education: Research Report to the Council on Higher Education. Pretoria, Council on Higher Education.

Finally, the Task Team reviews governance at the general level, noting that South Africa has a system of "state steering", in which the Minister of Education has a responsibility both to direct the higher education system in the national interest, and to respect the autonomy of individual institutions. The Task Team notes that recent amendments to the legislation have considerably strengthened the Minister's authority to intervene in the affairs of individual institutions.

Chapter 3 turns to the results of the study of a set of 12 higher education institutions, commissioned by the Task Team in order to inform its recommendations. This work involved a detailed study of each institution's governance documentation as well as site visits, during which wide-ranging interviews were conducted.

In order to treat the empirical material objectively it was necessary to identify a set of benchmarks that define the required qualities of efficient and effective governance and a set of criteria that can be used to determine the extent to which an institution meets these governance requirements. Using benchmarks derived from current policy and legislation, particularly the 1997 White Paper, the Task Team identifies four notional types of governance at the institutional level: institutions that have self-referential governance systems and shallow levels of delegation; institutions that are inward-looking in governance and which have developed systems of delegation; institutions that have participative governance systems that are well-tuned to the public interest, but limited delegation of responsibility; and those that are both attuned to the public interest and which have strong systems of delegated authority.

In turn, these notional types of governance have been matched with the case studies, allowing the Task Team to evaluate the extent to which the governance of individual institutions conforms to policy for public higher education as a whole. One cluster of institutions can be described as "contested", and either vulnerable to crisis, or already in crisis. A second group is "management-focused" and these institutions tend to be self-referential; while well-managed, they tend to be out of touch with the broader imperatives of public policy. In contrast, "democratic" institutions have broad participation of stakeholders in governance, but at the price of shallow systems of delegation and cumbersome management processes. "Democratic, well-managed institutions" combine the strengths of participatory governance with effective management systems.

The Task Team notes that, whatever the style of institutional governance, its effectiveness rests ultimately on the availability and ability of individuals to participate in governance. Consequently, the Task Team recommends that institutions give particular attention to building individual's capacity to participate in governance structures.

Chapter 4 considers the structures of governance that are specified in the legislation – Senate, Council and the Institutional Forum, and investigates how effective these are.

The Task Team notes that Senates, while critical to the bicameral system of governance, tend to be reactive and slow to take the lead in advancing the academic needs of the sector. The Task Team is concerned that this is undermining the critical balance in higher education governance, and recommends that institutions review the composition and functioning of their Senates.

In the case of Councils, the Task Team notes the critical role of trusteeship, and recommends that attention be given to developing a better understanding of what fiduciary responsibility entails. The Task Team examines the question of whether Council members should be remunerated, and argues that there is a case for devising a system to acknowledge the economic value of the time that lay council members give to the institution in their role as trustees. The Task Team makes specific recommendations for the basis of such remuneration and its regulation.

Given the central importance of fiduciary responsibility for the governance of higher education, the Task Team is particularly concerned that an unacceptably high proportion of Councils are either in a condition of crisis which has gridlocked procedures, or exhibit symptoms that indicate that crises could develop. In seeking ways to redress this situation, the Task Team finds that a number of conditions contribute notably to successful Councils: strong identification with the institution, a moderately-sized membership, clear and effective delegation of responsibilities without interference in the management responsibilities of the Executive, and strong Audit and Executive Committees of Council. The Task Team makes a number of recommendations that, it believes, will enable critical improvements in the quality of governance at the Council level.

As already noted, the role of the Institutional Forum is widely misunderstood. The study commissioned by the Task Team indicates that few Institutional Forums are functioning effectively, and there is little enthusiasm for their work. However, the Task Team believes that the Institutional Forum can, and should, play a key role in higher education governance. When taken in conjunction with the requirement that members of Council exercise their fiduciary responsibilities in the interests of the institution, rather than in furtherance of the objectives of the constituencies from which they are drawn, the Institutional Forum can be the place where student bodies, staff associations, management groups and academic bodies meet as stakeholder groups or as mandated organisations in order to develop policy options for Council to consider. The Task Team makes a number of recommendations that will strengthen Institutional Forums and help them to fulfil this role.

Chapter 5 returns to the relationship between the higher education sector as a whole and the state, represented by the Minister of Education. The Task Team is of the view that there is a need to renew the general sense of consensus regarding the principles of higher education governance, given that much has changed since the work of the National Commission on Higher Education in the mid-1990s. In particular, the concept of "co-operative governance" has lost much of its value as the agenda for social justice through education has been complicated by more market-related goals, changing state policies and new players in the education field, particularly private education providers.

In contributing to this process of reconceptualisation, the Task Team proposes the concept of "conditional autonomy" – a balance between the right and responsibility of each institution to determine its own policies, and the obligation of the state to steer the higher education system in the national interest.

The Task Team believes that there would be considerable benefit in a continuing debate about the vision and principles that determine policy in public higher education in South Africa.

Finally, the Task Team considers the case for a Code of Governance that will help in translating the principles of good governance into everyday practice, and recommends that attention be given to developing such a Code.

Chapter 6 brings together the Task Team's recommendations in summary form, and according to the type of action required.

1   Higher Education Governance

1.1   Introduction

This chapter sets the stage by reviewing the legislative framework for higher education governance in South Africa. From a broad consideration of international practice and South Africa's circumstances in the apartheid years, the focus shifts to the founding work of the National Commission on Higher Education, the 1997 White Paper and Higher Education Act, and the principles of co-operative and bicameral governance that underpin this country's system of state steering. In turn, this legislation and policy defines the roles of Senates, Councils and Institutional Forums, as well as governance at the system level and the extent to which the state can, and should, intervene in the affairs of individual institutions.

1.2   The Legislative Framework

The Task Team's review of international trends in higher education governance has shown a shift in the emphases on governance. From a concern with the identity and definition of governors and beneficiaries, and the consequent inclusion of previously marginalised groups in the higher education system and in governance in the 1960s and 1970s, the debate has turned to one about the implications, benefits and outcomes of higher education for society at large. A key objective of the new debates is to ensure the efficiency of institutions to deliver with regards to teaching and research output. Fiscal tools are used to exert pressure on institutions and bring about change in the system, be that directly by means of terms and conditions attached to public funding (including funds from research and funding councils and from parastatals), or indirectly by exposing the institutions increasingly to the forces of the market (for example, by increasing the share of private funding, including corporate executives in lay councils, and opening higher education up for private competitors).

South African higher education policy has, in broad terms, followed these trends, albeit with a different timeframe, and within this country's particular political history. Higher education policy had been an area of debate in the liberation movement in the late 1980s, in the period between 1990 and the first democratic elections in 1994, and in the initial years of national reconstruction after 1994. This was reflected in the work of the National Commission on Higher Education, which reported in 1996, and which was strongly influenced by principles of social justice and democratic participation, underlying in turn key concepts such as "co-operative governance". In the following year, legislation formed the basis for the creation of a single, national, co-ordinated system of education in place of the 15 independent structures under apartheid. There was a new approach to planning with a programme-based approach and central budgeting. Co-ordination across the system was to be achieved by a single national qualification system.

The subsequent translation of policy into practice marked the steady emergence of more familiar global themes. Thus while the major post-apartheid challenges of access and equity remain, current South African debates about governance mirror the issues that are current more generally in higher education and, in particular, the concern to develop appropriate models of governance at the institutional level, and appropriate relationships between the state and the higher education sector as a whole.

The current system of governance for South African higher education is formally constituted in the Higher Education Act of 1997, as amended in 1999, 2000 and 2001. Current policy which both informs and amplifies the legislation, is set out in the 1997 White Paper on Higher Education, and the 2001 National Plan for Higher Education.

It is not within the Task Team's brief to review the efficacy of current legislation governing higher education. However, it is evident from the research that underpins the analysis presented in this report that Institutional Statutes play a key role in interpreting the broad brushstrokes of higher education policy into the governance practices of individual institutions. A detailed review of the Institutional Statutes of all 36 public higher education institutions in South Africa (presented in the research report that accompanies this report) has shown that there are many inconsistencies and redundancies, that in some cases Institutional Statutes have been subject to many minor amendments that have not been consolidated into revised documentation, and that some Statutes seem not to comply with legislative requirements.

The Task Team notes that the Minister has published a Standard Institutional Statute[2] with a view to assisting institutions in streamlining their own Statutes and in preparation for possible institutional mergers. However, the Task Team believes that greater acknowledgement needs to be given to the importance of Institutional Statutes in determining the practice of governance, that greater attention should be given to ensuring compliance of Institutional Statutes with both legislation and policy and that, in the interests of transparency, amendments to Institutional Statutes should be consolidated to produce clear and concise procedures that are publicly available.

Recommendation 1: Institutional Statutes

Greater acknowledgement is due by government and institutions of the significance of Institutional Statutes as a governance device, recognising also that the Ministry is accountable for ensuring that Statutes comply with the policy and legislative framework. Public higher education institutions should be required to review and revise their Institutional Statutes in terms of the Higher Education Act and its amendments, as well as to publish Statutes consolidating amendments from time to time.

1.3 Co-operative Governance

The most comprehensive explication of co-operative governance is Chapter 7 of the National Commission on Higher Education's final report. The National Commission proposes its philosophy of co-operative governance as a version of the "state supervision" model that has been well tried in a number of other countries. In state supervision systems (as distinct from either state control or state interference systems), "the state sees its task as supervising the higher education system to ensure academic quality and maintain a certain level of accountability …In this model the government is an arbiter who watches the rules of the game played by relatively autonomous players and who changes the rules when the game no longer obtains satisfactory results".[3] However, the National Commission also recognised that the necessary conditions for an "imported" model of state supervision were not all present. South African higher education was characterised by a weakly integrated higher education system, weakly developed planning and regulative structures, low levels of mutual trust and the difficulties that institutions faced in placing common interests above individual interests. These circumstances required "distinguishing features" in the South African version of state supervision and, particularly, a wide range of "governance mechanisms". Thus co-operative governance requires that "the government does not become the single agent, but it will have a range of roles and obligations, in a variety of co-ordinated arrangements". This, in turn, is to recognise that there will be tensions, and that these must be balanced with commitment: "for co-operative governance to succeed all stakeholders need to commit themselves

---

[2] This Standard Institutional Statute was published for comment in Gazette No. 23061, Notice No. 85 of 25/01/2002.

[3] National Commission on Higher Education (NCHE) (1996). Report: A Framework for Transformation. Pretoria, HSRC Publications: 175. Hereafter referred to as NCHE 1996.

to a code of conduct based on the acceptance of joint responsibility for the future of higher education in South Africa".[4]

The National Commission's guiding philosophy was given expression – albeit more briefly – in the 1997 White Paper. In pursuing "co-operation and partnerships in governance", "successful policy must reconceptualise the relationship between higher education and the state, civil society, and stakeholders, and among institutions. It must also create an enabling institutional environment and culture that is sensitive to and affirms diversity, promotes reconciliation and respect for human life, protects the dignity of individuals from racial and sexual harassment, and rejects all other forms of violent behaviour". This is amplified further as follows: "the principle of democratisation requires that governance of the system of higher education and of individual institutions should be democratic, representative and participatory and characterised by mutual respect, tolerance and the maintenance of a well-ordered and peaceful community life. Structures and procedures should ensure that those affected by decisions have a say in making them, either directly or through elected representatives. It requires that decision-making processes at the systemic, institutional and departmental levels are transparent, and that those taking and implementing decisions are accountable for the manner in which they perform their duties and use resources".[5]

Co-operative governance is, then, a social contract in which diverse parties agree to suspend particular interests in the interests of reconstruction and development. Working within the broader framework of reconstruction and development which had enabled effective negotiation of South Africa's new constitution, the National Commission on Higher Education was seeking a way to resolve the campus conflicts that were disabling higher education across the country, to move forward rapidly in transforming institutions, and to instil management practices without violating academic principles.

1.4   The Bicameral Principle

In South African higher education, the broad principles of co-operative governance are given practical expression through the respective responsibilities of two traditional bodies, each institution's Council and Senate; through a new body, the Institutional Forum; and through the interrelationship of theses three governance agencies. Their role is underpinned by the dual principles of institutional autonomy and academic freedom. Thus the Higher Education Act states that it is "desirable for higher education institutions to enjoy freedom and autonomy in their relationship with the State within the context of public accountability and the national need for advanced skills and scientific knowledge".[6] Academic freedom is asserted in the 1997 White Paper: "the principle of academic freedom implies the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. It is a precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge. Academic freedom and scientific inquiry are fundamental rights protected by the Constitution".[7]

Following international practice, this is best described as a bicameral approach to governance, in which primary accountability is shared between lay members of Council, acting as trustees in the public interest, and professional academics in the Senate sector (the Senate and Faculty Boards), who are responsible for

---

[4] NCHE 1996: 177.

[5] Department of Education (1997). "A Programme for the Transformation of Higher Education". Education White Paper 3. Government Gazette No. 18207, 15 August 1997. Pretoria, Government Printers: Sections 1.13 and 1.19. Hereinafter referred to as White Paper 1997.

[6] Republic of South Africa (1997). Higher Education Act No. 101 of 1997. Government Gazette No. 18515, Notice 1655, 19 December 1997. Pretoria, Government Printers: Preamble. Hereafter referred to as Higher Education Act 1997.

[7] White Paper 1997: Section 1.23.

the curriculum, assessment, research and other key academic activities. This is given practical meaning by the clauses in the Higher Education Act that define the relationship between Councils and Senates.

Council has overall responsibility for a public higher education institution: "The council of a public higher education institution must govern the public higher education institution, subject to this Act, any other law and the institutional statute".[8] Again, this is amplified in the White Paper: "Councils are the highest decision-making bodies of public institutions. They are responsible for the good order and governance of institutions and for their mission, financial policy, performance, quality and reputation."[9] For its part, the Senate is responsible for research and teaching – the core purposes of higher education: "the senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council".[10]

The fact that Councils have overall accountability for their institutions does not mean that they can override Senates on academic issues in the way that a committee has authority over its sub-committees. The legislation distinguishes carefully between matters that Council may decide after "consultation" with Senates (meaning that Senate's view must be heard, but need not necessarily be acted upon), and matters that can only be resolved if Senate "concurs" with Council (meaning that Senate has an effective veto over a course of action). Thus "academic functions" – "including the studies, instruction and examinations of students and research" - specified in an Institutional Statute, can only be amended by a Council with Senate's concurrence.[11] And whereas Council must determine the overall admission policy for an institution in consultation with Senate, Council cannot decide on specific admission criteria, or criteria for readmission, without Senate's agreement.[12]

These small words have large implications, given that all public higher education institutions in South Africa are teaching institutions, that their budgets are largely determined by student fee revenues and state subsidies, and that their reputations (and therefore, ultimately, their ability to attract students) depend on the threshold requirements for specific programmes of study, curricula, and the effectiveness of assessment and examination systems in reflecting what students have learned. Councils cannot govern effectively without the partnership of Senates and Senates, in turn, have the constitutionally established right to expect no "outside interference, censure or obstacles in the pursuit and practice of academic work".[13]

This bicameral tension between the respective roles of Council and Senate in governance serves, in turn, to define the particular role of the Vice-Chancellor and an institution's Executive.[14] Here, legislation and policy offer little explicit guidance, and the Act simply specifies that "the principal of a public higher education institution is responsible for the management and administration of the public higher education institution". Council may delegate many of its powers and duties "to the other internal structures, the principal or any other employee of the public higher education institution concerned."[15] In effect, however, the governance role of the Vice-Chancellor is defined by the shared accountabilities of the Council and Senate. One the one hand, the Vice-Chancellor is appointed by Council, and is accountable to Council for running the institution. In this respect, the role of the Vice-Chancellor is comparable with the relationship between the Board of a publicly listed company and its Chief Executive Officer. But on

---

[8] Higher Education Act 1997: Section 27 (1).

[9] White Paper 1997: Section 3.34.

[10] Higher Education Act 1997: Section 28(1).

[11] Higher Education Act 1997: Section 32.

[12] Higher Education Act 1997: Section 37.

[13] White Paper 1997: Section 1.23.

[14] In this report, the term "Vice-Chancellor" includes "Principal", and the term "Executive" is used to designate the senior management group, including the Vice-Chancellor or Principal, of a university or technikon.

[15] Higher Education Act 1997: Section 30; Higher Education Act 1997: Section 68.

the other hand, the Vice-Chancellor is also Chair of Senate, and is therefore obliged to uphold the interests of Senate. In situations where Senate is not prepared to concur with Council in academic matters, or where Senate feels it necessary to defend an issue of academic freedom without the support of Council, or against Council, the full complexity of the Vice-Chancellor's position becomes apparent. One other source of tension in the relations between Senate, the Vice-Chancellor and the Council is the issue of the resource implications of Senate's academic decisions, which may not be taken into account by this body.

1.5   Council and the Institutional Forum

In contrast with systems in which there is direct state control of higher education – where policies are determined politically by government and where there is a central or regional bureaucracy that controls the major strands of administration – state supervision systems place a primary emphasis on the role of the Council of each institution. Despite (or because of) its philosophy of co-operative governance and the then-prevalent importance of transitional forums that claimed legitimacy by bypassing apartheid-era authorities, the National Commission on Higher Education was unambiguous about the role of Councils, proposing that "councils should remain the highest decision-making bodies in institutions". As such, they "should take ultimate responsibility for the institutional mission, the financial position of the institution and for issues of public integrity … the academic character of the institution and its strategy and operational plans".[16]

The 1997 Higher Education Act gives effect to this policy by stipulating a general framework for the composition of Councils. The Act specifies that each of the internal constituencies identified by the National Commission (managers, students and staff) must be represented on Council. In addition – and in keeping with the bicameral principle of shared accountability - staff representation must include elected representatives of Senate and elected representatives of academic employees. There must also be elected representatives of "employees other than academic employees". The Act specifies that, together, these internal constituencies cannot comprise more than 40% of the total membership of the Council.

The legislation gives individual institutions considerable leeway (via the Institutional Statute) in constituting the external membership of Council, specifying only that direct Ministerial appointments to Council must be limited to a maximum of five members, thereby preventing Councils from being controlled by state representatives; that members of the Council "must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution concerned"; and that they "must participate in the deliberations of the council in the best interests of the public higher education institution concerned".[17] This provision clarifies that Council members may be considered as representative of their constituencies in terms of the category from which they are drawn: they reflect a range of backgrounds, equity profiles, competencies and perspectives, but do not act on Council as mandated stakeholder representatives. The Higher Education Amendment Act of 1999 specifies that both the Chair and the Vice-Chair of Council must be elected from among the external members.[18] Because the Act requires that there be a minimum of six internal members of Council, and that, together, they are not more than 40% of the total membership, the legislation does not allow, in practice, any Council to consist of fewer than 15 members. Because the legislation allows both the number of members in the internal categories to be specified in the Institutional Statute, as well as the appointment

---

[16] NCHE 1996: Proposal 6 and 201.

[17] Higher Education Act 1997: Section 27.

[18] Republic of South Africa (1999). Higher Education Amendment Act No. 55 of 1999. Government Gazette No. 20651, Notice 1399, 19 November 2000. Pretoria, Government Printers: Section 3(a). Hereafter referred to as Higher Education Amendment Act 1999. The Amendment Act also stipulates in Section 3(b) that the Registrar must be the Secretary of Council.

of "such additional persons as may be determined by the institutional statute", there is currently no maximum limit to the size of Councils.

In seeking to promote the transformation of higher education, the National Commission on Higher Education recognised that insisting that Councils include a range of internal constituencies and a majority of external members may not be sufficient, and that there would be an ongoing requirement for extensive debate and negotiation across each institution as a whole. Consequently, the Commission proposed the introduction of Institutional Forums that "would be advisory bodies for restructuring and innovation where representatives of all stakeholders could meet, identify problems, mediate interests and advise relevant structures such as the SRC, senate and council". [19]

The 1997 White Paper accepted this proposal as policy, identifying the functions of Institutional Forums as "interpreting the new national policy framework; identifying and agreeing on problem areas to be addressed; involvement in selecting candidates for top management positions; setting the change agenda, including the race and gender equity plans; improving the institutional culture; providing a forum for mediating interests and settling disputes; participating in reforming governance structures; developing and negotiating a code of conduct; monitoring and assessing change".[20] Section 31 of the Higher Education Act gives effect to this policy by specifying that (as with the composition of Council), each university or technikon's Institutional Forum must include representatives of management, Council, Senate, academic and non-academic employees and students. Although membership may include "any other category determined by the institutional statute", there is no requirement for external representation. Consequently, an Institutional Forum must have more than six members but there is no maximum limit to its size.

The Task Team believes that it is important to be clear about the formal role of the Institutional Forum, and here the political and social context in which current policy was framed is significant. As has been mentioned – and as was emphasised by the National Commission – in the early 1990s forums were important in a range of areas of civil society and were part of the negotiating mechanisms that permitted the transition from apartheid structures to democratic government. In essence, such forums bypassed authorities that were still established in terms of apartheid legislation and functioned as transitional bodies during the period that new legislation (and the new South African Constitution) was framed. Broad Transformation Forums (and similarly named structures) played this role in the educational sphere.

The importance of Broad Transformation Forums was acknowledged both by the National Commission and by the government in framing formal policy for higher education. However, the 1997 Higher Education Act drew a clear line between them and the Institutional Forums that were to be a required part of institutional governance after 1997. Institutional Forums do not have decision-making powers, and cannot override the decisions made by Senates and Councils. While they can – and are expected to - have a major influence on transformation, this must be achieved through an advisory role. Section 31 of the Act specifies that the Institutional Forum must "advise" Council, but does not specify either that Council must seek, or heed, the Institutional Forum's advice. Simply put, Institutional Forums are statutorily constituted standing committees of Council. While an Institutional Forum must advise Council broadly ("on issues affecting the institution"), the Act directs its attention to five specific areas: the implementation of legislation and national policy, race and gender equity, the selection of candidates for senior management positions, codes of conduct, mediation and dispute resolution procedures, and "the fostering of an institutional culture which promotes tolerance and respect for fundamental human rights and creates an appropriate environment for teaching, research and learning".[21]

---

[19] NCHE 1996: Proposal 8 and page 204.
[20] White Paper 1997: Section 3.38.
[21] Higher Education Act 1997: Section 31.

1.6   Senate

The Higher Education Act specifies that "the senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council".[22] The Act stipulates that each Senate must include representatives of Council, non-academic employees and representatives of the Students' Representative Council. More than 50% of the membership, however, must comprise "academic employees of the public higher education institution". The 1999 Higher Education Amendment Act stipulates that the Vice-Chancellor must be the chair of Senate.[23]

Beyond this, the Act leaves the structuring of Senates up to individual institutions, via their Institutional Statutes. For instance, all academic staff can be members of Senate itself, or the academic majority on Senate could be elected by the academic staff or by the whole university community. Alternatively, an Institutional Statute could define a managerial model: academic members of Senate would be those academics who hold specific office only, rather than academics of senior standing on individual merit. Then again, institutions could opt for a traditionalist model, in which all professors are members of Senate by virtue of their individual standing, and are joined by those non-professorial academic staff who are heads of departments and other academic units.

1.7   Governance at the System Level

Higher education governance systems such as South Africa's require that government "steers" the higher education system, rather than controlling it, or interfering in areas where agreed policy is to allow autonomy. This does not, though, mean that all participants in governance have equal authority and responsibilities. The 1997 "settlement" does not, for example, allow that the student sector can have equal authority to the Council ("co-governance", as urged by some Broad Transformation Forums prior to 1997). Nor does Senate have the same breadth of authority as Council, while Institutional Forums have advisory functions, rather than executive authority. Consequently co-operative governance as implemented in South African higher education should be understood as a system of delineated powers and constraints which is hierarchical, but which also incorporates checks and balances that are designed to preserve the degree of institutional autonomy that is necessary for academic freedom in teaching and research.

Seen in this way, the 1997 policy and legislation makes it clear that the state, in the form of the Minister of Education, is at the head of this hierarchy of authority and responsibility. The White Paper specifies that government should have a "proactive, guiding and constructive role" in higher education.[24] It also makes it clear that this role justifies direct intervention when this is in the interests of ensuring transformation or preventing mismanagement: "there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defence of mismanagement". Indeed, the policy specifies that the state has an obligation to intervene in such circumstances, in the interests of public accountability: "institutional autonomy is therefore inextricably linked to the demands of public accountability".[25]

The White Paper interprets public accountability as comprising three imperatives. First, institutions must account for their expenditure of public funds. Second, universities and technikons must make public the results they have achieved in spending public money. And third, institutions should "demonstrate how

---

[22] Higher Education Act 1997: Section 28(1).

[23] Higher Education Act 1997: Section 28; Higher Education Amendment Act 1999: Section 3(b).

[24] White Paper 1997: Section 3.7.

[25] White Paper 1997: Section 1.24.

they have met national policy goals and priorities".[26] Taken within the context of a commitment to co-operative governance and institutional autonomy, this means that the Minister cannot intervene on a whim; intervention can only be justified on fiduciary grounds, or if a public higher education institution is evidently not pursuing the policies for tertiary education which form part of the government's mandate.

The 1997 Higher Education Act provides the Minister with a number of instruments with which to steer the tertiary sector. The major consultative mechanism is the Council on Higher Education and, in particular, its annual consultative conference. The Minister may investigate the affairs of an institution directly if there are indications of "financial or other maladministration of a serious nature", factors that "seriously undermine the effective functioning of the public higher education institution" or, more generally, such a direct investigation is in "the interests of higher education in an open and democratic society". Such investigations must be carried out by an Independent Assessor selected from a panel appointed by the Council on Higher Education, and the Independent Assessor's report must be published in the Government Gazette.[27]

The 1997 Act gives the Minister the more extensive powers to "merge two or more public higher education institutions into a single public higher education institution", or to close an institution after consultation with the Council on Higher Education.[28] However, it is clear that the wish was for a governance system in which higher education institutions participate voluntarily – the call for unity in the cause of national reconstruction and development which underpinned the recommendations of the 1996 National Commission on Higher Education and the concept of "co-operative governance". It is equally clear that, in the Ministry's view, such co-operation has not been forthcoming. Thus the 2001 National Plan for Higher Education asserts that "voluntarism … has failed to encourage institutional collaboration", and that policy has been undermined by the competitiveness of individual institutions: "the increased competition between higher education institutions has further fragmented and exacerbated the inequalities within the higher education system".[29]

Consistent with this view, the state has introduced a series of amendments to the 1997 Higher Education Act which, taken together, increase the Minister's powers of direct intervention to a considerable degree. Thus the Higher Education Amendment Act (1999) allows for the appointment of an Administrator to a higher education institution if an audit of the financial records of an institution, or the report of an Independent Assessor, reveals "financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution". Initially limited to an appointment for two consecutive six-month periods, a further amendment in 2001 allows an Administrator to be appointed indefinitely.[30]

Other amendments allow the Minister to direct the policy and practices of an individual institution by direct intervention. Thus the Higher Education Amendment Act of 2000 allows the Minister to "determine the scope and range of operations" of a university or technikon "in the interests of the higher education system as a whole". More specifically, an additional amendment in the following year allows the

---

[26] White Paper 1997: Section 1.25.

[27] Higher Education Act 1997: Sections 44, 45 and 47.

[28] Higher Education Act 1997: Sections 23 and 24.

[29] Ministry of Education (2001). National Plan for Higher Education. Pretoria, Ministry of Education: Sections 6.4, 1.3. Hereafter referred to as NPHE 2001.

[30] Higher Education Amendment Act 1999: Section 6; Republic of South Africa (2001). Higher Education Amendment Act No. 23 of 2001. Government Gazette No. 22808, Notice 1104, 02 November 2001. Pretoria, Government Printers: Section 15. Hereafter referred to as Higher Education Amendment Act 2001.

Minister to define "the physical location of an institution … where the institution carries out its teaching and research activities".[31]

Accompanying policy makes it clear that if the Ministry believes that direct intervention is required: "the Ministry will not … hesitate in certain limited circumstances to intervene directly in the higher education system in order to ensure stability and sustainability. The intervention by the Ministry to bring stability to institutions in crisis through the appointment of administrators, for example, at UNITRA [the University of the Transkei] and the University of the North, is a case in point. Equally, the Ministry will not hesitate to intervene to ensure the implementation of national policy and transformation goals should this prove necessary … The Ministry is acutely aware of the delicate balance that requires to be maintained between institutional autonomy and public accountability. It is committed to maintaining this balance. The Ministry believes that the solution to finding the appropriate balance must be determined in the context of our history and our future needs. The Ministry will not however, allow institutional autonomy to be used as a weapon to prevent change and transformation".[32]

In publishing its 2001 National Plan for Higher Education, the government has indicated that the process of consultation that began with the initiation of the National Commission on Higher Education six years earlier has now ended. The National Working Group has subsequently provided a basis for the reconfiguration of public higher education institutions, and implementation of these or related proposals will demand extensive intervention by the Ministry.[33]

---

[31] Republic of South Africa (2000). Higher Education Amendment Act No. 54 of 2000. Government Gazette No. 21784, Notice 1196, 22 November 2000. Pretoria, Government Printers: Section 2; Higher Education Amendment Act 2001: Section 24.

[32] NPHE 2001: Section 1.5.

[33] Department of Education (2001). The Restructuring of the Higher Education System in South Africa. Pretoria, Department of Education.

2 ANALYSING AND EVALUATING GOVERNANCE PRACTICE

2.1 Introduction

This chapter turns from the consideration of the legislative and policy framework for higher education to the challenge of evaluating governance in practice. A methodology for measuring institutional performance against benchmarks for good practice is described. This forms the basis for a grid of notional types of governance, against which the realities of institutional circumstances can be set.

2.2 Methodology

Developing a methodology appropriate to the Task Team's objectives required an understanding of the dimensions of governance in South African higher education institutions on a day-by-day basis. The Task Team decided to focus on a subset of 12 institutions, chosen to be as representative as possible of the diversity in South African public higher education, taking into account the double historical divide of language and segregation by race, as well as geographical location. The institutions studied in detail included: four small technikons, with fewer than 10 000 students; three small universities, with fewer than 10 000 students; three medium universities, with between 10 000 and 20 000 students; and two large universities, with more than 20 000 students.

In each case, Senate, Council and Institutional Forum agendas and minutes were requested (and given) for the preceding 18 months, as well as other planning and policy documents of relevance. Each Institutional Statute was studied in detail and institutions were profiled from their three-year rolling plans, as submitted to the Department of Education. Each institution was visited and representatives from key constituencies interviewed, sometimes at length: Chairs and members of Council, Senate representatives, members of the Institutional Forum, student leadership, and Vice-Chancellors and other members of the Executive. In some cases these were individual interviews, while in other cases they were focus group discussions.

In order to evaluate the results of these institutional profiles, the Task Team required a set of benchmarks for good governance practice. These were derived from a combination of general principles of governance, international trends, and from specific policy imperatives that provide the governance framework for higher education in South Africa.

Firstly, most of the needs and challenges identified in the White Paper – and the project of transformation in general – are facilitated by the degree of representivity[34] in the governance structures of each institution. The more self-referential the governance system – both beyond the institution and in terms of its internal constituencies – the more difficult it is likely to become to appreciate the needs of economic development and of civil society in general. Conversely, the more representative a governance system, the more likely is the institution to be aligned with the public interest.

Secondly, goals such as revised student recruitment and enrolment policies, achieving equity targets, curriculum changes and improved and redirected research capacity, require organisational effectiveness. Given the nature of higher education – and the general recognition that participation is central to good

---

[34] Representivity here *does not* mean functioning as a representative of any constituency or as a delegate with a mandate from a constituency. The term "representivity" is used here as shorthand for the principle of democratisation as captured in Section 1.19 of the 1997 White Paper: "the principle of democratisation requires that governance of the system of higher education and of individual institutions should be democratic, representative and participatory".

governance - such efficacy is likely to require effective delegation of authority and of responsibilities. The more an institution resists delegation, holding day-by-day decision-making and monitoring functions in top-level structures such as Senates, Councils and their Executive Committees, the less likely it is that the institution will be able to implement its policies effectively.

Thirdly, the ability of an institution to translate its governance design into efficient, day-by-day practice will depend on its implementation capacity – the capacity within the institution to give effect to decisions that are outcomes of the governance process. Implementation capacity is a quality of particular importance in South African higher education, given the legacy of inequalities from the apartheid years. Apart from the major discrepancies in funding across the system, institutions have had to carry significantly different burdens in meeting the contrasting needs of students entering higher education from a highly varied secondary school system, thus redirecting resources that could have been used to enhance institutional capacity to other needs. Redressing such inequities is a theme that runs throughout higher education policy.

These criteria for governance can be set as axes that define differing patterns of institutional governance. Plotting the degree of representivity in governance against the degree of delegation of authority yields four notional types of institutional arrangement:

- Institutions that have self-referential governance systems and shallow levels of delegation;
- Institutions that are inward-looking in governance and which have developed systems of delegation;
- Institutions that have representative governance systems that are well-tuned to the public interest, but limited delegation of responsibility; and
- Institutions that are both attuned to the public interest and which have strong systems of delegated authority.

These four notional types of governance arrangements are illustrated in Figure 1.
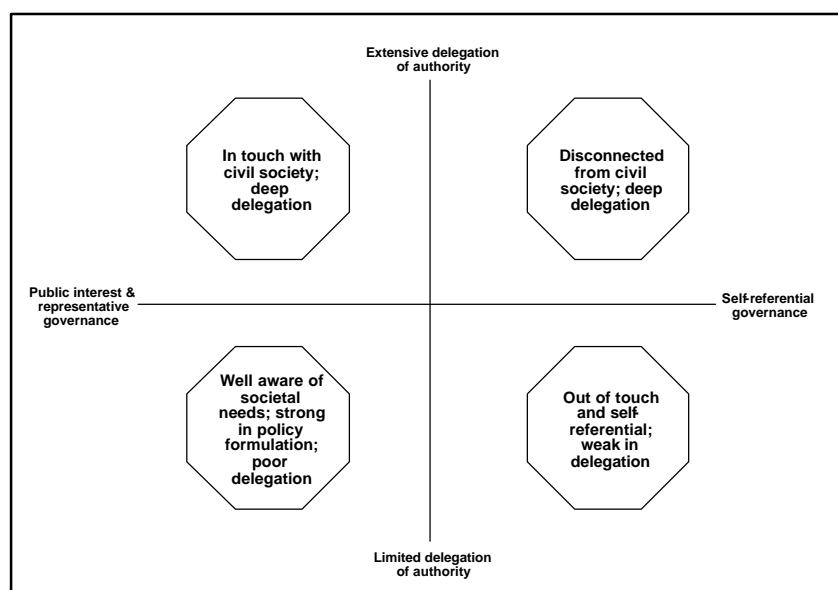
Figure 1: Governance Conditions

In each case, the ability of an institution to translate its governance structure into day-by-day practice will be affected by the third quality – implementation capacity. Thus an institution's governance system may have the structural characteristics advocated in current policy – representative governance and deep

systems of delegation – but may lack the capacity to translate design into practice. Similarly, an institution may be self-referential and have an over-concentration of responsibilities, but may have the implementation capacity to get by anyway.

2.3   Organisational Types and Capacities

In order to match the 12 case studies in its sample to the governance types illustrated in Figure 1, the Task Team adopted a comprehensive rating system, described in full in the research report for this project. This resulted in the identification of four categories of governance, as manifested in institutional practice:

- "Contested institutions", in which there is limited representivity in governance and poorly developed systems of delegation. These tend to be institutions in crisis, or institutions that are vulnerable to crisis if their present leadership loses legitimacy. They are a particular consequence of South Africa's history, in that issues inherited from the apartheid years are still dominant.

- "Management-focused institutions": universities and technikons in this group share a focus on management issues, either because they have made the explicit decision to adopt models from the corporate sector, or because systems of internal organisation that were better suited to previous years now present substantial obstacles to institutional adaptation. These institutions have inwardly-focused systems of governance with well-developed capacity for administration and the delegation of authority. They are at risk from factional interests pursuing sectoral issues that are not in the interests of the institution as a whole.

- "Democratic institutions" combine broad representivity with shallow systems of delegation. These institutions are the classic defenders of academic participation in governance. However, their poorly developed formal systems of delegation make them vulnerable to institutional gridlock if consensus cannot be reached on key issues.

- "Democratic, well-managed institutions". Institutions in this category have achieved an impressive record in governance through combining the strengths of participatory governance with the advantages of well-developed, formal systems of delegation of authority and responsibility.

Some aspects of governance are apparent in all types of institutions: first, the inter-dependency of governance: weakness in any one structure of governance weakens institutional governance as a whole; second, the dependency of good governance upon the capacity of individuals to participate fully. Whatever the status of the institution - whether a historically advantaged institution with a long tradition of participatory governance, or a newer university or technikon struggling to realign itself in the wake of apartheid education - the health of the organs of governance depends on the ability of individuals to prepare effectively for meetings, analyse the evidence before them, and apply their minds in a consistent way in the best interests of their institutions.

The Task Team believes that the capacity to participate in governance cannot merely be assumed, and that programmes may need to be put in place at each institution to ensure that participation can be widened and maintained.

Recommendation 2: Building Governance Capacity at Institutional Level

Participation in governance at institutional level takes place in a variety of ways, including participation by individuals in their own capacity (e.g. Council), and as mandated representatives of a stakeholder group (e.g. Institutional Forum). Public higher education institutions need to assess the capacity needs of all those participating in governance and to develop approaches for addressing these. In particular, mechanisms should be found for building the capacity of students to play their role in institutional governance.

It is important to determine the bases of good governance and the study of 12 institutions suggests that well-governed institutions will share a range of characteristics, as illustrated in Figure 2.
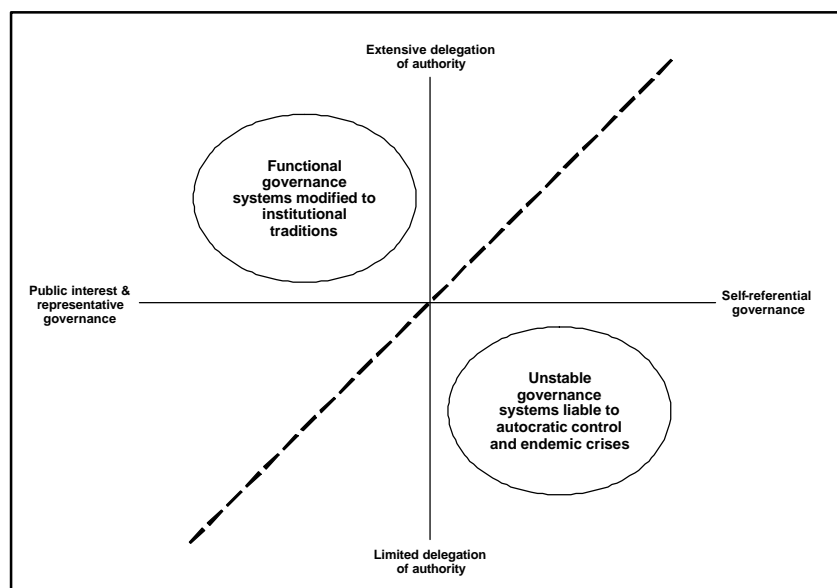
Figure 2: Balancing Effectiveness and Efficiency in Governance

The Task Team believes that there is a range of ways in which effectiveness and efficiency can be balanced. Well-governed institutions will tend to fall "above the line" in Figure 2, and will have Councils that encompass a broad range of competencies and relevant perspectives and that are capable to see both the interest of the institution and the public good; Senates and Institutional Forums that well reflect the range of interests within the institution; clear and well-defined systems of delegated responsibilities, authorities and accountabilities, allowing the effective implementation of policies; and adequate administrative capacity to ensure that principles can be translated into day-by-day practice.

3 GOVERNANCE IN PRACTICE

3.1 Introduction

In this chapter, attention shifts from the performance of individual institutions to the nature of the principal agencies of governance that are legislated for all institutions: the Senate, Council and Institutional Forum. Issues considered include the nature of trusteeship; questions as to whether members of Councils should be remunerated, and whether specific changes are necessary to improve the performance of Councils; and the role of the Institutional Forum as a location for the proper representation of stakeholder groups and formally mandated student and staff associations.

3.2 Senate

The Task Team believes that the current role of the Senate, as the highest authority in an institution for academic matters, is essential to a viable higher education system. While maintaining standards and guarding against the erosion of academic freedom, Senates should also be forward-looking in anticipating new opportunities for research and teaching, and advising Councils on future challenges that need to be incorporated in strategic plans. Senate should remain alert to the financial consequences of academic decisions, working in partnership with Council within the bicameral system, and using such specific mechanisms as joint committees, to ensure balanced consideration of academic and financial questions.

The Senates of the group of "democratic institutions" in the Task Team's sample set (as well as some institutions in other groups) uphold a classic view of academic freedom, stressing the crucial role of collegiality in higher education governance. All of these institutions had Senates composed along traditional lines, with membership conferred by virtue of academic status (the professors), joined by non-professorial heads of academic departments when this was appropriate, as well as by the Executive and by the representatives required in terms of the 1997 Higher Education Act. Such traditional Senates had often played a lead role in institutional transformation. In several cases, the Senate sector had initiated the work of Broad Transformation Forums, often in partnership with student leadership and sometimes well ahead of formal initiatives by the government after 1994.

However, not all Senates have built up such traditions, and in technikons and some universities they have worked in a way that can be described as "constructive partnership". Seen from their perspective, the traditional Senate appears to be a divisive arrangement, emphasising disagreement and, perhaps, always looking for reasons for dissent. Thus, not surprisingly, the membership of Senates that work in this way is primarily *ex officio* rather than *ad hominem*.

In addition, the study commissioned by the Task Team found evidence that Senates – including those constructed on traditional lines – are not functioning as envisaged in current policy for South Africa, and in the broader principle of bicameral governance. Senates come across for the most part as reactive (and sidelined) bodies. While Senates seem to be well attended at technikons, they are often poorly attended at universities, where a significant number of those professors who hold membership on personal merit do not regularly exercise their right to participate in governance.

Consequently, the way in which Senates work can be placed on a spectrum. At one end is a Senate that is fairly-widely representative, initiating debate about key academic directions for the institution. In-principle priorities are subsequently tested for viability by the Executive and the institution's professional managers. The other end of the spectrum works in the opposite way. Here, academic strategies are

initiated by the Council and Executive, and brought to a Senate made up of office-bearers, where further value is added by debate and discussion. Following the support of proposals in Senate, the institution's management has extensive delegated authority to implement decisions.

The Task Team is concerned by this evidence that Senates are not fulfilling their full role in bicameral governance. It is apparent that some institutions would benefit from reviewing this aspect of their governance in order to ensure that Senates play a vigorous, proactive role, and that they maintain the balance that is essential to any system of higher education governance, including South Africa's. However it would, by definition, be inappropriate for the Minister of Education to instruct individual institutions in the ways that Senates should function, and the Task Team recommends that this should be a matter left to self-review.

Recommendation 3: Review of Role and Composition of Senate

Senate is accountable to Council for the academic and research functions of the public higher education institution. Universities and technikons should be encouraged to review the composition and functioning of their Senates, to ensure that they fulfil this role with a particular focus on maintaining academic standards and the principle of academic freedom in teaching and research, and on playing a forward-looking role in policy formulation, in partnership with Council. This will best be achieved where Senate's membership ensures the meaningful participation of the professors, the academic staff in general, the administrative heads of academic departments, and other staff and the students of the institution as specified in the Higher Education Act; and where attention is given to adopting suitable mechanisms of delegation in respect of day-by-day academic business.

3.3   Trusteeship

The broad principles of co-operative governance are given practical expression through the respective responsibilities of the Council and the Senate and through the Institutional Forum. The work of these institutions is underpinned by the dual principles of institutional autonomy and academic freedom. This incorporates a bicameral approach in which the primary accountability for the institution is shared between the lay members of the Council (and in some case the Institutional Forum as well) acting as trustees in the public interest and professional academics in the Senate sector who are responsible for the curriculum, assessment, research and other key academic activities.

The bicameral principle of governance in South African higher education requires a balance between the academic sector and lay governors, representing the public interest. Because, in democratic political systems, the public good is determined and pursued through representatives elected to government, lay governorship implies a relationship between the Council (or its equivalent as the highest level of governance at the institutional level) and the state, although this relationship is indirect.

Individual institutions are given considerable latitude in moulding the form that trusteeship takes. While required by the legislation to have at least 60% external membership of Councils, all institutions have used their Institutional Statutes to define the constituencies from which lay Councillors are drawn and, while there are up to five Ministerial appointments on each Council, these are generally made from a list of nominations submitted by the institution to the Department of Education. In addition to this potential for lateral variation, all Councils were still in their first term of office at the time of the Task Team study, and were therefore still in the process of building a shared understanding of the implications of the 1997 Higher Education Act for governance at this level.

The Task Team believes that the development of effective trusteeship has been made more difficult by a lack of central guidance. External Council members at most institutions in the Task Team's sample set expressed degrees of confusion about what was expected of them in the "public interest", and frustration

at the lack of resources to help build capacity. New guidelines for reporting had yet to be issued by the Department of Education, and Councils were left to their own interpretations of the larger expectations of their fiduciary responsibility.

The ambiguities of trusteeship were revealed in a number of different ways in the cases that were examined by the Task Team. In some cases, Council members who were interviewed saw themselves as responsible for the day-by-day affairs of the institution, and therefore entitled to intervene directly in management issues. This attitude was invariably associated with either serious institutional instability or with endemic crisis. In other cases, the absence of models for fiduciary responsibility in public higher education led to the assumption that the *modus operandi* of business, and particularly of the boards of publicly-listed companies, was automatically applicable to universities and technikons. This may introduce assumptions that the functions of higher education can be reduced to narrow measures of performance, and business models of management, shareholders and customers, possibly leading to disjuncture with the public interest.

The Task Team believes that there is a need to build up the general capacity for trusteeship of public higher education institutions. This will require the publication of clear guidelines for the responsibilities of those undertaking fiduciary responsibilities, the development of procedures for dealing with failures in trustee responsibilities, and the availability of resources for those in such public positions.

Recommendation 4: Developing Trusteeship

The Council on Higher Education should promote the development of trusteeship in the governance of public higher education institutions by:
Initiating a discussion with the Ministry of Education regarding publication of guidelines for the responsibilities of those undertaking fiduciary roles;
Initiating a discussion with the Ministry of Education regarding establishing procedures for dealing with failures in trustee responsibility;
Initiating consideration of how to develop resources for external members of university and technikon Councils, such that these would contribute to sustainable fiduciary capacity in the public higher education system.

3.4 Remuneration of Council Members

One view of trusteeship is that trustees serve in the public interest. Their formal status is that of custodians of the public good, and as a mark of their independence from influence they are not remunerated. This has been the traditional policy for lay governance of South African universities, and it is in some cases still rigorously defended as a principle. However, the Task Team found that this view is no longer held in a majority of the institutions studied as part of this exercise, and that two other sets of principles are guiding Councils in their policies for the remuneration of lay members.

The first of these other viewpoints is based on a straightforward equivalence with the practices of publicly-listed companies, in which non-executive members of the board are usually paid. In this argument, remuneration is both necessary, and in the interests of the institution, in order to secure the best possible expertise. Although the payment might well be nominal (particularly for Council members who are leading figures in the private sector), the policy is a mark of respect for their willingness to participate in institutional governance.

The second point of view is more nuanced. While recognising that fiduciary duties are carried out in the public interest, this policy recognises that transformation of higher education is facilitated by Councils that reflect the diversity of South African society in a creative and purposeful manner. Potential members of Councils drawn from community-based and non-government organisations, or who are self-employed,

or who may suffer a direct loss of income by spending time at Council and committee meetings, may be prevented from taking up Council positions if there is no compensation.

The Task Team does not believe that the analogy to the private sector is appropriate to a public higher education institution. Although a university or a technikon shares some characteristics with large corporate bodies, it is not the same as a company. Specifically, a public higher education institution does not have shareholders who own the equity of the university or technikon: in publicly-listed companies, external directors are remunerated for the service that they provide to the company. Additionally, it is problematic for universities and technikons to pay external members of Council for "expert services". Such arrangements could imply that the member of Council is acting as a consultant to the institution, and is obliged to deliver a satisfactory "product" to the "client". This is not the role expected of external members of Council in current policy and legislation, and interferes with the fiduciary responsibilities of Council members. In particular, such payments for services will compromise the audit responsibilities of Council members, and will make it difficult to assemble an Audit Committee that can fulfil its role in a satisfactory way.

The Task Team does, however, believe that there is merit in the argument that, if Councils are to increase the participation from civil society (itself an important criterion for successful governance), then there will need to be a system to acknowledge the economic value of the time that lay members devote to a governing body.

When this need is set against considerations of conflict of interest if remuneration originates from within the institution, it seems clear that, if external members of Council are to be remunerated, then such payments should ideally come directly from the state. Such a system would bring remuneration into alignment with the intention of lay participation in governance. The Task Team believes, however, that it would be difficult to put such a system into practice. While higher education systems in developed economies have considerable administrative resources, South Africa does not have this luxury, and the person-power that would be needed to process claims for many thousands of meetings each year by lay members of Councils is arguably better used on other priorities. What is needed, then, is a practicable solution that recognises the principle that lay members of Council are providing a service for the wider public good (rather than in the interests of the specific institution alone), but that places the responsibility for administering the payments with each institution.

The Task Team believes that a key requirement is that the Minister sets clear policy and criteria for the remuneration of Council members. Institutions would be required to act within this policy framework, making provision for the remuneration of Council members out of their budgets and administering these payments accordingly. Full disclosure of payments to Council members should form part of each institution's audited statements, and payments made to Council members should be a matter of public record.

The Task Team believes that policy in this area should be based on the following principles:
- Remuneration of Council members should be a matter of consideration for external Council members only, as internal Council members[35] are already remunerated for their time in service of the institution;
- Remuneration should be determined on the basis of a general consideration and not on the basis of attendance per meeting as this may have unintended consequences (e.g. undue proliferation of meetings, attendance for the wrong reasons);

---

[35] It should however be noted that students are non-remunerated internal members of Council and that consideration is needed as to how to compensate them for time and income they might lose through participation in governance – see Recommendation 2: Building Governance Capacity at Institutional Level.

- Remuneration should cover attendance at all ordinary Council meetings, as well as extraordinary meetings and committee meetings;
- Payment in kind (such as a tuition rebate for family members of Councillors) should not be allowed as it constitutes a potential conflict of interest, and is an unevenly distributed benefit;
- Remuneration of Councillors should be wholly transparent;
- The key criterion for remuneration of any Council member should be some acknowledgement of the economic value of the time given by the lay members of Council to the governing body;
- A further criterion for remuneration of Council members could be that members have to give greater than average time to Council service due to practical considerations, such as travel time in the case of institutions in less accessible locations.

Recommendation 5: Remuneration of Council Members

Remuneration of Council members should be a matter of consideration for external Council members only and internal remunerated members of Council should not be further compensated in any way for Council service. Remuneration of external Council members should be based on a system that acknowledges the economic value of the time given by lay members of Council to the governing body. Remuneration should constitute a modest sum to cover attendance at all Council meetings, including extraordinary and committee meetings.

Recommendation 6: Nature of Remuneration of External Members of Council

Payment of Council members in kind (such as a tuition rebate or "staff fee" for family members of Councillors) should not be allowed as it constitutes a potential conflict of interest, and is an unevenly distributed benefit.

Recommendation 7: Transparency of Remuneration of External Members of Council

Remuneration of Councillors should be wholly transparent, and details of payments should form part of the institution's audited financial statements.

3.5   Council Governance in Practice

Establishing the conditions for effective trusteeship is a necessary precondition for good governance in a state steering system. But this alone does not guarantee that institutions will be well governed. Accordingly, the Task Team gave close attention to the "lived practice" of Council governance at the institutional level.

As with the criteria for evaluating all aspects of governance at an institution, the qualities expected in the fiduciary role of university and technikon Councils are appropriately derived from the 1997 White Paper. These can be summarised as: meeting the learning needs and aspirations of individuals; addressing the development needs of society; contributing to the socialisation of enlightened, responsible and constructively critical citizens; and contributing to the creation, sharing and evaluation of knowledge. [36]

Of the institutions examined in detail as part of the Task Team's work, a first cluster had soundly-functioning Councils with well-developed implementation capacity. Councils in this group had strong definitions of their mission and purposes, buttressed by one or more of: a strong sense of institutional identity, historical roots in particular communities, identity with a geographic region, and association with professions and vocations. They all had well-developed, open and inclusive processes for strategic planning, clear and well implemented budgeting processes, and a high consciousness of national policy

---

[36] White Paper 1997: Sections 1.3 and 1.4.

developments in higher education. These Councils all had a clear delimitation of their role with respect to that of the Senate and of the Executive. Council authority was delegated to key committees, allowing plenary Council to meet only to consider high-level policy, planning and oversight issues, with four or five meetings each year. There was well-defined, formalised delegation of authority, in some cases with extensive documentation of systems and procedures, and with a principle of transparency. There were effective management information systems appropriate to the institution's size and complexity (with several self-developed systems that clearly fulfilled their intended purposes). These generated performance indicators that allowed Council to maintain oversight without interference in day-by-day management.

Councils in a second cluster were experiencing difficulties in governance which, while not destabilising the institution, were cause for concern. Their problems were related to shallow levels of delegated authority - the consequence of the trade-off between hierarchical forms of organisation and "flat" structures that strive for maximum inclusiveness. With regard to determining the mission of their institutions, and overseeing strategic planning, these Councils combined a clear sense of their public role with a developed capacity for strategic planning. Indeed, the inclusiveness of the composition of their Councils was explicitly in response to the intent of the National Commission on Higher Education and White Paper policy directions, and this conferred the advantage of including a broad range of participants in governance. However, the corollary of this has been a laboriousness in establishing key procedures that are sufficiently flexible in responding to the myriad opportunities and demands that characterise the external environment of any higher education institution.

In the case of the third cluster of Councils, tensions in the way in which governance was conducted seemed more serious. Here, while the capacity for implementation of governance decisions was on average for the full sample set, significant problems centred on the design and implementation of key procedures for effective decision making and oversight. These can be seen as institutions on the verge of governance crisis.

In the final cluster of institutions, such crises had already developed, with consequences that can only be described as catastrophic. Councils in these institutions failed to meet any of the qualities required for an acceptable standard of governance. There were differing reasons for this circumstance, sometimes the result of particular histories and sometimes because of lack of resources. Council's key role in setting the mission and purpose of the institution and developing strategic plans was, in all of these cases, hijacked by sustained internal crises. Not surprisingly, this paralysis in the strategic planning area impacted adversely on the ability of Council to establish and implement key procedures. The absence of procedures meant, in turn, that Councils in this group could not exercise appropriate oversight over major internal processes, with a collapse in audit functions.

The review of trusteeship and the work of Councils in the Task Team's sample set of institutions indicates that a third of the total sample (four institutions) are functioning well. However, two institutions have well-functioning Councils that nevertheless show tensions in their governance arrangements, a quarter (three institutions) show tensions that are a cause for serious concern, and a further quarter (three institutions) are in endemic crisis, in one case resulting in a breakdown of institutional governance. The Task Team is concerned that, if this pattern were to be projected on to South African higher education as a whole, it implies that a significant proportion of the country's 36 public institutions are at risk of governance failure at the Council level.

In further exploring the implications of this conclusion, a first point to note is that there is not a precise correspondence between governance capacity at the Council level and the conventional categories of "historical advantage" and "historical disadvantage". While it is certainly the case that historically white institutions have a large comparative advantage in resources, including administrative capacity, the results of this survey show that this does not protect them from governance crises. Conversely, while the under-

capacity of historically black institutions makes the maintenance of good governance more difficult, it does not prevent it, and several institutions examined by the Task Team have overcome the apartheid legacy and established well-functioning Councils. Effective trusteeship depends heavily on the individual qualities of lay participants, attributes that self-evidently have nothing to do with race.

Well-functioning Councils invariably had lay participants who identified strongly with their institution. This sense of identity could stem from a local or regional sense of civic purpose - such as social and economic development goals; from shared history (for example, in institutions with strong community identity or democratic political credentials); from ethnic and language association; or from professional purpose (particularly in technikons, with their strong vocational orientation). Such a sense of identity was not always benign, and in some cases there was nostalgia for the privileges of the past. But where such institutional identity was absent, Councils seemed to be subject to a greater degree of factionalism and to the play of individual interests. Where Councils were in open crisis, there was invariably play of individual interests and factionalism, and the sidelining of concern for either the public interest or the interests of the institution as a whole.

A further factor affecting the cohesion and sense of identity of Councils was their absolute size. There is no direct correlation between the size of a Council and its success, and institutions with both small and large Councils have found themselves in crisis. However, the case studies did suggest that at institutions with large Councils, a considerable investment was required in seeking and maintaining cohesion. Large Councils appeared to be more prone to factionalism and to absenteeism, particularly by external members. Keeping Council members informed, and organising retreats, special meetings and other events was proportionally more difficult. There is, in addition, no particular trade-off in "councillor satisfaction". Members of large Councils seemed less happy in their roles than their opposite numbers in more hierarchical systems, and talked more about dissent, contested issues and burdensome meetings than about their sense of identity with, and pride in, their institutions.

In accordance with the criteria for good governance that have been developed and tested here, the Task Team found that all effective Councils have developed systems of delegated roles and responsibilities. These allow the plenary Council to meet four or five times in each year, to consider high-level policy and planning, and to receive consolidated reports on key aspects of the institution's work and operations. In turn, key Council committees meet more frequently. The nature and work of these committees vary with the size and complexity of the organisation, but all well-functioning Councils have effective and active Executive Committees and Audit Committees. The responsibilities and domains of these committees – and of the Council as a whole – are clearly defined and bounded. In some cases, this definition is achieved by simple statements, while in other cases there are elaborate schedules of delegation and accountability. Whatever the approach, the effect is that Council members have a clear sense of their responsibilities, and the proper extent of their authority, in advance of any potential crisis situation. Converse attributes are evident in crisis-ridden institutions, and serve as storm warnings for Councils that have yet to find stability. In these cases, lack of boundary definition and defined responsibilities result in continual debates and dissension about jurisdiction, with a consequently diminished attention to substantive issues. Because committees of Council are either ad hoc or lack clear authority and roles, decisions tend to be reviewed again, and perhaps reversed, in plenary Council. This is often manifested in Council papers as a sustained recycling of issues, which stay over-long on agendas and crowd out other business. In those institutions where the authority of Council is contested, this may be accentuated by committees of Council that lack a majority of Council members. This has the effect, clearly at variance with the provisions of the 1997 Act, of rendering the will of Council subordinate to other structures in the institution. In circumstances such as these, full Councils have to meet frequently. This may tax the ability of external members to participate, resulting in absenteeism and the effective domination of internal members of Council, again undermining the intent of policy and legislation.

The Task Team believes that the Audit Committee should play a key role in any institution, and well-functioning Councils have Audit Committees that are set up in accordance with best-practice procedures for accounting. A key quality of the Audit Committee is its independence from the Vice-Chancellor and management of the institution, manifested in its lay membership. Conversely, governance crises at the Council level seem to be closely associated with audit failures, and difficulties with audit functions are early warning indicators of governance crises in the making.

A second key Council committee is the Executive Committee. Well-functioning Councils in this study had Executive Committees - made up in various ways, but most effective when kept small - with authority to act in specified areas between the plenary meetings of Council. In this way, the Executive Committee functions as a clearing house for Council and can also serve to monitor and safeguard the boundary between Council and senior management in the institution (although it must clearly be careful itself to respect that boundary).

In addition to the advantages of delegation, Executive Committees in the sample set also served to set the tone of the relationship between the Council and the Vice-Chancellor. Where an institution's governance was working effectively, Council understood that, while it was responsible for appointing the Vice-Chancellor, and for reviewing and evaluating his or her performance, the Vice-Chancellor also plays a key role in setting policy and in strategic planning. This is particularly the case in universities and technikons, for whereas the Vice-Chancellor is analogous in many respects to the Chief Executive Officer of a public company, he or she is also Chair of Senate and a "first among equals" in the academic sector. In all well-functioning institutions in the study, there was an effective working relationship between the Chair of Council and the Vice-Chancellor, more akin to co-governance than to a dominant-subservient relationship. The Executive Committee of Council served to provide support and legitimacy to this working relationship, protecting it from being perceived as functioning out of the sight of Council and providing the support of a small group of additional Council members and senior executives. Conversely, in those institutions in severe crisis, the relationship between the Vice-Chancellor and the Chair of Council had either completely broken down, or alternatively the Vice-Chancellor and Chair of Council had been seen as working together illegitimately, and outside governance structures.

Seemingly less developed in South African higher education, are mechanisms for Councils to audit their own performance in governance. Previous approaches to reporting by the Chair of Council to the Minister of Education made little, if any, provision for self-evaluation, although the Department of Education is currently reviewing these requirements and is developing new reporting standards. Given that all Councils in the Task Team's sample set held only closed meetings, and that the release of Council papers to the wider institution is solely at Council's discretion, Council deliberations are effectively closed to outside scrutiny. While there are clearly aspects of Council business that should be confidential, there seems to be room for greater transparency around Council debates on policy and planning, and reviews of institutional performance – all issues that are clearly in the public interest, and for the efficacy of which members of Council are publicly accountable.

Finally, it is evident from this study that in order to function to any reasonable standard, Councils need appropriate levels of administrative support and, in particular, some form of management information system in order for them to be able to meet their responsibility for the oversight of the institution's key internal functions. In some cases examined by the Task Team, institutions had adopted state-of-the-art management information systems and had employed consultants to review and implement such systems. However, in other cases, institutions had developed simpler systems that adequately met basic requirements.

3.6 Towards Improved Council Performance

The Task Team believes that South Africa's high failure rate of institutional governance at the Council level requires a number of changes to the manner in which Councils are constituted.

An important factor affecting the cohesion and sense of identity of Councils is their absolute size. Consequently, the Task Team proposes that the Councils of both technikons and universities should be restricted to no more than 24 members, at least 60% of whom should be external to the institution. The present provisions of the legislation should continue with regard to internal members of Council, with institutions given latitude, via their Institutional Statutes, in determining the composition of the internal membership. However, in order to meet statutory requirements, there will need to be a minimum of one Senate member, one student member, one member elected by the academic employees and one member elected by the support staff. The Vice-Chancellor should be included as an internal member and not as an *ex officio* member as has been the practice in some cases. In addition, and following from a recommendation that will be made later in this report, the Chair of the Institutional Forum should also be included as an internal member. This will leave up to three additional internal places on Council for allocation via the Institutional Statute.

The objection that this will reduce the expertise available to Council can be countered by having Deputy Vice-Chancellors and heads of major support departments as "staff in attendance" at Council meetings; as such, they would be able to provide high-level information and advice, but would not have formal voting rights. In the Task Team's view, this new arrangement will serve to counter a damaging trend in current practice, whereby Councils are "packed" with internal members by co-option or, in other cases, where the formal accountability and authority of the Vice-Chancellor is bypassed by having Deputy Vice-Chancellors and heads of support departments report directly to Council.

The Task Team believes that legislative provision for the Registrar to be Secretary of Council is judicious and should remain in place.

Recommendation 8: Role and Composition of Council

The Council is the highest decision-making body of a public higher education institution and has fiduciary responsibility for the institution. Members of Council act in the best interests of the institution and not as mandated representatives of constituencies.

Councils of both technikons and universities should comprise no more than 24 members, of whom at least 60 per cent should be external members.

Institutions should have the latitude to determine the internal members of the Council via the Institutional Statute, provided that they include the Vice-Chancellor, the Chair of the Institutional Forum, at least one member of Senate and at least one member elected by the following constituencies: the students, the academic staff, and the support staff.

Other members of the Executive and senior management may be staff in attendance at the Council's discretion, without voting rights. The Registrar should serve as the Secretary of Council.

Institutions should have the latitude to determine external Council membership via the Institutional Statute. In choosing Council's external members institutions should take into account their identification with and capacity to contribute to the institution's mission and the broader national development objectives as well as their perspectives, expertise, personal qualities, and their profile in terms of social equity.

The range of competencies and perspectives that are required of external members of Council will vary from institution to institution. This latitude is appropriate, since the needs of technikons and research universities, or of rural and metropolitan institutions, will be different (and acknowledging that while a range of external interests have a general stake in higher education – e.g. regional and local government and business – specific need for such involvement may vary from institution to institution). Such latitude is allowed via the discretion of the Institutional Statute. However, this research has shown that the degree

of participation from civil society in the Council is a significant factor in determining the ability of the institution to act taking into account broader societal goals and needs; self-referential institutions are either liable to crisis or are susceptible to corporate-like policies that favour the institution in itself, rather than the public good to which the institution should be directed.

Given the need for Councils to be assembled to meet particular needs, as well as to reflect the diversity of South African society, the Task Team believes that it would be difficult to legislate further regarding the selection of external Council members. The proposal here is that representivity is further assured by means of new measures for the nomination and appointment of external Council members.

Firstly, the terms of office for the external members of Council should be five years, with a fifth of the external members retiring each year. Evidence is that it takes up to two years for a Council member to get to grips with the affairs of an institution, and a five-year term is appropriate to take advantage of this accumulated wisdom. Staggered appointments to Council are essential for building up and maintaining the institutional identity which was found to be an element of good governance; Councils which reappoint all external members at the same time suffer unnecessarily the problem of rebuilding identity and expertise at the beginning of each cycle.

Secondly, each institution should have a Council Nominations Committee which is a joint committee of Council, Senate and the Institutional Forum, and which proposes an appropriate proportion of new members of Council each year. This is a necessary provision to prevent Council becoming a self-perpetuating oligarchy, and is a valuable opportunity to build trust across the institution by broadening participation in composing the membership of the Council.

The Task Team also believes that it is important that the Minister retains the ability to shape Councils, albeit indirectly, as a key stakeholder in the affairs of public higher education institutions and in order to monitor the achievement of the transformation objectives of national policy. The position taken here is that the needs of both the institutions and the Minister can be met through a set of additional statutory provisions for the way in which Councils are composed.

Two options are opened within this framework.

- The Minister appoints two external members to the council from a list of nominees proposed by the institution. This is the current system only modified in terms of the number of Ministerial appointees, given the proposed modification of the total number of Council members.
- Institutions choose all their external members and submit their names to the Minister for confirmation. This option takes care of the fundamental interest of the Minister in shaping Councils taking into account the broader national policy goals but takes away the Minister's direct appointment of Council members.

Recommendation 9: Terms of Office for External Members of Council

The terms of office for external members of Council should be five years, with one fifth of the members retiring each year. External members of Council should serve not more than two terms. For new Councils, all external members should serve an initial three-year term, with one fifth of the members retiring each year thereafter.

Recommendation 10: Appointment of External Members to Council

Each institution should have a Council Nominations Committee which is a joint committee of Council, Senate and the Institutional Forum. The Council Nominations Committee should call for nominations from all sources and propose to Council names of new external members of Council each year, to replace those members retiring.

Recommendation 10 a: *The Minister of Education has the right to appoint two external members to the Council of every higher education institution from a list of nominees proposed by the institution. Should the Minister fail to express an opinion on the proposal within three months, the institution should proceed with the proposed appointments.*

Recommendation 10 b: *Nominations as approved by Council should be submitted to the Minister, together with the institution's statement of governance as published in its annual report. The Minister in turn should confirm the nominations taking into account the potential role that nominees can play in furthering the transformation of higher education as stated in national policy. Should the nominations not been approved reasons for the rejection as well as suggestions as to how to proceed should be provided by the Minister. Should the Minister fail to express an opinion on the proposal within three months, the institution should proceed with the proposed appointments.*

Recommendation 11:

Implementing Recommendations re Terms of Office and Appointment of External Members of Council at the Institutional Level

In order to implement recommendations re terms of office and appointment of external members of Council, existing Councils should be required to dissolve and reconstitute themselves within three years of revisions being made to the Higher Education Act.

It was apparent from the case studies examined by the Task Team that a number of structural conditions are necessary for Councils to operate effectively. As discussed in the review of Council governance in practice above, these include effective systems of delegated roles and responsibilities, well-functioning Executive Committees and Audit Committees, and appropriate levels of administrative support which preferably include effective management information systems. All of these allow Council to streamline its focus and schedule and thus to fulfil its role, and attend to its priorities, most effectively. Furthermore, a need was noted for general transparency around matters for which members of Council are publicly accountable, while respecting those aspects of Council business requiring confidentiality.

In addition to the need for general transparency, it is important that Councils fulfil their obligations to report fully and formally on the institutions that are their fiduciary responsibility. At the time of the Task Team study, universities and technikons were in a transitional phase of reporting. The Task Team endorses the view that the systems of reporting inherited by the present Ministry were completely inadequate for proper public accounting purposes. However, a number of measures have been enacted to rectify this situation. These have included the introduction of three-year rolling plans that are submitted annually by institutions to the Department of Education, as well as new requirements for financial reporting. Furthermore the Department of Education has issued the prototype for a new reporting standard - the *Manual for Annual Reporting of Technikons and Universities.* [37] This sets out financial reporting requirements according to South African Generally Accepted Accounting Practice (GAAP), and establishes a required framework in terms of the Higher Education Act. The Manual incorporates the principles of the King Report on corporate governance, and requires a broad range of contextual information for financial statements, as well as accompanying reports. The Task Team is of the opinion that this new approach to reporting links financial accountability directly to the full range of operations of

---

[37] Department of Education (2001). Manual for Annual Reporting of Higher Education Institutions 2nd Edition (Revised Draft). Pretoria, Department of Education.

a public higher education institution, and builds a wide bridge of communication from individual Councils to the Minister of Education.

Related to this is the issue of how to deal with malfunctioning Councils. The Task Team is of the opinion that the new framework for institutional reporting provides the necessary elements to detect and act on malfunctioning councils. Councils are required to report on their activities including a satisfactory account of their compliance with statutory governance requirements. If a Council failed to submit the report, or the report was unsatisfactory, or if the report did not satisfy the institution's auditors, the Council would have failed in its fiduciary responsibilities and the Minister would be empowered to intervene by appointing an Independent Assessor, and, if necessary, by suspending the Council and appointing an administrator.

Recommendation 12: Meetings of Council

Full meetings of Council should normally be held between four and six times each year. Council must ensure that the agenda for Council meetings is structured so as to support the priorities of the institution and the fiduciary role of Council.

Recommendation 13: Committees of Council

Every Council must have an Executive Committee, an Audit Committee and a Council Nominations Committee, and should thereafter have the authority to establish such committees as it deems appropriate for the effective conduct of its business, as currently allowed in the Higher Education Act.

Recommendation 14: Executive Committee of Council

The Executive Committee of Council should be authorised to act on behalf of Council within a clear and formal system of delegated authorities and responsibilities. The Executive Committee should have no more than six members, while including the Chair of Council as its Chair, the Deputy Chair of Council, and the Vice-Chancellor, and while maintaining the balance of external/internal membership applicable to Council as a whole.

Recommendation 15: Audit Committee of Council

The Audit Committee of Council must be required to act independently, and in accordance with generally accepted accounting practices. It should be small, comprising only external members of Council, with the Vice-Chancellor and head of internal audit in attendance. The Chair of Council cannot be chair of the Audit Committee.

Recommendation 16: Schedule of Delegations

Councils should establish a schedule of delegated responsibilities, authorities and accountabilities for each of its committees, for the Chair and Deputy Chair of Council, for the Vice-Chancellor, and for other senior members of the Executive and management as appropriate. This schedule of delegations should be formally adopted as a motion of Council, should be tabled and reviewed annually and, if necessary, revised.

Recommendation 17: Transparency of Council Business

Council should give attention to ensuring a process for appropriate transparency of Council decisions. The Chair of Council should have the discretionary authority to designate matters confidential to Council members.

Recommendation 18: Formal Institutional Reporting

Full, annual institutional reporting that is consistent with South African Generally Accepted Accounting Practice is essential to ensure the full compliance of Councils with their fiduciary responsibilities. The Department of Education should confirm its draft Manual for Annual Reporting of Technikons and Universities as a standard requirement for all public higher education institutions.

3.7   The Institutional Forum

The third key element in the governance of public higher education in South Africa is the Institutional Forum. As outlined previously, this is an innovation of the National Commission on Higher Education, and an outcome of a transformation agenda strongly influenced by principles of social justice. As such, the role of the Institutional Forum is closely bound up in the concept of co-operative governance, and in the ways in which this concept has been understood and put into practice.

The appropriate benchmark for evaluating the role of the Institutional Forum is the policy statement of the 1997 White Paper and the subsequent legislation. Thus the White Paper sets the functions of Institutional Forums as "interpreting the new national policy framework; identifying and agreeing on problem areas to be addressed; involvement in selecting candidates for top management positions; setting the change agenda, including the race and gender equity plans; improving the institutional culture; providing a forum for mediating interests and settling disputes; participating in reforming governance structures; developing and negotiating a code of conduct; monitoring and assessing change".[38]

The Task Team found that, at those institutions where governance was in endemic crisis, the Institutional Forum had invariably become a prominent platform for particular groups and alliances of interests.Other Institutional Forums met the letter of the legislation, but the consequence often seemed to be redundancy, with issues discussed twice and often by the same people (because of overlaps between Council and Institutional Forum membership). On the whole, then, Institutional Forums were generally seen in a negative light.

Despite this, the Task Team believes that there is an important and continuing role for the Institutional Forum in higher education governance, particularly when coupled with the critical assessment of the current functioning of Councils. In framing this perspective, a first point to re-emphasise is that the 1997 White Paper and Higher Education Act clearly specify that the Institutional Forum is a statutory advisory committee to Council that does not have decision-making powers, and should neither assume such powers nor have them so delegated. The purpose of the Institutional Forum is to represent major stakeholders (especially internal ones), and to ensure that Council has the benefit of their views. In order to fulfil this role, the Institutional Forum should incorporate a balanced representation of students, support staff, academic staff, Senate, Council and management.

These provisions present an opportunity that has yet to be fully realised in any of the case studies that the Task Team examined. Thus a Council can only meet its fiduciary responsibilities if its members put the interests of the institution above personal or factional interests, or above the interests of outside organisations that they may represent. But an Institutional Forum benefits from the opposite quality. Where the Institutional Forums included in the Task Team study were at their best was when complex issues were debated by a full range of stakeholders, some of which participated as mandated representatives of student unions, staff associations, trade unions and other bodies. Thus the combination of a fiduciary Council, and an Institutional Forum where policy positions can be developed by mandated representatives, offers additional value in governance through symmetry.

---

[38] White Paper 1997: Section 3.38.

The Task Team believes that this opportunity for mandated participation is particularly important for student bodies. A common theme through all of the case studies included here was that students feel disempowered in Councils and Senates, where they are expected to master large and complex agendas, and where they are almost always in the smallest of minorities. In contrast, and because of this, students were almost always supportive of some form of Institutional Forum. They welcomed the opportunity to have larger delegations at the Institutional Forum, and to meet other constituencies on an equal footing, rather than in a hierarchical relationship.

The Task Team found that, in some cases, Councils had restricted the terms of reference of their Institutional Forum to the five areas of advice detailed in Section 31 of the Higher Education Act. If Institutional Forums are to be effective in the future, and in the ways envisaged here, then this aspect of their work needs to be clarified to avoid ambiguity.

A further area of difficulty is the reporting relationship between the Council and the Institutional Forum. Currently, this is left open to individual institutions, either through the formalities of their Institutional Statutes or through procedures and practice. However, at no institution studied as part of this project was this relationship satisfactory. The most common problem – and that in most urgent need of correction – is the failure of Council to respond to advice given by the Institutional Forum. Members of Institutional Forums reported that they rarely – if ever – heard whether or not their work had been useful or acted upon, while examination of Council papers showed that input from the Institutional Forum was merely noted in the agenda and minutes, and not discussed or debated. Naturally, such a tradition acts as a dampener on the enthusiasm of even the most ardent advocates of the Institutional Forum's role in governance, while it also limits Councils' ability to get the benefit of broad advice in dealing with complex and challenging issues.

The Task Team believes that this problem can be rectified by adopting, at the institutional level, the principle that defines the relationship between the Minister of Education and the Council on Higher Education. In the same way that the Minister is obliged to provide the Council on Higher Education with reasons for accepting or not accepting advice given to him or her, so should the Council of a higher education institution be obliged to provide reports on the implementation of advice received from the Institutional Forum, or reasons for not accepting advice given.

Recommendation 19: Scope of the Institutional Forum

Institutional Forums, as statutory advisory committees may debate issues either at their own volition, or at the request of the Council. The Council of a higher education institution should be obliged to report to the Institutional Forum on the implementation of advice received from the Institutional Forum, as it does with Senate, and should give the reasons for not accepting advice given.

Turning now to the composition of the Institutional Forum, the Task Team found that, in general, universities and technikons have been careful to achieve a balanced representation of the key internal constituencies, although in some cases there is an over-representation of management. While there is room for considerable variation in the composition of each Institutional Forum, meeting specific needs by means of the Institutional Statute, the Task Team believes that care should be taken that the key internal constituencies of the institution are represented in a balanced manner, empowering each to participate fully in the deliberations of the Institutional Forum.

External representation is more varied. Most Institutional Forums are restricted to internal membership, while those Institutional Forums in the case studies that do have external membership report that these members rarely attend. There is a danger, played out in the history of at least one institution, that a

dominant external membership can take over the functions of the Institutional Forum, to the disadvantage of the institution as a whole. The Task Team believes that the guidelines for the membership of the Institutional Forum need to guard against this possibility.

Recommendation 20: Role and Composition of the Institutional Forum

The Institutional Forum is a statutory advisory committee to the Council. It should engage all stakeholder groups of the institution and, unlike the Council, should debate mandated positions where feasible. Institutions should use the discretion of their Institutional Statute to ensure a balance in the composition of the Institutional Forum between the internal constituencies of Council, Senate, management, academic staff, support staff and students. External stakeholder groups should be engaged through co-option by the Institutional Forum to its task teams as appropriate.

The Task Team is of the opinion that more specific provisions need to be made for the chairing of the Institutional Forum. In some cases, the Chair of the Institutional Forum is a member of the Executive and, while this is quite legitimate in terms of the present legislation, this can be seen as counter to the intentions of policy. It is particularly important that delegations to the Institutional Forum participate on an equal status, and that neither management nor Council put, or are suspected of putting, constraints on the Institutional Forum's deliberations. Consequently, if would be preferable for the Chair of the Institutional Forum to be appointed from members other than representatives of Council and the Executive.

The Task Team is of the view that the relationship between the Institutional Forum and the Council can be strengthened through arrangements for the Chair of the Institutional Forum. While some institutions had included the Chair (or a representative of the Institutional Forum) on Council through provision in their Institutional Statute, most had not, and there was no structural connection between the two organs of governance, other than overlapping membership.

Recommendation 21: Chair of the Institutional Forum

The Chair of the Institutional Forum should be elected from its membership for a term of office as specified by the Statute. Representatives of Council and the Executive should not be eligible for election as Chair. On election, the Chair of the Institutional Forum should become a member of Council.

---

4 CONDITIONAL AUTONOMY: THE STATE AND THE GOVERNANCE OF HIGHER EDUCATION INSTITUTIONS

4.1 Introduction

The previous chapters have evaluated the state of governance in South African higher education. Firstly, it has been argued that the three criteria of the representivity of governance structures, the depth of delegation, and the capacity for implementing policy, serve to differentiate institutions into categories, some of which are inherently unstable and others of which approach ideal models of governance. Secondly, it has been shown that the three major agencies of governance – the Council, Institutional Forum and Senate – can each be evaluated along a spectrum that is determined by the nature of their guiding philosophies: trusteeship, co-operative governance and academic freedom. The outcomes of these evaluations raise serious concerns. A significant proportion of South Africa's higher education institutions are either in crisis, or show the symptoms of impending problems. This leads back to the relationship between higher education institutions and the state – the subject of this chapter.

4.2 Conditions of Autonomy

The Task Team believes that there is a good case for a high degree of institutional autonomy in countries such as South Africa (and this case is set out in full in the accompanying research report). However, the Task Team also accepts that the state must play a role in steering the higher education system in the national interest. This can best be described as "conditional autonomy" – 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.

Seen in this way, the evolution of South African higher education policy from the publication of the White Paper in 1997 to the release of the National Plan for Higher Education in 2001, marks a path from a comparatively loose system of state steering, with guarantees of autonomy, block grant funding and the expectation of self-regulation by individual institutions, to a system of conditional autonomy in which substantive autonomy (and academic freedom) continues to be guaranteed while the state exercises increasing control over subsidies and academic accreditation. The mechanisms for increased procedural control by the state are, primarily, new policy for funding that will allocate subsidies prospectively and according to a set of targets for student registrations which are derived from the Department of Education's perception of national need, the regulation, accreditation and quality control of qualifications through the South African Qualifications Authority and the Higher Education Quality Committee of the Council on Higher Education, and the amendments to the 1997 Higher Education Act that allow the Minister to intervene directly in the affairs of an institution in the interests of system-level planning and in cases of institutional failure.

If, however, conditional autonomy is to prove an effective balance between, on the one hand, the needs of the state to direct higher education in the interests of development and, on the other hand, the needs of institutions to preserve and defend an environment in which teaching and research can prosper without outside interference, then the rights and responsibilities of the academic sector must be guaranteed and asserted. The bicameral system of governance on which higher education is based in South Africa and elsewhere is as essential to conditional autonomy as it is to other forms of governance. However, the Senate sector in South African higher education is currently a passive reflection of the status quo rather than an active champion of substantive autonomy.

The Task Team notes that the campus radicalism that gave the higher education landscape its particular character during the 1980s and early 1990s, and which strongly influenced the work of the National Commission on Higher Education, has now been replaced for the most part by a pragmatic politics which accepts the traditional, bicameral model of Council and Senate governance and which seeks to effect change through participation. However, rather than the general model of stakeholder participation envisaged in the first half of the 1990s, institutions have adopted a range of *de facto* governance arrangements. Here, the primary division is between those institutions that stress the inclusion and representation of both internal groups and external constituencies (the "democratic institutions"), and those technikons and universities that have adopted more managerial approaches and tend to be inward-looking, with deep and sometimes opaque delegations of authority to officials and committees (the "management-focused institutions").

As a result of the way that the practice of governance has evolved, the Task Team believes that the concept of co-operative governance, as defined in the earlier 1990s, 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 civic participation in higher education. In addition, the philosophy of co-operative governance fails to take account of the competition that has become part of the higher education landscape with reduced funding to public institutions and the establishment of private education providers.

The Task Team believes that, for its part, the Ministry of Education has clearly defined responsibilities for the governance of the higher education system as a whole, and a parallel set of obligations to respect the principles of academic freedom. While there is clear continuity of policy in this regard, more recent developments have changed the balance between the state and individual institutions that underlay the idea of co-operative governance. These developments include amendments to the Higher Education Act that allow the Minister to define the "seat" of a higher education institution and to determine its policy, and the new formula for institutional funding, which will be prospective rather than reactive and which will allow the Ministry to shape institutional policy through funding constraints and incentives.

Given these changed circumstances, the Task Team believes that there is a need to reconceptualise the underlying basis for public higher education policy in South Africa. This must clearly be done in an inclusive and participatory way. The Task Team believes that the principle of conditional autonomy has the potential of balancing the need of the state to direct higher education in the interests of development, and the need of institutions to preserve and defend an environment in which teaching and research can prosper without outside interference. This, though, will depend on the guarantee of the rights and responsibilities of the academic sector which are essential to conditional autonomy. The Task Team believes that it is important to reassert those aspects of the 1997 White Paper and Act that entrenched, for the first time, the right to academic freedom, and established a careful balance between the civic accountabilities of Councils and the academic responsibilities of Senates.

Recommendation 22: Promoting Good Governance in the Public Higher Education System

In the light of developments in the higher education sector subsequent to the White Paper and Higher Education Act of 1997, the Council on Higher Education should renew and promote debate on the vision and principles that underlie the current policy and legislative framework for higher education governance in South Africa.

4.3 The Case for a Code of Governance

Finally, the Task Team believes that attention should be given to the ways in which the principles of governance, as set out in both policy and legislation, are translated into day-by-day practice within individual institutions.

This was crystallised for the Task Team by the comments of one Vice-Chancellor who spoke of the challenge of translating the high principles of national policy, legislation and the formal roles of statutory bodies into guidelines for everyday practice. A similar view was expressed by the Executive of a second institution, faced with the task of reconstruction following a period of major crisis. Here, there was a danger that ambiguities in policy positions could nurture future conflict, taking the institution backwards rather than forwards. Indeed, it was evident in other case studies that, at a time of crisis, different readings of policy may become the ideological banners of specific factions. As with all crisis management scenarios, the Task Team believes that it is imperative that principles of negotiation and dispute resolution are in place before conflict occurs. It was striking that, at many higher education institutions, there seemed to be few agreements in place that would guide the resolution of governance disputes "on the ground" if this were to become necessary.

Taken together, factors such as these point to the value of a Code of Governance as a supplement to existing policy and legislation. One option is to agree such a code at the institutional level. This should not form part of the Institutional Statute, as legislating the Code would run counter to its intention. Rather, the Code should be congruent with the spirit of stakeholder co-operation and flexible enough to be adapted when occasion demands without the requirement of a legal process. The Statute could, however, specify the broad purpose and scope of the Code, as well as spelling out the institutional process required for its negotiation, adoption and amendment from time to time. Such a Code of Governance could include:

- A statement of institutional values and principles, related to standards of behaviour and association (this could be framed as an institutional Code of Ethics or Code of Conduct);
- A general statement of the roles and responsibilities, rights, duties and obligations of different governance bodies and/or actors and stakeholder groups;
- A broad outline of the flow of co-operative decision-making within the institution, including clear indication of mandatory and optional consultation situations, indication of opportunities for participation and comment, and indication of rules of consensus;
- A statement of institutional view on the public trust role of structures of governance (this might include statements on such issues as conflict of interest, personal liability, implications of recusal from decisions, guidelines on whistle-blowing, expectations of time commitment, reward and recognition for participation in the governance process);
- A general statement of the terms of reference of key (non-statutory) committees in the institution;
- A specification of the roles of different governance bodies and/or actors in specific situations (e.g. institutional planning, risk management, organisational redesign and restructuring);
- Indication of financial control mechanisms;
- Indication of grievance procedures as well as procedures for staff and student suspension and dismissal;
- Outline of procedures for review of effective governance functioning.

The implementation and application of such a Code of Governance should be monitored continuously by a suitable individual or unit within the institution, with regular feedback to governance bodies and stakeholder groups (the Institutional Forum could facilitate feedback, for example). Alternatively – or in addition – this approach could be extended to the system level, through the development of a Code of Governance by non-statutory bodies such as the South African Universities Vice-Chancellors Association

(SAUVCA) and the Committee of Technikon Principals (CTP). This could serve as a means of self-policing by institutions as well as enabling dispute resolution in instances where conflict arises between specific institutions and the Ministry and/or between the sector and the Ministry. The Task Team believes that such a development would need to be the outcome of inclusive discussions between all parties concerned.

Recommendation 23: Code of Governance for Public Higher Education Institutions

Consideration should be given to the establishment of a Code of Governance to be adopted and appropriately applied by public higher education institutions. In the first instance, debate on this issue with both government and educational institutions should be promoted by the Council on Higher Education.

---

5 SUMMARY OF RECOMMENDATIONS

5.1 Introduction

The Task Team's terms of reference required that it investigate three aspects of higher education governance in South Africa:

- The present state of governance in public higher education institutions in South Africa;
- The concept of "co-operative governance";
- Ways to improve efficiency, effectiveness and accountability in higher education governance.

In addressing this brief, the Task Team has made 23 recommendations which, it believes, address these issues in a meaningful manner. In some cases recommendations constitute re-affirmation of existing policy; in other cases, modifications of policy are suggested and specific measures are proposed.In this final chapter, the recommendations are brought together in terms of the actions that will be required to put them into effect.

5.2 Recommendations Requiring Amendment of the Higher Education Act

While a state steering system of higher education governance such as South Africa's requires that the burden of effective governance rests with the Councils of individual institutions, acting in the public interest, the Task Team believes that institutional autonomy will be strengthened if the organisational requirements of these Councils are buttressed by more specific regulation of the ways in which Councils are constituted. Given the unacceptably high incidence of governance failure, the Task Team believes that this should be achieved by means of further amendments to the Higher Education Act of 1997.

A first set of recommendations relates to the composition and appointment of members of Council, the minimum Council procedures that are necessary for Councils to be able to fulfil their fiduciary responsibilities, and the standards of formal reporting required of Councils.

Recommendation 8: Role and Composition of Council

The Council is the highest decision-making body of a public higher education institution and has fiduciary responsibility for the institution. Members of Council act in the best interests of the institution and not as mandated representatives of their constituencies.
Councils of both technikons and universities should comprise no more than 24 members, of whom at least 60 per cent should be external members
Institutions should have the latitude to determine the internal members of the Council via the Institutional Statute, provided that they include the Vice-Chancellor, the Chair of the Institutional Forum at least one member of Senate and at least one member elected by the following constituencies: the students, the academic staff, and the support staff.
Other members of the Executive and senior management may be staff in attendance at the Council's discretion, without voting rights. The Registrar should serve as the Secretary of Council.
Institutions should have the latitude to determine external Council membership via the Institutional Statute. In choosing Council's external members institutions should take into account their identification with and capacity to contribute to the institution's mission and the broader national development objectives as well as their perspectives, expertise, personal qualities, and their profile in terms of social equity.

Recommendation 9: Terms of Office for External Members of Council

The terms of office for external members of Council should be five years, with one fifth of the members retiring each year. External members of Council should serve not more than two terms. For new Councils, all external members should serve an initial three-year term, with one fifth of the members retiring each year thereafter.

Recommendation 10: Appointment of External Members to Council

Recommendation 10 a**:**
The Minister of Education has the right to appoint two external members to the Council of every higher education institution from a list of nominees proposed by the institution. Should the Minister fail to express an opinion on the proposal within three months, the institution should proceed with the proposed appointments.
Recommendation 10 b:
Nominations as approved by Council should be submitted to the Minister, together with the institution's statement of governance as published in its annual report. The Minister in turn should confirm the nominations taking into account the potential role that nominees can play in furthering the transformation of higher education as stated in national policy. Should the nominations not been approved reasons for the rejection as well as suggestions as to how to proceed should be provided by the Minister. Should the Minister fail to express an opinion on the proposal within three months, the institution should proceed with the proposed appointments.

Recommendation 11: Implementing Recommendations re Terms of Office and Appointment of External Members of Council at the Institutional Level

In order to implement recommendations re terms of office and appointment of external members of Council, existing Councils should be required to dissolve and reconstitute themselves within three years of revisions being made to the Higher Education Act.

Recommendation 12: Meetings of Council

Full meetings of Council should normally be held between four and six times each year. Council must ensure that the agenda for Council meetings is structured so as to support the priorities of the institution and the fiduciary role of the Council.

Recommendation 13: Committees of Council

Every Council must have an Executive Committee, an Audit Committee and a Council Nominations Committee, and should thereafter have the authority to establish such committees as it deems appropriate for the effective conduct of its business, as currently allowed in the Higher Education Act.

Recommendation 14: Executive Committee of Council

The Executive Committee of Council should be authorised to act on behalf of Council within a clear and formal system of delegated authorities and responsibilities. The Executive Committee should have no more than six members, while including the Chair of Council as its Chair, the Deputy Chair of Council, and the Vice-Chancellor, and while maintaining the balance of external/internal membership applicable to Council as a whole.

Recommendation 15: Audit Committee of Council

The Audit Committee of Council must be required to act independently, and in accordance with generally accepted accounting practices. It should be small, comprising only external members of Council, with the Vice-Chancellor and head of internal audit in attendance. The Chair of Council cannot be chair of the Audit Committee

Recommendation 16: Schedule of Delegations

Councils should establish a schedule of delegated responsibilities, authorities and accountabilities for each of its committees, for the Chair and Deputy Chair of Council, for the Vice-Chancellor, and for other senior members of the Executive and management as appropriate. This schedule of delegations should be formally adopted as a motion of Council, should be tabled and reviewed annually and, if necessary, revised.

Recommendation 18: Formal Institutional Reporting

Full, annual institutional reporting that is consistent with South African Generally Accepted Accounting Practice is essential to ensure the full compliance of Councils with their fiduciary responsibilities. The Department of Education should confirm its draft Manual for Annual Reporting of Technikons and Universities as a standard requirement for all public higher education institutions.

A second set of recommendations are intended to facilitate the better functioning of the Institutional Forum, which the Task Team believes is an essential adjunct to a properly-fiduciary Council:

Recommendation 19: Scope of the Institutional Forum

Institutional Forums, as statutory advisory committees to Council, should be free to discuss any issue of relevance to their institution or to public higher education in general. They may debate issues either at their own volition or at the request from the Council.. The Council of a higher education institution should be obliged to report to the Institutional Forum on the implementation of advice received from the Institutional Forum, as it does with Senate, and should give the reasons for not accepting advice given.

Recommendation 20: Role and Composition of the Institutional Forum

The Institutional Forum is a statutory advisory committee to the Council. It should engage all stakeholder groups of the institution and, unlike the Council, should debate mandated positions where feasible. Institutions should use the discretion of their Institutional Statute to ensure a balance in the composition of the Institutional Forum between the internal constituencies of Council, Senate, management, academic staff, support staff and students. External stakeholder groups should be engaged through co-option by the Institutional Forum to its task teams as appropriate.

Recommendation 21: Chair of the Institutional Forum

The Chair of the Institutional Forum should be elected from its membership for a term of office as specified by the Statute. Representatives of Council and the Executive should not be eligible for election as Chair. On election, the Chair of the Institutional Forum should become a member of Council.

5.3   Recommendations Requiring a Statement of Policy by the Ministry

In addition to these formal changes, the Task Team believes that effective governance will be further enhanced by additional leadership on the part of the Ministry, by means of statements of policy. In these cases, the burden of action lies with individual institutions, in terms of the institutional autonomy set out in current policy and legislation.

Recommendation 1: Institutional Statutes

Greater acknowledgement is due by government and institutions of the significance of Institutional Statutes as a governance device, recognising also that the Ministry is accountable for ensuring that Statutes comply with the policy and legislative framework. Public higher education institutions should be required to review and revise their Institutional Statutes in terms of the Higher Education Act and its amendments, as well as to publish Statutes consolidating amendments from time to time.

Recommendation 2: Building Governance Capacity at Institutional Level

Participation in governance at institutional level takes place in a variety of ways, including participation by individuals in their own capacity (e.g. Council), and as mandated representatives of a stakeholder group (e.g. Institutional Forum). Public higher education institutions need to assess the capacity needs of all those participating in governance and to develop approaches for addressing these. In particular, mechanisms should be found for building the capacity of students to play their role in institutional governance.

Recommendation 3: Review of Role and Composition of Senate

Senate is accountable to Council for the academic and research functions of the public higher education institution. Universities and technikons should be encouraged to review the composition and functioning of their Senates, to ensure that they fulfil this role with a particular focus on maintaining academic standards and the principle of academic freedom in teaching and research, and on playing a forward-looking role in policy formulation, in partnership with Council. This will best be achieved where Senate's membership ensures the meaningful participation of the professors, the academic staff in general, the administrative heads of academic departments, and other staff and the students of the institution as specified in the Higher Education Act; and where attention is given to adopting suitable mechanisms of delegation in respect of day-by-day academic business.

Recommendation 5: Remuneration of Council Members

Remuneration of Council members should be a matter of consideration for external Council members only and internal remunerated members of Council should not be further compensated in any way for Council service. Remuneration of external Council members should be based on a system that acknowledges the economic value of the time given by lay members of Council to the governing body. Remuneration should constitute a modest sum to cover attendance at all Council meetings, including extraordinary and committee meetings.

Recommendation 6: Nature of Remuneration of External Members of Council

Payment of Council members in kind (such as a tuition rebate or "staff fee" for family members of Councillors) should not be allowed as it constitutes a potential conflict of interest, and is an unevenly distributed benefit.

Recommendation 7: Transparency of Remuneration of External Members of Council

Remuneration of Councillors should be wholly transparent, and details of payments should form part of the institution's audited financial statements.

Recommendation 17: Transparency of Council Business

Council should give attention to ensuring a process for appropriate transparency of Council decisions. The Chair of Council should have the discretionary authority to designate matters confidential to Council members.

5.4 Recommendations Requiring Action by the Council on Higher Education

Finally, the Task Team believes that the Council on Higher Education can play a direct role in promoting effective governance in higher education:

Recommendation 4: Developing Trusteeship

The Council on Higher Education should promote the development of trusteeship in the governance of public higher education institutions by:
Initiating a discussion with the Ministry of Education regarding publication of guidelines for the responsibilities of those undertaking fiduciary roles;
Initiating a discussion with the Ministry of Education regarding establishing procedures for dealing with failures in trustee responsibility;
Initiating consideration of how to develop resources for external members of university and technikon Councils, such that these would contribute to sustainable fiduciary capacity in the public higher education system.

Recommendation 22: Promoting Good Governance in the Public Higher Education System

In the light of developments in the higher education sector subsequent to the White Paper and Higher Education Act of 1997, the Council on Higher Education should renew and promote debate on the vision and principles that underlie the current policy and legislative framework for higher education governance in South Africa.

Recommendation 23: Code of Governance for Public Higher Education Institutions

Consideration should be given to the establishment of a Code of Governance to be adopted and appropriately applied by public higher education institutions. In the first instance, debate on this issue with both government and educational institutions should be promoted by the Council on Higher Education.