GUIDELINES FOR GOOD GOVERNANCE PRACTICE AND GOVERNANCE INDICATORS FOR COUNCILS OF SOUTH AFRICAN PUBLIC HIGHER EDUCATION INSTITUTIONS
FOREWORD

Over the past several years, independent assessors have been appointed for a number of universities in terms of the Higher Education Act (Act No 101 of 1997, as amended) as a result of poor institutional governance and mismanagement. The work done by the independent assessors revealed serious challenges with regard to governance, administration and management of some universities that were destabilising and undermining the effective functioning of the institutions. Various governance failings stemmed from amongst others, inexperience and lack of the required expertise among some of the council members towards the fulfilment of their governance and fiduciary role; fraught relationships between councils and executive management and members of staff; failure of leadership especially at the level of the chairpersons of councils; unacceptable and counter-productive conduct by some council members; and non-adherence to proper meeting procedures.

As a result of these governance challenges in the system, for the 2014-2019 Medium Term Strategic Framework, government committed to develop governance indicators and monitor governance practices of universities. These challenges have also provided the context within which the DHET and the Committee set out to draft this document, and have influenced both the approach and content.

The process of developing this document was started in November 2015 through a brainstorming meeting between the Department and a group of sector stakeholders namely, former administrators, researchers, some university registrars, representatives from the Council on Higher Education (CHE), Universities South Africa (USAf) and University Chairs of Council Forum-SA (UCCF-SA). The main objectives of the meeting were to initiate a dialogue on the development of indicators that will be used to measure the state of governance at universities; to set up a process and discuss the principles for the development of the indicator or a guide to good governance framework.

Following the brainstorming meeting, a Committee consisting of Professor Themba Mosia, Professor Rolf Stumpf, Dr Jairam Reddy, Dr Jeffrey Mabelebele and Dr Denyse Webbstock was established to develop governance indicators.

Governance challenges continue to plague some universities, and there is a need for a code of good governance practices for university councils. It was therefore resolved that indicators on their own will not be very useful to the system without a code of good governance. Hence the document titled “Guidelines for Good Governance Practice and Governance Indicators for Councils of South African Public Higher Education Institutions”.
The first draft document was approved by the Director-General in March 2017 for consultation. It was discussed and debated in a consultation workshop with council chairpersons, vice-chancellors, registrars (as secretaries of councils), USAf and the CHE. The workshop drew many comments and recommendations on how the guidelines and indicators may be improved. Comments were received through discussions during & after the workshop; evaluation forms and written submissions from institutions subsequent to the workshop. All comments were read and considered. Some, not unexpectedly, contradicted one another, and not all the suggestions were incorporated into this second draft. However, all enriched the deliberations and invoked other processes which the DHET may embark upon to improve the overall governance of the system.

We acknowledge other distinctive codes that are available to advise and guide on the path to better governance such as the King Reports on Corporate Governance for South Africa which contain very good principles of good governance. However, these may not be entirely applicable to the higher education setting. Hence the need to develop Guidelines for Good Governance Practice accompanied by a set of indicators specific to councils of public higher education institutions.

Councils are the highest decision-making bodies of public higher education institutions. They are responsible for the good order and governance of institutions and for their mission, financial policy, performance, quality and reputation. The Guidelines for Good Governance Practice sets out the principles and key elements of good governance practices, which can serve as a valuable and practical resource to university councils in their governance role. The indicators are purposefully designed for self-assessment by university councils to measure their practices on primary areas of governance. The indicators are by no means, designed with a view to create a form of a ranking system for comparing institutions.

We trust that this document will contribute to a revitalization of governance practices at higher education institutions. Governing of a university needs to be carried out with integrity and care. Failure to effectively govern can be the undoing of an institution. On various occasions when a Minister has had to intervene, there are accusations of encroachment on institutional autonomy.

Under certain extreme circumstances and after following due process and procedure outlined in the Higher Education Act, the Minister may intervene especially when a council has failed to discharge its duties. This is a provision no Minister has joy in applying. The Ministry's oversight role does not involve responsibility for the micro-management of institutions however it does justify direct intervention when such is in the interest of ensuring public accountability regarding the use of funds or preventing mismanagement. We have to always remember that institutional autonomy should be exercised in tandem with public accountability as clearly articulated in the White Paper. Government
invests vast amounts of public resources to ensure that institutions contribute to national development goals and this has to be met by a degree of accountability to the South African public.

One of the reasons I am putting emphasis on improving governance of universities, is the need to ensure that our universities do not become hubs for corrupt practices. The success of a public higher education institution rests, to a large extent, on accountable and effective governance and sound management practices.

I approve this revised draft document for institutions to pilot - to use the guide to benchmark their council practices and the indicators for self-assessment. The assessment scorecard should be submitted to the DHET for analysis that will set a baseline for the system. This is a living document that will be continuously reviewed and improved periodically, as and when deemed necessary.

I would like to thank everyone who has contributed to the development of this document. A special word of thanks to Professor Rolf Stumpf who put together this document.

Professor HB Mkhize, MP
Minister of Higher Education and Training,
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CHAPTER 1. INTRODUCTION

Universities and other higher education institutions are crucial institutions in terms of contributing to the national development objectives. Among the 17 priorities that serve as navigational markers for the United Nations Sustainable Development Goals (SDGs), higher education across the world features prominently towards the fulfillment of these priorities, which include, among others, an end to poverty, inequality, and scientific progress in economic growth in developing counties. The National Development Plan (NDP) outlines three main functions of universities. First, universities educate and provide people with high-level skills for the labour market. Second, they are the main producers of new knowledge; they assess and find new applications for existing knowledge; and they validate knowledge and values through their curricula. Third, they provide opportunities for social mobility and strengthen social justice and democracy, thus helping to overcome the inequities inherited from our apartheid past.

The current system of governance for the South African public higher education institutions is constituted in the Higher Education Act No 101 of 1997. In terms of the Higher Education Act, the main institutional governance structures are council; the senate; the institutional forum and the Student Representative Council (SRC). The council is the highest decision-making body and is responsible for ensuring good governance of the institution subject to the Higher Education Act and relevant institutional statutes. The senate is accountable to the council with regard to academic and research functions of an institution. The institutional forum advises the council on issues affecting the institution as stipulated in the Act. The SRC has a jurisdiction, subject to Council, over certain student matters. Senates and SRCs also exercise their primary governance role through their membership of university councils as provided for by the Higher Education Act.

The governance relationship between the councils and senates; between councils and SRCs; and between councils and institutional forums is set out in the Higher Education Act, Act 101 of 1997, amended. The relevant provisions in the Act set out in which cases council can only act after having consulted these three structures and in which cases such consultation takes the form of non-binding ‘after consultation’ or binding ‘in consultation’. It is required that councils must follow these prescriptions meticulously as part of good governance practices in their institutions.

Since the Higher Education Act was promulgated for the first time in 1997, no less than 14 independent assessor investigations were conducted into the governance and administration of the affected universities. Very disconcerting is the fact that in the case of 4 universities, such investigations were conducted more than once. In 11 cases these investigations resulted in their councils being dissolved and the institutions being placed under administration in terms of the Higher Education Act.
The reasons for our universities experiencing such governance challenges and difficulties are complex and certainly cannot be divorced from the country’s apartheid based political past and its legacies. Some of the most compelling reasons are:

a) The increased emphasis placed on access for all academically deserving students irrespective of their financial strength and limited alternative options for young school leavers has resulted in an average growth in undergraduate student numbers of close to 5% per annum for the past decade or so. This sustained growth in student numbers, coupled with very poor student throughput and completion rates, have resulted in significant new operational and governance challenges for universities;

b) The failure of public funding levels for universities to match cost increases resulting from increases in student enrolments and other higher education cost increases, means that public funding now only amounts to 40% of all income for the SA university system compared to nearly 50% a decade or so ago. This decline in public funding has, in turn, resulted in an increased emphasis by universities on student tuition fee income and private own income which has brought with it new governance challenges.

c) The introduction by government of a number of steering instruments in relation to funding, planning, and quality as set out in the National Plan for Higher Education (NPHE) of 2001 together with associated policies and reporting systems, particularly concerning performances of institutions has introduced new elements of governance regarding institutional oversight for university councils;

d) The size of university councils comprising up to 30 voting members and even more when non-voting members who are included for their skills; together with the minimum requirements regarding the number of institutionally non-aligned members, has made the finding of sufficient numbers of such council members who are well versed with the governance challenges facing universities and who have an adequate understanding of higher education, very difficult; and

e) The manner of selection of members of council has further contributed to a number of governance challenges. In many instances there are no criteria set to select suitably experienced and qualified ‘independent’ members of council. Some become members by association with some influential political or business acquaintances to whom they owe allegiance; some by virtue of being university graduates through convocation; and in certain institutions, stay as members for an inordinate amount of time, thereby
compromising their independence as external members. Similarly, internal stakeholders are sometimes selected to council based on their popularity or on the subjective judgment of fellow staff members.

Other than the White Paper and the Higher Education Act, there are no governance standards framework provided for higher education institutions for them to establish norms and standards of good governance. In the absence of such a framework, institutions have had to rely on the King Reports on Corporate Governance in South Africa. Although the King Reports contain very good principles of good governance, they in general do not represent appropriate governance instruments for the higher education sector. Hence the need to develop Guidelines for Good Governance Practice and Governance Indicators for University Councils.

The Guidelines for Good Governance Practice sets out principles and key elements of good governance for university councils, to improve efficiency, effectiveness and accountability of university councils. The indicators or standards are purposefully designed for self-assessment by university councils to measure their approaches to, and practices in, primary areas of council governance. The indicators are by no means designed for comparison between individual institutions. It should be emphasised that this Guide is purposefully constructed for university councils only.
CHAPTER 2. REGULATORY FRAMEWORK FOR INSTITUTIONAL GOVERNANCE


The first democratic government established a National Commission on Higher Education (NCHE) which charted a programme of transformation for the higher education sector in a post-apartheid era. Its report (NCHE Report: A Framework for Transformation, 1996), laid the foundation for the governance structure of the post-apartheid public higher education system.

In its report, the NCHE devoted a considerable amount of attention to appropriate governance models for universities. The following three relationship models between government and higher education are analysed:

a) State control: A model where the system is created by the state, almost completely funded by it, and whose key aspects are controlled by the bureaucracy and politicians;

b) State supervision: A model in which the state sees its task as supervising the higher education system to ensure academic quality and maintain accountability; and

c) State interference: A model where no systematic forms of control occur but the state interferes in an ad hoc manner in the university system mainly according to political considerations.

The NCHE proposes the model of ‘co-operative governance’ as a special category within the state supervision model. This model rests on three key assumptions:

a) Accepting differentiation between, and sharing of, powers;

b) Policy formulation, decision making, implementation and monitoring being separate yet connected functions; and

c) Distinguishing between multiple levels and facets of policy making, decision making, implementation and monitoring.

Co-operative governance therefore ‘offers a strong steering model with a planning role and a strong co-ordinating role, which provides for increased and stronger government and stakeholder participation as well as input from the higher education sector’ (NCHE Report, 1996: p 180).

According to the NCHE co-operative governance therefore implies that:
a) No single actor or agency can claim sole responsibility or authority for determining the policies and priorities of the higher education system;

b) Competing and complementary interests, interdependence and common goals of those involved in higher education must be recognized;

c) Power, shared accountability and responsibility require co-operative behaviour from all participants in higher education; and

d) Within the context of national goals and priorities, the government will play a steering and coordinating role with the participation of higher education stakeholders. (NCHE Report, 1996: p179-180)

These precepts apply within the context of the governance of higher education by the state as represented by the government of the day. However, regarding institutional governance the NCHE points out that ‘the principles of co-operative governance should be generally applicable to institutional governance’. The NCHE provides for councils to:

a) Take ultimate responsibility for the institutional mission and the financial position of the institution, and for issues of public integrity;

b) Be responsible for the appointment, remuneration and termination of services of senior management and all other institutional staff members;

c) Not be involved in the day-to-day issues of institutional management, other than monitoring progress in achieving set goals;

d) Delegate their powers and responsibilities relating to the awarding of qualifications and other academic awards to senates; and

e) Strike an appropriate balance between the need to limit the size of the council and the wish to include representatives of different stakeholders groups, provided at least 60% of the council members are ‘independent’ of the institution. (NCHE Report, 1996: p201-202).

The model of co-operative governance, put forward by the NCHE, makes provision in the composition of councils for ‘independent’ experts as well as representatives of recognized institutional stakeholder groups. This model has to be understood against the background of the NCHE’s call for greater democratization of university structures as part of the transformation of higher education. Accommodating both ‘experts’ and institutional stakeholder groups in sufficient
numbers within the so called ‘60% independent experts rule’ resulted in very large councils for most universities.

Both the NCHE and the White Paper on Higher Education have the motives in advancing models of council membership consisting of ‘experts’ and ‘stakeholder representatives’ as part of the democratisation of higher education structures and the transformation of higher education.

2.2 University governance in the White Paper on Higher Education (1997)

The Higher Education White Paper 3: A Programme for Higher Education Transformation (1997) devotes an entire chapter to governance of the higher education system. In this regard it distinguishes between the government’s role with regard to the higher education system and institutional governance. With some amendments, it endorses the system of co-operative governance as espoused by the NCHE.

In paragraph 3.7 the White Paper states that: ‘Co-operative governance assumes a proactive, guiding and constructive role for government. It also assumes a co-operative relationship between the state and higher education institutions. It further states that institutional autonomy is to be exercised in tandem with public accountability. Another is that the Ministry’s oversight role does not involve responsibility for the micro-management of institutions. A third implication is that the Ministry will undertake its role in a transparent manner’.

Institutional autonomy of universities, meaning that they have the right and responsibility to manage their own affairs, is explained in paragraph 3.33.

The role and duties of university councils are described in paragraph 3.34 as: ‘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. To sustain public confidence councils should include a majority of at least 60% of members external to the institution. Councils ought not to be involved in the day-to-day management of institutions as that is the responsibility of their executive management, led by the vice-chancellor/rector/principal who in turn is accountable to the council’.

These points relating to institutional governance, are given effect in the Higher Education Act, Act 101 of 1997 and its provisions regarding institutional governance are described in the next section.
2.3 Governance and the Higher Education Act, No 101 of 1997

Since the Higher Education Act was promulgated in 1997 it has been amended several times, the last such amendment being in 2016. Many of these amendments covered governance related matters, particularly in relation to failures in financial governance and also in broader institutional governance requiring Ministerial intervention.

In its latest format the Higher Education Act in Section 27 covers the following matters regarding institutional governance:

a) Its role and function (Subsections 1, 2 and 3);

b) Its maximum size and its composition (Subsection 4);

c) Eligibility criteria and election procedures: To be set out in institutional statutes (Subsection 5);

d) Rule regarding 60% of members being independent of the institution (Subsection 6);

e) Provisions regarding the background of members, their fiduciary duties, declaration of financial interests and of conflicts of interest, contravention of stipulations regarding the declaration of conflicts of interest, and adoption of a council code of conduct (Subsection 7); and

f) Resignation of council (Subsections 8 and 9).

Section 29 of the Higher Education Act makes provision for the establishment of council committees while Section 32 sets out council’s duties and responsibilities in respect of making institutional statutes and institutional rules.

The 2016 Higher Education Amendment Act introduced a number of refinements to Section 27 of the Higher Education Act mainly with respect to:

a) The appointment or re-appointment of members of council adversely implicated in reports of independent assessors;

b) Exercising of the fiduciary responsibilities of council members in activities of the council, its committees or in exercising any functions delegated by council;

c) The annual declaration of business interests that could lead to a conflict of interest with the institution;
d) The prior declaration in writing, by council members of conflicts of interest with specific agenda items for of council or committee meetings or in the performance of any delegated functions;

e) Prohibition of a council member in participating in any discussions or decisions on a matter in which he/she has declared a conflict of interest at council meetings or meetings of its committees;

f) The adoption by council of a code of conduct and subscription to it in writing by all members of council, its committees and all persons exercising functions delegated to them by council.

These refinements together with a series of previous amendments, were aimed at closing any loopholes that existed in previous legislation with regard to governance matters which may have given rise to governance difficulties and failures that resulted in some institutions being placed under administration.

The Higher Education Act provides neither provides any detail or competencies required from council members for the effective and efficient execution of their duties, nor does it provide for the chairperson and deputy chairperson. The Higher Education Act states in Section 27(7) that ‘a member of council or a member of a committee of council must be a person with knowledge and experience relevant to the objects and governance of the public higher education institution concerned.’

Section 27 (7E) (a), makes the adoption of a code of conduct by the council obligatory. The Higher Education Amendment Act, No 9 of 2016 has, however, considerably strengthened a number of provisions for council members aimed at improving institutional governance. Apart from stressing the fact that council members, including members of its committees, must at all times function in the best interest of the institution, it has strengthened the provisions on declaration of interest and conflict of interests considerably.
2.4 Governance and institutional ‘Reporting Regulations’

In 2014 the Minister or Higher Education approved the Regulations for Reporting by Public Higher Education Institutions aimed at improved institutional accountability that have some implications for institutional governance. These regulations prescribe the following of immediate concern to councils of universities:

a) Production of a strategic plan every five years;

b) Submission of an annual performance plan aligned to the strategic plan containing appropriate performance targets;

c) Identification of a core set of institutional indicators for monitoring institutional performance;

d) Submission of a mid-year performance report; and

e) Ensuring alignment between the following institutional plans and instruments: Strategic plan, annual performance plan, annual report, budget documents and mid-year performance report.

These requirements introduced a new dimension of council responsibilities involving institutional planning. The Regulations lists the following committees of council as a requirement:

Remuneration committee, audit committee, finance committee (if separate from audit committee), planning and resources committee, council membership committee, risk committee (if separate from audit committee and/or finance committee); and IT governance committee.

From these regulations it is clear that council members are required to possess a considerable amount of knowledge as well as experience in the above-mentioned facets of institutional planning and institutional accountability.
2.5 Governance and Institutional Statutes and Institutional Rules

The Higher Education Act provides for university councils to make institutional statutes for approval by the Minister and for making accompanying institutional rules.

Some institutions argue that including all governance related matters in one document makes for easier compliance and monitoring thereof. The arguments in favour of institutions having separate institutional statutes strengthened by a set of institutional rules are persuasive and this approach is recommended as constituting good practice. Governance matters should be enshrined within the statute, while management and administration, operational and procedural issues concerning governance matters are to be enshrined in the institutional rules. The institutional rules allow for frequent amendment and approval by the council, and will not require Ministerial approval as in the case of the statute.

Institutional statutes are intended to contextualise the prescriptions of the Higher Education Act, within an institution’s specific context. In this regard an institutional statute represents an explication of the Act but within an institutional context and without contravening any provisions of the Act. Institutional statutes have to be approved by the Minister who would publish them in the Government Gazette as constituting binding secondary legislation. Although differing in some detail, Institutional statutes typically cover the following matters in relation to councils:

a) Functions, duties and responsibilities
b) Composition and criteria for eligibility
c) Terms of office of members
d) Election and nomination procedures of members
e) Vacancies on council
f) Chairperson and deputy chairperson
g) Meetings and meeting procedures of council
h) Executive committee of council
   i) Chairperson, Deputy Chairperson, Secretary and Meeting Procedures of the Executive Committee of the Council
   ii) Powers and functions of executive committee of council
   i) Committees of council

A cursory analysis of some institutional statutes shows that in many cases no further competency requirements are set for members of council apart from the very general requirements for
membership mentioned in the Higher Education Act. In addition no specific competency requirements are stipulated for the chairperson and deputy chairperson of the council. Similarly, most institutional statutes are silent on councils developing governance-enhancing instruments such as codes of conduct, annual performance assessments, and formal delegation frameworks although the existence of some of these measures seems to be assumed in the Higher Education Act.

The DHET also developed a standard institutional statute to assist newly merged universities in the period 2002-2005 and was also used in the establishment of the new universities in 2013 and 2014. The standard Institutional Statute, however, needs regular review so that it can stay relevant for whenever it is required in an emergency situation.

Institutional rules, in turn, provide an opportunity for institutions to explicate the provisions of the institutional statute and provide more detail on a variety of institutional governance and other related arrangements. Institutional rules are subject to council approval after the required consultations have been completed. Institutional rules with regard to governance matters, are a vehicle for setting out in great detail particular processes and arrangements provided for in the institutional statute. Regarding institutional governance some issues covered in the institutional rules that must be consonant with the institutional statute are:

i) Arrangements regarding nomination and appointment of council members;
ii) Exercise of voting rights of members;
iii) Duties of the chairperson and deputy chairperson of council and its committees;
iv) Terms of reference of council committees;
v) Accepted meeting procedures;
vi) Administrative arrangements regarding meeting agendas;
vii) Institutional standing committees;
viii) Relationships between the council and senate, SRC and institutional forum;
ix) Appointment processes of vice chancellor and members of senior management;
x) Council’s code of conduct, delegations framework and performance assessment measures;
xii) Induction and governance training of council members; and
xii) Performance assessment of vice- chancellor.
CHAPTER 3. COOPERATIVE GOVERNANCE FOR PUBLIC HIGHER EDUCATION

3.1 National Level

At national level, cooperative governance is based on the principle of autonomous institutions working co-operatively with government. The White Paper 3 stipulates that the state, in the form of the Minister should have a “proactive, guiding and constructive role” in higher education.

Under cooperative governance, universities enjoy some degree of autonomy. Such autonomy is a condition for effective self-government. However, there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defense of mismanagement. Institutional autonomy is therefore inextricably linked to the demands of public accountability.

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

The Minister, through the Reporting Regulations, monitors institutional compliance with relevant legislation, and further monitor councils’ ability to promote efficiency, effectiveness, and ethical behaviour when exercising control over state resources.

The guiding role of the Minister justifies direct intervention when this is in the interest of ensuring transformation or restoring good order and legitimate governance and management in institutions. Taken within the context of a commitment to co-operative governance and institutional autonomy, the intervention by the Minister can only be justified on fiduciary grounds, or if a public higher education institution is clearly not pursuing the policies for tertiary education which form part of the government’s mandate. The Act clearly stipulates conditions under which the Minister may intervene into the affairs of the institution.

In order for co-operative governance to work, the policy informed the establishment of structures that would enable the differences between stakeholders to be negotiated in participatory and transparent manner.

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1 White Paper 1997, Section 1.24
2 White Paper 1997, Section 1.25
3 CHE, Governance in South African Higher Education
ways. At national level, the CHE was established to be consulted by the Minister for advice. As a political leader, the Minister could follow the advice or disregard it, provided that the public was given reasons for disregarding advice provided by the new governance body.

### 3.2 Institutional Level

In line with international practice, the governance of universities takes the form of a bicameral system in which primary accountability is shared between members of council acting as trustees in the public interest; and academic matters that are entrusted to the senate. The work of these governance bodies is underpinned by the dual principles of institutional autonomy and academic freedom.

The Higher Education Act contains some provisions that define the relationship between councils and senates. The overall responsibility for a public higher education institution is vested on the council: “The council of a public higher education institution must govern the public higher education institution, subject to the Act, any other law and the institutional statute”\(^4\). This is also underscored in the White Paper that 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. Councils ought not to be involved in the day-to-day management of institutions as that is the responsibility of their executive management, led by the vice-chancellor who in turn is accountable to the council\(^5\). The senate is responsible for matters relating to 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”\(^6\).

However, 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).\(^7\)

Thus the language policy and “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. In addition, council cannot decide on specific admission

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\(^4\) The Higher Education Act, Section 27(1)
\(^5\) White Paper 3, Section 3.34
\(^6\) The Higher Education Act, Section 28(1)
\(^7\) CHE, Governance In South African Higher Education (2002): 35
criteria, or criteria for readmission, and number of students to be admitted into a programme without senate’s agreement. On the other hand, the determination of the overall admission policy for an institution and the appointment of academic staff can only be done by council after consultation with senate.

Co-operative governance at institutional level, is premised on the principle that no single stakeholder, be it management, academic staff or students, can take sole responsibility for determining an institution’s transformation agenda. The White Paper argued that institutional governance depends on the recognition of the existence of different institutional interests, and the inevitability of contestation among them. The NCHE recognised that insisting that councils include a range of internal constituencies may not be sufficient, and that there would be an ongoing requirement for extensive debate and negotiation across each institution as a whole. It therefore proposed the establishment of a new structure, Institutional Forum, in addition to the two traditional structures, council and senate. These forums would be advisory bodies where representatives of all stakeholders could meet, identify problems, mediate interests and advise relevant structures such as the SRC, senate and council” 8.

The institutional forums are to play an advisory role to councils as a way of broadening participation in institutional governance; they are meant to act as ‘shock absorbers’ in the transformation process by providing an arena in which issues pertaining to the institution’s transformation agenda can be debated and discussed9. In other words, it is a body in which university stakeholders could meet and discuss issues of concern to the institution; mediate interests and advise the council as to the possible solutions or approaches. In other words, they are to serve as an avenue to ensure that the council is informed of the views of internal stakeholders with respect to transformation and other matters as mandated.

Their advisory role to council encompasses issues pertaining to institutional transformation, the mediation of conflict among campus stakeholders, and the selection of candidates for senior management positions. The legislation requires councils to consider the advice given by the institutional forums and provide written reasons if the advice is not accepted10.

The fourth statutory structure is the students’ representative council (SRC) which is the highest decision-making structure of student governance. In line with the definition of governance, the roles and responsibilities of the SRC include: participating in institutional decision-making structures; advising and supporting the delivery of effective and efficient student support services; managing

8 NCHE Report 1996:204
9 CHET, Transformation in Higher Education: Global Pressures and Local Realities in South Africa; Chapter 7: 155
10 The Higher Education Act (No 101 of 1997, as amended): Section 31(1A)
and administering student representation at different levels; advising on the development of academic programmes and student learning experiences; and participating in the development and implementation of institutional and national policies on higher education\(^\text{11}\). The legislation also outlines matters which council can perform after consulting with the SRC, such as the establishment of a student support services council, which is to advise on the policy for student support services; as well as disciplinary measures and procedures relating to students.

While the council is responsible for governance, the executive management led by the vice-chancellor is responsible for effective management and administration of the institution. It is the responsibility of a vice-chancellor, through the executive management team, to institute appropriate management and operational measures. It is the responsibility of the council to ensure that an institution's primary operations, and its management and administration, function accordingly.

\(^{11}\) CHET, Effective Student Governance (2001)
CHAPTER 4. ASSESSMENT OF AND FAILURES IN GOVERNANCE AT SOUTH AFRICAN PUBLIC UNIVERSITIES

4.1 Introduction

Governance of universities has remained a challenge over the past two decades, despite the acceptable governance record of many South African universities. This is particularly evident from a considerable number of universities that have had to be placed under administration during this period. This section provides a brief analysis of some of these governance failures largely based on analyses done by USAf (2010) and the CHE (2012) regarding the main findings of the various independent assessor reports. These analyses are supplemented by other assessments and debates on governance.

4.2 Inadequate leadership

First, it is the inability of councils, and in some cases the chairperson and deputy chairperson in particular, to provide strategic leadership and direction resulting in the abdication of its responsibilities to the vice-chancellor and/or management. This is reflected in, amongst others, the failure of councils to discuss strategic issues and the low level and poor quality of debate and discussion in council meetings. In the most extreme case this resulted in the marginalisation of council and rendered it as nothing more than a rubber-stamp for the vice-chancellor. The disfunctionality of councils has enabled the vice-chancellor to determine the agenda of council meetings by selecting which items should serve or not, chair critical council committees such as finance and remuneration, not establish an audit committee, and not table the financial statements and budget for approval by council. The inadequate leadership by council may also result in “council capture” where certain members of council influence council decision-making processes to their own advantage.

This inadequate level of strategic leadership by council was also identified in the Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions that states: 'It became clear in the course of the institutional visits that, with a few exceptions, the leadership role of council was limited, if not non-existent. Indeed, the overriding impression is of councils that have a prescribed vision, provide little or no leadership and strategic direction, and have weak management accountability measures in place. In short, they have abdicated their leadership role to management and seem to have, in the main, become conveyor belts for ratifying policies submitted by management. This was graphically portrayed by constituencies at one institution where it was claimed the ‘council was owned by management’ (2008:104).
4.3. Role confusion and contestation

Second, in contrast to leadership failure and at the opposite end, is role confusion between governance and management. This is manifested in the council encroaching into operational matters, which is the preserve of management. In its most extreme form, role confusion has resulted in council not only interfering in operational matters but usurping the role and functions of management. This is exemplified in the case of one council establishing a Quality Assurance Committee to oversee the quality assurance function and at another where the council undertook the development of the institutional Programme and Qualification Mix (PQM). In some cases council members either interfered directly or sought to influence outcomes of staff appointment processes, procurement decisions, and admission of students in their favour that in many cases was not in the best interest of the institution but in their own.

In other cases, this may be reflected in the chairpersons of councils who are overly dedicated to their role to the extent that they get involved in the day-to-day running of the university; serving overly extended terms of office and “careerism” of the chairpersonship; and the inability of the chairperson to delegate responsibilities. As a result of this over-dedication of discharging responsibilities, the chairperson is even allocated an office, and in extreme cases they tend to find loopholes to maneuver the system for unethical practices which end up benefiting the chairperson personally.

In some isolated cases role confusion even occurred between councils and their executive committees as well as their other committees. This confusion arose largely due to lack of clarity on delegated roles of council committees in respect of council itself. Normally all council committees make recommendations to council and have no decision-making powers unless specifically delegated as such by council.

4.4 Factionalism and internal divisions

Third, councils are rendered ineffective because of the role of factionalism and internal divisions, which are due to the fact that the ‘internal’ members of council in particular are unable to distinguish between the interests of the constituencies, which elected or nominated them to serve on council, and the interests of the institution, which is the fiduciary responsibility of the council. Thus instead of removing their constituency hat and putting on their institutional hat when they enter the council chamber, the council becomes a battleground and bargaining structure for fighting battles that may have been lost in the institutional structures where issues such as the annual fees and wage increases are negotiated.

These internal divisions give rise to factionalism as the different constituencies seek alliances in support of their particular demands or cause. While the assessor reports suggest that it is the labour
union and student members who are at the forefront of fomenting factionalism, management and external members are not immune and have at times also been guilty of such behaviour.

4.5 Non-adherence to rules and procedures

Effective oversight and decision-making by council is also precluded by the fact that governance procedures and basic meeting rules are not adhered to. This includes, amongst others:

a) Lack of quorums. In the case of a particular university the assessor reported that no less than 5 consecutive meetings of the council did not have a quorum;

b) Inadequate preparation and timeous circulation of agendas and minutes;

c) Agenda item and matters referred for action not always followed-up at the next meeting of council;

d) Frequent revisiting of council decisions that were taken at a previous meeting;

e) Overturning of council decisions by the chairperson after the meeting;

f) Excessive use of special or emergency meetings usually convened at short notice, and where decisions are made on matters not reflected on the council agenda;

g) Abuse of the item ‘general’ or ‘urgent matters’ to include substantive matters that should have required substantiating documentation;

h) Remuneration of council members, which is restricted to external members, extended to internal members;

i) Submission of claims for reimbursement by council members without the provision of the necessary supporting evidence;

j) No consistent practices regarding declaration of interest at each meeting;

k) Non-application of council codes of conduct; and

l) Ineffective and dysfunctional council committees.
4.6 Council / Vice-chancellor relationships

In a number of universities fraught council / vice-chancellor relationships were an important contributory factor to institutional governance failures. In some cases the relationship has been characterised by recurring arguments, criticism and hostile attitudes. In other cases the tensions were based on rumours (often later proven to be false) or simple misunderstandings resulting from infrequent and incomplete communication between the council and the vice-chancellor or executive management. In some instances clear rules on the delegation of decision-making authority between council and the vice-chancellor and executive management were lacking, causing some council members to feel that the vice-chancellor and executive management may have overstepped their levels of authority. Further, the inability of some council members to distinguish between their role in governing the institution and the vice-chancellor in managing the institution was a cause of friction in quite a few cases.

This manifested itself, amongst others, in the following ways:

a) Council members seeking to undo valid decisions by the vice-chancellor;

b) Council becoming less supportive of management role of the vice-chancellor;

c) Council becoming more and more involved in daily operational matters, to the point of stripping management and the vice-chancellor of normal functional authority; and stifling the effectiveness of management.

d) Active mobilisation by council members against the vice-chancellor who stood in the way of their often indefensible goals towards self-enrichment;

e) Disputing the vice-chancellor’s decision making mandate in the absence of a council approved delegations framework;

f) Sloppy or no proper performance management of the vice-chancellor’s performance; and

g) Council members by-passing the vice chancellor in seeking to get certain decisions through.

Vice-chancellors were not always blameless in these matters. In some cases they failed to establish regular information and communication channels on institutional matters with council. In others they simply failed to ensure implementation of council decisions, and in yet others were unable to galvanise senior management into a cohesive unit supporting council in its governance task, and in others failed to ensure that council documentation was prepared properly and provided timeously to council members for preparation for meetings. Similarly, where relationships between the vice
chancellor and chairperson of council have been cosy, the rest of council is undermined, and cracks emerge when the relationships are no longer healthy.

4.7 Other governance challenges

4.7.1 ‘Stakeholderisation’

One of the key factors that contributes to and helps explain the persistent and perennial crisis of governance at the institutional level is the structure and composition of councils, which has, in many cases, resulted in the “stakeholderisation” of councils. “Stakeholderisation” refers to the fact that council members who have been nominated by various internal constituencies such as students and staff, or external constituencies such as alumni through the convocation, are unable to distinguish between the interests of the constituencies that elected and/or nominated them and the interests of the institution, which as council members it is their responsibility to safeguard. This problem even extends to the ministerial appointees on councils who in some cases feel that they are more superior than other council members on the basis of their appointment; undermine other members of council and the council chairperson; and seem to be under the impression that they are obliged to report back on council activities to the Minister. In this case, it is the responsibility of the council of a public higher education institution to report any developments that may have an adverse impact on the institution to the Minister. It is in this sense then that the impression that the role of ministerial appointees as the “eyes and ears” of the Minister is not only superfluous but contributes to role confusion within councils.

In addition to the “stakeholderisation” of councils, a second factor precluding councils from exercising their fiduciary responsibilities, which if not equally important is the non-adherence to governance procedures, which is due to the fact that council members in many cases do not have the requisite skills and experience to enable them to perform their functions on council. This is compounded by the fact that although there have been induction and training programmes run in the past for council members, this has not been done on an ongoing and systematic basis; and when these capacity building workshops were run, the attendance has been a challenge with some institutions not bothering to attend and make contributions that could improve the governance regime in the higher education system.
4.7.2 Appointment of council members

The appointment of members by council based on expertise and experience avoids the pitfalls associated with stakeholder nominated or elected members. However, it does raise the issue of the criteria used and the expertise and experience identified as critical for enabling effective governance. An overview of existing council members appointed in this category suggests that the expertise and experience sought seems largely to be in the fields of higher education, business/finance, information technology, human resources, law, facilities, and communication and marketing.

A fairly narrow focus on technical expertise and experience may preclude councils from taking into account “broader societal goals and needs” unless the individual members combine technical expertise with an understanding of the social, cultural, economic and political challenges that confront South African society. In addition, as has been pointed out by some vice chancellors a key gap in expertise within external council members was a lack of understanding of higher education, in particular, the nature of the academic project and funding of higher education, which requires that consideration should be given to appointing retired senior leaders in higher education to provide expertise in these areas.

4.7.3 Size of councils

The studies of the CHE and USAf found little evidence of a direct correlation between the size of a council and its success in respect of governance as institutions with both small and large councils have found themselves in governance crises. 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 also proportionally more difficult. Some vice-chancellors have also pointed out that having strategic debates within large councils is very difficult to achieve.

The Act stipulates that a council must consist of not more than 30 members, and at least 60% of the members must be persons who are not employed by or students of the institution concerned. There are some institutions whose council composition is between 20 and 24, under the current legislation (Appendix 1). The size of the council is dependent on how the internal members are constituted. For instance, if each category of internal structures has one representative, then the council size may range between 20 and 24 and still adhere to the 60% rule.
CHAPTER 5. INTERNATIONAL EXAMPLES OF UNIVERSITY GOVERNANCE

5.1 United Kingdom

In the United Kingdom the Committee of University Chairs has compiled a Code of Good Governance based on the following basic principles for higher education:

a) Autonomy as the best guarantee of quality and international reputation;

b) Academic freedom and high-quality research, scholarship and teaching;

c) Protecting the collective student interest through good governance;

d) The publication of accurate and transparent information that is publicly accessible;

e) A recognition that accountability for funding derived directly from stakeholders requires HEIs to be clear that they are in a contract with stakeholders who pay for their service and expect clarity about what is received:

f) The achievement of equality of opportunity and diversity throughout the institution;

g) The principle that higher education should be available to all those who are able to benefit from it; and

h) Full and transparent accountability for public funding

In addition it lists 7 elements of good governance for university councils:

a) The governing body is unambiguously and collectively accountable for institutional activities, taking all final decisions on matters of fundamental concern within its remit;

b) The governing body protects institutional reputation by being assured that clear regulations, policies and procedures that adhere to legislative and regulatory requirements are in place, ethical in nature, and followed;

c) The governing body ensures institutional sustainability by working with the executive management to set the institutional mission and strategy. In addition, it needs to be assured that appropriate steps are being taken to deliver them and that there are effective systems of control and risk management;
d) The governing body receives assurance that academic governance is effective by working with the senate/academic board or equivalent as specified in its governing instruments;

e) The governing body works with the executive management to be assured that effective control and due diligence take place in relation to institutionally significant external activities;

f) The governing body must promote equality and diversity throughout the institution, including in relation to its own operation; and

g) The governing body must ensure that governance structures and processes are fit for purpose by referencing them against recognised standards of good practice.

In addition it lists the following duties of university councils:

a) The governing body has a responsibility for all decisions that might have significant reputational or financial implications (including significant partnerships or collaborations). It must therefore seek assurance that the institution meets all legal and regulatory requirements imposed on it as a corporate body, including through instruments of governance such as statutes, ordinances and articles;

b) Approve a whistle blowing policy and seek assurance that whistleblowing is effectively managed, for example by getting an annual report on numbers and outcomes of any whistleblowing; it might also ask about the extent to which the associated protocols are widely known within the institution;

c) The audit committee needs to be a small, well-informed authoritative body which has the expertise and the time to examine risk management control and governance under delegation from the governing body. It cannot confine itself to financial matters, and its role extends to all areas of institutional activity. The Audit Committee must be composed of a majority of independent members (who may also be drawn from outside the governing body) and produce an annual report for the governing body, including: its opinion on the adequacy and effectiveness of the institution’s risk management, control and governance arrangements; processes for promoting value for money through economy, efficiency and effectiveness; and the management and quality assurance of data for institutions receiving funding body support;

d) The proper remuneration of all staff, especially the vice-chancellor and his/her immediate team, is an important part of ensuring institutional sustainability and protecting the reputation of the institution. Accordingly governing bodies must establish a remuneration committee to
consider and determine, as a minimum, the emoluments of the vice-chancellor and other senior staff as prescribed in constitutional documents or by the governing body;

e) Be of sufficient size that its responsibilities can be undertaken effectively and speedily, without being so large that it becomes unwieldy. In meeting these key requirements the governing body should:

i) Have a size within the range of 12-25 members, although there is no optimal governing body size, and total membership should depend on numerous factors including the nature and history of the institution, the range of skills and experience required and the number of internal members deemed necessary;

ii) Ensure it has rigorous and systematic processes agreed by the governing body for recruiting and retaining governors (including the chair), on the basis of personal merit and the contribution they can bring to a governing body; and

iii) Adopt an approach of continuous improvement to governance, in order to enhance their own effectiveness and provide an example to institutions about the importance of review and evaluation. Accordingly, governing bodies must conduct a regular, full and robust review of their effectiveness and that of their committees, the starting point for which should be an assessment against this Code and the statutory responsibilities alongside those which it has assumed and articulated independently (e.g. through a statement of primary responsibilities).

5.2 Denmark

The current Danish university law stipulates a governance structure with a board of trustees as the highest authoritative body at Danish universities. The board of trustees must consist of a majority of external members, but also has to include representatives of the academic staff, the administrative staff and students. The students must have at least two representatives, but otherwise the specific number of members of the board of trustees is not specified.

Staff and student representatives are elected according to the rules set in each university’s own governance charter, which has to be approved by the minister of education and research. The external members are appointed according to a procedure where candidates are recommended by a body set up by the individual university for that purpose, while the final appointment is made by a separate body also set up by the university.

Among the tasks of the board of trustees is the appointment of the rector, who is a member of the senior management staff. Though, not clearly stated, appointments of the rest of the senior
management (deans, vice-rectors, and directors/heads of administration) are done after recommendation / nomination by the rector.

For the appointment of a new rector the board of trustees normally appoints a selection commission. The commission includes members from the academic staff, the administrative staff as well as students. The commission evaluates the applicants, conducts interviews with the most relevant ones, and gives their recommendation to the board of trustees that makes the final appointment.

**5.3 Ireland**

The governance of universities is based on a code agreed by the Higher Education Authority and Irish Universities Association. Under the Universities Act 1997, all universities are required to have a governing authority. This legislation does not specify the composition of the governing authority, but does set out, amongst other things, the duration of the term of office of members. The legislation explicitly mentions the possibility of a student being a member of the authority. Governing authorities are generally made up of the following positions:

Chief officer (president); chairperson; senior officers; representatives elected by the professorial staff; representatives elected by the academic staff; representatives elected by the non-academic staff; students, usually officers of the Students' Union and representatives elected by postgraduate students; nominees of external organisations; nominees of the Minister of Education and Skills; representatives elected by graduates; and representatives of local county councils (local government).

Procedures for the appointment of presidents of universities vary and in some cases still make provision for the election of a president rather than his/her appointment by the governing authority.

**5.4 Australia**

In Australia the council is the governing authority of the university and is responsible for the direction and superintendence of the University. Councils largely comprise of external members but include members of the university's key internal stakeholders.

External and internal members play a significant role in the committees of councils. External members bring to the university independent judgement and a range of expertise that is not readily available at the university. However, external members may have less detailed knowledge of the institution than their internal counterparts. This mixed membership of the governing body is designed to ensure appropriate governance accountability for universities.
According to the Federation University Australia Act of 2010 the role of councils is set out as:

a) Provide a clear statement on the university’s strategic direction, vision and mission and continually monitor progress against agreed goals;

b) Shape and review its vision, mission and values and evaluate its own performance;

c) Appoint and appraise the performance of the vice-chancellor as chief executive;

d) Require and monitor compliance with statutory and regulatory obligations;

e) Oversee the establishment and effective operation of key policies consistent with legal requirements and the spirit of community expectations, including those expressed in statutes and regulations;

f) Ensure delegated responsibilities and authorities are clearly defined to the Vice-Chancellor and other bodies, and to the Boards and other committees;

g) Ensure adequate risk management procedures and associated internal controls are established and effectively maintained;

h) Oversee the effective and prudential operation of the University and assess performance against key performance indicators agreed with management, including:

   i) approve and monitor budgets and financial plans;
   ii) ensure the University’s assets and resources are properly managed; and
   iii) approve and monitor controlled entities.

i) Approve and monitor commercial undertakings and monitor education, training, research and consultancy activities; and

j) Effectively manage its own operations, including the appointment of the Chancellor, selection of new members and their induction and the proper execution by members of their fiduciary duties.

In addition the following duties of care of members of council are listed

a) Act always in the best interests of the university as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
b) Act in good faith, honestly and for a proper purpose;

c) Exercise appropriate care and diligence;

d) Not improperly use their position to gain an advantage for themselves or someone else; and

e) Disclose and avoid conflicts of interest.

The Australian National University’s council consists of 15 members whose duties include: providing strategic oversight of the university; ensuring effective overall management, appointing the university's senior leadership; and ensuring responsible financial and risk management. The primary responsibilities of Council members are to:

a) Appoint the Chancellor and Pro-Chancellor;

b) Appoint the Vice-Chancellor as the chief executive officer of the University and monitor his/her performance;

c) Oversee the strategic direction of the university;

d) Oversee and monitor the academic activities of the university;

e) Approve the university's annual budget or its business plan;

f) Oversee and review the management of the university and its performance;

g) Oversee and monitor the assessment and management of risk across the university, including commercial undertakings;

h) Approve and monitor systems of control and accountability, including general overview of any controlled entities;

i) Monitor the commercial activities of the University, and its subsidiaries and any other entities it controls;

j) Enact statutes, rules and orders;

k) Establish policy and procedural principles, consistent with legal requirements and community expectations;

l) Approve the annual report of the university; and
m) Ensure the effective operation of council including the induction and professional development of council members and the evaluation of the performance of council and its committees.

5.5 United States of America (USA)

Governance boards and their practices differ widely at universities in the USA. However, the two most pressing issues regarding boards of governance in recent years have been a size and the number of committees. In general there has been a trajectory to downsize the size of the boards.

Typically, board committees would comprise the following: academic affairs; finance; facilities; development; audit; and student life. Despite this some in the USA still maintain that with these limited number of committees crucial issues of importance fall between the cracks and are not addressed.

Southern New Hampshire University has recently reduced its board size from 26 to 13. The Board of Regents at the University of Michigan are elected by popular public vote as is the case with public universities in Colorado, Nebraska and Nevada. In most cases these boards of regents are small and vary in size between 6 and 8 members.

5.6 Council size and composition for a number of international universities

Apart from the councils sizes already mentioned, the table below gives the council composition and size for some international universities. These figures have to be compared with South Africa’s size of up to 30 (Appendix 1). Reduction of the composition of councils from the maximum of 30 to 20 or 24 would bring South Africa in line with common international practice (Appendix 2).

The comparison of council sizes was also extended to universities in the African continent (Appendix 3). The council sizes vary greatly and may be indicative of the model of governance adopted by the country in question.
CHAPTER 6. PROVISIONS REQUIRED FOR ENSURING GOOD GOVERNANCE

6.1 Introduction

This section outlines some provisions required for supporting good governance in relation to council’s functioning and preventing some of the governance failings discussed in the previous chapter.

6.2 Council’s composition

With regard to Council composition, institutional statute and/or institutional rules should contain clear provisions on the following:

a) A set of membership criteria listing desired individual competencies that should be present collectively in a council. Criteria such as the following could be considered:

- A sound understanding of the higher education environment;
- track record of commitment to ethical governance, demonstrated ability to exercise fiduciary responsibilities without any self-interest;
- a commitment to the institution and its well-being;
- a solid grasp of strategic and other forms of institutional planning;
- an understanding of the funding environment of universities;
- the ability to analyse and interpret budgets and financial statements;
- an ability to re-prioritise institutional goals and targets in light of changed circumstances;
- an understanding of the audit and risk context within which universities function;
- a grasp of the legislative and regulatory environment and general legal processes within which universities operate;
- a sound understanding of human resource systems and processes;
- an understanding of the role IT plays in all institutional facets;
- experience in multiple project management; ability to interpret changing social situations impacting on the institution;
- displaying a clear understanding of the distinction between governance and management in large institutions;
- a strong commitment to the development of young people;
- a grasp of facilities management and the broader building and construction environment;
- ability to function constructively in a collective environment;
- appreciation of and commitment to democratic processes; and
- a track record in advancing public accountability.

It is common practice in many countries to exclude serving politicians from membership of university councils and this is sound good governance practice that should be upheld in the South African universities.

b) Competencies deemed necessary in the various committees of council derived from the list of competencies required for council members in general.

c) Nomination, selection and appointment of council members and members of council committees.

d) The application of the 60% rule in relation to council meeting quorums and committee composition. To enhance institutional accountability it is recommended that the quorum should also have at least 60% external representation. However, the adherence to the 60% rule on the council committees is largely dependent on the number of committees. The more committees the council has, the more difficult it becomes to adhere to the rule.

e) The maximum term of membership of council and committees. Term limits are an essential ingredient in maintaining the vitality of the council. Moreover, the higher education landscape undergoes constant change hence having term limits will ensure council renews its membership to ensure new perspectives, attitudes and skills, all of which may be needed for a changing institution and landscape.

f) A staggered rotation of council members. The rotation should be structured so as to retain valuable skills, to have continuity of knowledge and experience and to introduce persons with new ideas and expertise.

g) The resignation and termination of membership of council or committees. Termination of membership would normally be considered in cases such as a member being:

   Found guilty of a criminal offence by a court of law;
   - declared insolvent by a court of law;
   - certified as fit for assignment to a mental institution;
   - found guilty of transgressing the council’s code of conduct with an accompanying council decision to terminate membership; and
   - absence from council meetings without explanation or the tendering of apologies for unacceptably long periods.
h) The filling of any vacancies that may arise from time to time in the membership of council and its committees.

i) The evaluation of council performance and of its individual members.

j) Honoraria/remuneration/compensation for services rendered by external council members only bearing in mind that universities are public institutions and that serving as a council member is a public good service. Universities receive public funds and the council must ensure economic, effective and efficient use of these funds.

### 6.3 Chairperson and Deputy Chairperson

The election of a chairperson and a deputy chairperson should similarly be subject to a set of requirements set out in the institutional statutes and/or institutional rules and be based on:

a) Provision of a list of desired competencies that should be demonstrated by the chairperson and deputy chairperson. The following criteria could be considered specifically applicable to the chairperson and deputy chairperson:

- Having sufficiently high standing amongst the council members;
- demonstrate track record of leadership of structures and organisations;
- demonstrate ability to separate governance and operational management issues;
- demonstrate ability to work with people and galvanise them into a cohesive team;
- understanding of strategic challenges facing the institution;
- time management and process management skills;
- ability to constructively solve disputes between members with different viewpoints; and
- ability to work constructively with the vice-chancellor.

b) Clearly set out provisions for the nomination, selection and appointment of the chairperson and deputy chairperson.

### 6.4 Secretary

The institutional statute and/or institutional rules must make it clear that the registrar is the secretary of council and senate; he/she is responsible for all administrative support matters concerning the council and its committees as well as for advising the council on all legal and regulatory matters pertaining to their work and deliberations. Apart from advising council on all aspects of higher
education legislation, such advice should extend to other relevant legislation such as the protection of consumers, access to information, administrative justice and intellectual property rights etc.

6.5 Functioning of council and its committees

There has been a call to reduce council committees, however, this is a matter that requires thorough investigation. Notwithstanding this, the Reporting Regulations stipulate the key committees namely, Executive Committee of Council, Audit and Risk Management Committee, Finance Committee, Nominations Committee, Planning and Resources and IT Governance Committee.

The institutional statute and/or institutional rules must stipulate the following with regard to the functioning of council and its committees:

a) Council committees function in terms of charters approved by council. These charters stipulate the composition of the committees, appointment of chairperson and deputy chairperson, terms of reference including any powers as delegated by council. The charters should stipulate that external council members must constitute the majority of all council committees.

b) Constituting council committees represents opportunities for incorporating specific types of expertise not available amongst council members through appointing external non-council experts.

c) The meeting procedures for council and its committees approved by council including matters such as: Scheduling of ordinary meetings; arrangements regarding extraordinary and emergency meetings; preparation of agendas; actual meeting procedures including matters such as tabling of proposals and resolutions; manner of making decisions; quorum; observers at meetings; points of order; sending out of meeting documentation; taking of minutes and approval thereof; so-called ‘round robin’ processes for taking decisions; declaration of interest; and rules for reviewing and rescinding decisions of the council.

6.6 Joint council-senate committees

The institutional statute and/or institutional rules must stipulate the following with regard to the functioning of joint council-senate committees:
Joint council-senate committees function in terms of charters approved by senate and council. These charters stipulate the composition of the committees, appointment of chairperson and deputy chairperson, the terms of reference etc.

6.7 Primary functions of council

The Higher Education Act, Act 101 of 1997 contains some fairly general provisions on the duties of councils and these should form the context for council duties as spelled out in the institutional statute and/or institutional rules which should:

   a) Stipulate the primary functions of council and its committees such as:
      - Approval of its code of conduct and procedures related thereto;
      - developing procedures for the declaration of interest and managing any conflicts of interest;
      - devising a system for assessing its own performance;
      - exercising strategic governance including the approval of institutional strategic plans that are linked to institutional budgets, and their annual evaluation;
      - the annual approval of all other institutional plans linked to the institutional strategic plan as required by DHET such as the institutional performance plan, enrolment plan, teaching and learning plan (commonly referred to as the institutional programme and qualification mix), transformation plan, financial plan (including infrastructure plan), and governance of institutional risk management and sustainability;
      - exercising budget approval and overall budget oversight;
      - ensuring appropriate financial control including financial audits;
      - approval of the macro-level institutional structure;
      - appointment of staff including the direct appointment of members of senior management;
      - approval of conditions of employment of staff including remuneration adjustments;
      - evaluating the performance of the Vice-Chancellor;
      - approval of institutional policies and student and staff disciplinary procedures;
      - approval of an institutional language policy;
      - approval of the institutional admissions policy and enrolment limits for specific academic programmes;
      - approval of building projects and the acquisition of land; and
      - the approval of the delegation of specific functions to its committees or joint committees and to the vice chancellor and senior management/management and any limits set to such delegations.

   b) Make provision for the induction of new council members regarding their functions and the institution’s functioning, as well as for specific opportunities for the council to be briefed
regarding its various planning functions through appropriate means such as information sessions, planning workshops etc.

Council members must at all times be aware of the distinction between their role in a governance or oversight capacity and the operational (day-to-day) management role of the institution’s executive management, and they should under no circumstances attempt to encroach on such operational management functions.

6.8 Governance instruments for councils

The following instruments represent the minimum governance instruments that should be in place and be applicable to council and its committees:

6.8.1 Council code of conduct

This document must be approved by council and formally signed by every member of council. Normally, the code of conduct would contain the following:

a) Purpose and aims

b) Principles

c) Definitions

d) Specification of acceptable and unacceptable behaviours. Examples of unacceptable behaviours could be: Misleading or deliberately influencing council; exerting pressure on employees of the institution to adopt certain measures/decisions; disclosure of confidential information; procuring of rewards; non-declaration of gifts/favours, interference in institutional administration (financial administration, staff issues, student matters); procurement or tenders; appropriation or misuse of institutional property; harassment; victimisation and discrimination; promoting factionalism in council; and participating in council activities for personal or sectional gain.

e) Processes undertaken in order to deal with alleged transgressions of code of conduct including the establishment of a council code of conduct committee and its powers and duties.

f) Administrative matters regarding written undertakings of adherence and abide by all the provisions contained in the code of conduct. These written contractual undertakings must be entered into on an annual basis.
g) Any other matters the council may deem it necessary and worth regulating in accordance with considerations

6.8.2 Performance assessment of council and its committees

This council-approved document that sets out content/items, process, and procedure which council will assess its own performance and that of its committees, with a view to improve its governance performance. Such an assessment is normally done annually and if necessary can be performed by appropriate outside agencies. An assessment instrument would typically cover matters such as:

a) Council’s role and responsibilities:

   i) Providing strategic direction: Approval and evaluation of strategic plan, and other institutional plans; approval of budget to support of institutional plan, prioritisation of strategic issues, risk management.

   ii) Governing the institution: Definition of council’s role and responsibilities; development and application of code of conduct; performance assessment instrument; delegations framework; setting and assessment of annual performance objectives; assessment of ethical standards of council’s functioning; effective utilisation of resources; communication with stakeholders; and functioning of committees.

   iii) Ensuring sound institutional management: Approval of policies; existence of sound management systems; institutional reports to council; separation between council and management duties.

b) All Council members must at all times act in the best interests of the institution and not the stakeholder groupings that nominated or elected them to serve on Council.

c) Meetings of council: Sufficiency of scheduled meetings, adequacy of documentation, adherence to meeting procedures; attendance of meetings by members; participation by members; council’s decision making; reports from council committees.

d) Membership of council: Diversity and competencies; induction of new members.

e) Chairperson of council: Effectiveness of council leadership; managing member contributions; council decision making; resolution of disagreements between members; application of meeting procedures; application of code of conduct.
f) Relationship between council and vice-chancellor: Vice-chancellor’s performance in respect of council activities; working relationship between chairperson and vice-chancellor; adequacy of institutional reports to council by vice-chancellor.

6.8.3 Delegations framework

This council-approved document sets out the functions to be delegated to committees of council and the vice-chancellor (including the right to delegate further if deemed appropriate). It sets out clearly which functions councils should not/cannot delegate and in each case who the final decision-making authority is; who is responsible for initiating a particular action; mandatory consultations and the nature of these before a final decision may be taken, and the limits of the various delegations. In addition it also should make it clear that delegating a function does not absolve the council from ultimate responsibility for the function so delegated. Typically such a document would cover the following institutional aspects:

a) Institutional governance, and management structures and offices.

b) Academic matters such as: Academic year; academic ceremonies; admission of students; registration of students, recognition/exemption of courses/status recognition, masters and doctoral students, class groups and lecture sessions, academic programmes/qualifications, time tables, modes of delivery, examinations, certification, short learning programmes, research, technology and innovation, community engagement, academic structures.

c) Student matters: Disciplinary matters, student accommodation, student financial aid, student learning support and others.

d) Financial matters: Budgets, auditing, financial authorization of non-capital expenditure, bad debt, insurance, subsistence and travel allowances, tuition and residence fees, research funds, building and capital projects, immovable property, writing off assets, investments.

e) Staff matters: Organisational structure, creation of new posts, filling of vacancies, approval of permanent appointments, approval of temporary or part-time posts, appointment to acting capacity, transfer or redeployment of staff, promotions, performance management, training and development, conditions of employment including remuneration issues.
f) Approval and signing of contracts: Employment contracts, institutional / academic / research contracts other than capital contracts, capital project contracts, other institutional contracts.

g) Miscellaneous matters: Outsourcing/insourcing, communications and marketing, international travel, conferring of honorary degrees, legal action, intellectual property, computer equipment.

6.8.4 Council training and development

Council should formally approve periodic initiatives aimed at the training and development of members of council. These initiatives can involve matters such as:

a) Formal council induction workshops for new (and existing members).

b) Council strategic planning workshop.

c) Council information service.
CHAPTER 7. COUNCIL COMPETENCY AND CAPACITY FRAMEWORK

In this part of the report some competency and capacity related measures are developed in order to strengthen good governance amongst university councils.

7.1 Personal competency framework for members of council

The following personal competency framework for council members is proposed in order to ensure that councils possess the desired spread or requisite good governance competencies. Council members must collectively represent the following set of competencies. At least 2-3 council members should be able to demonstrate this competency at high levels of governance effectiveness. The majority of council members must possess the majority of the following qualities:

a) A sound understanding of the higher education environment;

b) Demonstrable ability to exercise fiduciary responsibilities without any self-interest;

c) Commitment to the institution and its well-being;

d) Solid grasp of strategic and other forms of institutional planning;

e) Understanding of the funding environment of universities;

f) Ability to analyse and interpret budgets and financial statements;

g) Ability to re-prioritise institutional goals and targets in light of changed circumstances;

h) Understanding of the audit and risk context within which universities function;

i) Grasp of the legislative and regulatory environment and general legal processes within which universities operate;

j) Sound understanding of human resource systems and processes;

k) Understanding of the role IT plays in all institutional facets;

l) Experience in multiple project management;

m) Ability to interpret changing social situations impacting on the institution;

n) Clear understanding of the distinction between governance and management in large institutions;
o) Strong commitment to the development of young people;

p) Commitment to contribute to and invest in public good;

q) Grasp of facilities management and the broader building construction environment.

r) Ability to function constructively in a collective environment;

s) Ability to resolve conflicts and differences of opinions;

t) Appreciation of, and commitment to, democratic processes; and

u) Track record in advancing public accountability.

7.2 Personal competency framework for chairperson and deputy chairperson

The chairperson and deputy chairperson must display a reasonable number of the competencies listed in the previous section. In addition they should have the majority of the following competencies:

a) Sufficiently high standing and seniority amongst the council members;

b) Demonstrable track record of leadership of structures and organisations;

c) Demonstrable ability to separate governance and operational management issues;

d) Ability to work with people and galvanise them into a cohesive team;

e) Sound people, time and process management skills;

f) Ability to solve disputes and differences in opinions and views between council members;

g) Sound understanding of strategic challenges facing the institution;

h) Ability to work constructively with the vice-chancellor; and

i) Ability to hold the vice-chancellor (and his/her executive team) to account when necessary.
7.3 Personal competency framework for vice-chancellor in relation to working with council

In order to promote effective governance the vice-chancellor in relation to his/her working with council should possess a majority of the following competencies:

a) Ability to work constructively with a collective group of people, some from within the institution and some from without;

b) Ability to distinguish clearly between governance and operational management;

c) Sound analytical and synthesizing skills in preparing institutional reports for council meetings;

d) Superior knowledge of higher education legislative, regulatory and policy environment;

e) Ability to distinguish between high level issues requiring council’s attention and micro issues which do not;

f) Ability to galvanise senior management in the effective execution of council decisions;

g) Ability to discern likely responses of stakeholders and constituent community to council decisions; and

h) Sound grasp of socio-political environment of institution.

7.4 Personal competency framework for secretary of council

In order to support the effective and efficient functioning of council the registrar as council’s secretary should possess the following competencies:

a) Ability to compile meaningful agendas timeously for council members in a format conducive to their participation in meetings;

b) Superior skills in drafting accurate minutes in an appropriate format;

c) Superior knowledge of the legislative and regulatory environment within which council functions;
d) Ability to collect inputs from staff members in an appropriate format and in time for compiling agendas for council meetings;

e) Ability to arrange meetings, and organize travel and accommodation for council members; and

f) Superior writing skills in drafting council related regulatory documents.

The Registrar is responsible as part of his or her normal duties as secretary of the council, to ensure that council at all times operates within its prescribed regulatory framework and that the provisions of the statute and the rules of council are adhered to.

7.5 Institutional support capacities required for council

Apart from the sets of competencies listed earlier the effective and efficient functioning of councils require a number of institutional support capacities to be in place that are listed next:

a) Capacity to draft initial versions of strategic and other institutional plans in appropriate formats and of high quality for council’s consideration;

b) Capacity to develop draft policies in appropriate formats and of high quality for council’s consideration;

c) Capacity to develop strategically aligned budgets and budget monitoring systems for council’s consideration;

d) Capacity to forewarn council of effects of impending changes in the higher education environment;

e) Capacity to assist councils in moving to paperless ICT meditated meetings as far as is practically possible;

f) Capacity to accommodate last minute changes in travel and accommodation schedules of council members; and

g) Capacity to process expense claims of council members expeditiously and with a minimum of ‘red-tape’.
CHAPTER 8. GOVERNANCE INDICATORS

8.1 Introduction

In this chapter some good governance indicators are proposed. In doing so some of the performance indicators set by DHET in the annual performance reporting requirements for universities are used; some of the provisions set out in chapters 6 and 7; some work done in this regard by the Funding Council of the UK; the typical factors that would be evaluated in a council’s performance assessment and some international literature in this regard.

Quite a substantial amount of work has been done internationally on public governance indicators. Most of this work focuses on government’s governance practices and their public accountability; financial performance; contribution to socio-economic development; rendering of public services; and clamping down on corruption. While much of this work is undoubtedly of relevance for university councils, the actual development of governance indicators for university governance is far more limited. This is probably due to many different models of state/government and university relationships being followed in different countries.

It has to be borne in mind that many of these indicators will have a qualitative nature and that to be useful a fairly limited number of not more than say 15 or a maximum of 20 indicators should be identified. The intention is that together with the elements of good governance covered in chapters 6 and 7 these indicators would assist in identifying emerging governance problems at universities.

8.2 Indicator categories

The first task in developing some governance indicators for universities is deciding whether to determine indicator categories or clusters. Such a determination must be followed with the relevance of the indicators to the context of the institution. The following suggestions are made:

The UK Committee of University Chairs (2006) proposed 10 categories in its Code of Good Governance:

- a) Institutional sustainability;
- b) Academic profile and market position;
- c) The student experience of teaching and learning;
- d) Research;
- e) Knowledge transfer and relationships;
f) Financial health;
g) Estates and infrastructure;
h) Staff and HRD;
i) Governance, leadership and management; and
j) Institutional projects

Interestingly this categorisation is one of the few that explicitly provides for indicators regarding the core functions of a university of teaching and learning and research. It furthermore highlights financial health and the governance of estates and infrastructure. The downside of this list of categories is that with, say 3-4 indicators for each category, one could easily end up with at least 30 or even 40 indicators. While this may not be too many on an institutional level it may well be too many on assessing the soundness of governance across institutions in terms of system governance.

The World Bank (2009) proposed a university governance screening card system in which indicators were grouped into 5 categories:

- Overall context, mission and goals;
- Management orientation;
- Autonomy;
- Accountability; and
- Participation

The World Bank's governance screening card system was used to compare soundness of university governance across a number of North African and Middle Eastern countries by means of spider graphs in which each of the dimensions or categories above was weighted with a score of 1 to 5 allowing for a set of weighted individual responses within each category.

In its description of these categories it includes the management of resources (financial, human and infrastructure) in the category: Overall context, mission and goals while it does not specifically mention the core functions of teaching and learning, and of research as being part of any of these 5 categories although it is probably possible to read the aspect of governance of these core functions into one or more of the 5 categories.

The American Association of University Professors (2001) developed a set of 36 sound governance indicators without, however, grouping them into specific categories. Interestingly none of their 36 indicators arise from ‘yes’/’no’ responses. Instead they use a 4 category response scale
with scores attached to each one: True with a score of 2; More true than false with a score of 1; More false than true with a score of -1; and False with a score of -2. A final score is then determined for an institution which could vary between 72 where all indicators were scored as ‘true’ and -72 where all indicators were scored as ‘false’.

Quyen (2014) argues in favour of using the following 5 categories:

- Management and direction;
- Participation;
- Accountability;
- Autonomy; and
- Transparency

In the analysis of these categories, the categories ‘management and direction’; ‘accountability’; and ‘autonomy’ are regarded as roughly equal in importance, while ‘transparency’ is regarded as a bit less important, and ‘participation’ as the least important.

The advantage of using weighted categories of indicators would yield more reliable final estimates of an institution’s soundness of governance than simply weighing each of, say, 20 or so individual indicators equally.

It is thus proposed that governance indicators should be grouped into not more than 5-6 categories and provision should be made for say 3 or so indicators per category.

8.3 Proposed governance indicator categories

The development of a set of governance indicators represents uncharted waters for South African higher education and should best be initiated on the basis of a number of basic points of departure such as:

- The indicators should be both quantitative as well as qualitative in nature;
- The indicators should cover the primary areas of council governance including at least the core functions of teaching and learning, research, and community engagement as well as the governance of all institutional resources such as financial, human resources, equipment and facilities, and infrastructure;
- For the foreseeable future all the indicator categories should carry an equal weighting;
d) The number of indicators should preferably not exceed 20; and

e) Providing information on these indicators annually to DHET should be kept as simple as possible and should form part of annual council reporting as required in the reporting on their annual performance plans.

Based on the discussions in the preceding sections of this report the following categories are proposed for the development of appropriate governance indicators:

a) **Strategic leadership, vision, mission, context, and transformation**

This refers to matters such as the council’s role in providing strategic leadership as distinct from operational leadership in all institutional spheres. It also refers to council’s role in overseeing government-institution relationships. Specifically it refers to the council’s role in approving and monitoring institutional strategic plans, academic plans (including teaching and learning and research and innovation), and financial plans aimed at ensuring strategically oriented financial sustainability. It also refers to council’s oversight role in identifying niche areas corresponding to institutional strengths and identifying institutional areas targeted for development and strengthening.

Vitally important in the South African context is governance of institutional transformation. In this regard the council’s oversight over institutional transformation strategies, plans and institutional performance in this field in a variety of institutional areas and contexts is included.

b) **Governance of core functions of teaching and learning, research and community engagement**

This refers to matters such as a council’s governance oversight role with regard to an institutions’ programme qualification mix and its enrolment plan; throughput and graduation rates and the achievement of other teaching and learning goals and targets; the role and function of teaching and learning student support; the monitoring of research, technology and innovation outputs and targets and the approval of policies with regard to the carrying out an institution’s core functions.
c) Governance of resources: Financial, human, equipment and infrastructure

This refers to matters such as council’s governance role regarding the financial sustainability of the institution evidenced in, amongst other, its role in budget approval and monitoring, audit and risk management including the assessment and approval of annual financial statements, monitoring the performance of internal and external audit, approval of all large scale infrastructure projects in line with its approved delegations of decision making, the making of senior management appointments and approvals of all policies relating to institutional resource management in its most inclusive sense.

d) Governance of institutional accountability including public reporting

This category refers to council’s governance role in upholding the principles of institutional autonomy, academic freedom and public accountability as well as its governance of institutional stakeholder participation and inclusion. In particular it refers to its governance of its relationships with all institutional stakeholders, and its governance of the institution’s performance.

e) Council meetings and conduct of business

This category refers to matters such as the composition of council and the way council meets and executes its governance. It refers to the leadership role of the chairperson and deputy chairperson in the running of meetings and adherence to generally accepted meeting procedures, to the timeous development and distribution of meeting agendas and supporting documentation in appropriate formats, to modes of decision making at council meetings, the functioning of council committees, and the development and use of governance enhancing measures such declaration of interests and the resolving of conflicts of interest, establishing and practicing a code of good governance, approving a delegations framework, and applying an annual council performance assessment.
8.4 Governance indicators per governance category

In the case of qualitative assessments the following ‘scoring’ system should be used:

**True** i.e. the statement is true of governance practices at the institution with very rare exceptions

**More true than false** i.e. the statement is more often true of governance practices at the institution than is not the case

**More false than true** i.e. the statement is more often false of governance practices at the institution than is not the case

**False** i.e. the statement is false with regard to governance practices at the institution with very rare exceptions

1. **Strategic leadership, vision, mission, context and transformation, and risk management and sustainability**

1.1 Council reviews the institution’s strategic plan, specifically in relation to the institution’s annual budget, and other strategic plans such as the academic and financial plans as well as risk management and other sustainability plans annually.

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1.2 Council assesses institutional policies and institutional initiatives in terms of approved strategic goals and targets

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1.3 Council reviews all internal and external stakeholder relationships annually.

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Comments:

1.4 Council reviews its transformation strategy and policies regularly on the basis of feedback on institutional transformation indicators/targets

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1.5 Council ensures that appropriate steps are instituted in order to meet transformation targets and communicates regularly with its stakeholders on its endeavours in this regard

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Comments:
2. Governance of core functions of teaching and learning, research and community engagement

2.1 Council reviews the institution’s programme qualification mix (PQM) and enrolment plan annually to ensure alignment to the strategic plan and national objectives – with the knowledge that Senate has scrutinised the academic requirements of the PQM.

| True | More true than false | More false than true | False |

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2.2 Council assesses the institution’s enrolments, throughput and graduation rates at least once per annum in line with strategic targets set for these.

| True | More true than false | More false than true | False |

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2.3 Council reviews the institution’s research and innovation endeavours and outputs against strategically set targets at least once per annum.

| True | More true than false | More false than true | False |

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Guidelines for Good Governance Practice and Governance Indicators for Councils of South African Public Higher Education Institutions: Approved by the Minister of Higher Education and Training, Professor HB Mkhize, MP, on 13 December 2017
2.4 Council reviews the institution’s community engagement endeavours against strategically set targets at least once per annum.

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2.5 Council receives and considers regular reports from senate and institutional forum on the core business of the institution and other institutional culture imperatives.

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3. Governance of resources: Financial, human, equipment and infrastructure

3.1 Council approves the institution’s budget, especially in relation to the institution’s strategic plan, and regularly reviews the institution’s income and expenditure against the budget.

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3.2 Council receives and considers regular reports from internal audit and engages with the external auditors at least once per annum

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3.3 Council approves the institution’s annual financial statements and takes appropriate steps in the case of qualified external audit opinions

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3.4 Council evaluates and approves the institution’s IT governance systems and policies in relation to the institution’s strategic objectives

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3.5 Council has in place legally sound and fair appointment policies for all staff and in particular for the vice chancellor and members of senior management

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3.6 Council reviews the performance of the vice chancellor regularly each year with a view to corrective steps being taken where needed.

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3.7 Council reviews and approves all building and infrastructure projects as well as procurement of services in terms of its decision making delegations
3.8 Council has in place working whistle blowing services and receives regular reports on alleged fraudulent and corrupt activities in the University.

4. Governance of institutional accountability including public reporting

4.1 Council receives and considers institutional reports from the vice chancellor in a format and covering items as approved by it at each meeting of council

4.2 Council considers and approves the institution’s annual performance plan and the accompanying performance report for DHET and ensures its timeous submission to DHET
4.3 Council participates constructively, through its members nominated for this purpose, in meetings of senate and the institutional forum

5. Council and Committee meetings and conduct of business

5.1 Council has in place and regularly uses the following good governance instruments: A set of institutional rules covering provisions within the institutional statute in greater detail; a code of conduct; conflict of interest declaration procedures; a comprehensive decision making delegations framework, a council performance assessment instrument; a performance agreement between itself and the vice chancellor
5.2 Council annually has workshops for all council members covering the induction of any new members and all strategic planning matters.

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5.3 Council has ensured that its institutional statute and/or institutional rules include membership criteria for members of council and its committees and applies these rigorously.

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5.4 Council has ensured that its institutional statute and/or institutional rules spell out the duties of council and its committees.

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Guidelines for Good Governance Practice and Governance Indicators for Councils of South African Public Higher Education Institutions: Approved by the Minister of Higher Education and Training, Professor HB Mkhize, MP, on 13 December 2017
5.5 Council continually ensures that all committees operate in terms of council approved charters and takes the necessary remedial steps in cases where this proves not to be so.

| True | More true than false | More false than true | False |

Comments:

…………………………………………………………………………………………………………
…………………………………………………………………………………………………………
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…………………………………………………………………………………………………………
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5.6 Council agendas and supporting documentation are in an appropriate format and are delivered at least 7 working days before each council meeting with no or a minimum of supplementary agendas permitted.

| True | More true than false | More false than true | False |

Comments:

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5.7 Council and specifically the chairperson ensures that accepted meeting procedures are adhered to strictly.

| True | More true than false | More false than true | False |

Comments:

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5.8 Council ensures that apart from its own annual self-evaluation it is evaluated externally at least every 3 years by peers such as 1 or 2 former vice chancellors and former registrars.

<table>
<thead>
<tr>
<th>True</th>
<th>More true than false</th>
<th>More false than true</th>
<th>False</th>
</tr>
</thead>
</table>

Comments:

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5.9 Attendance of council meetings

i) Average attendance expressed as a % of external members of council meetings measured over 12 months:

ii) Average attendance expressed as a % of internal members of council meetings measured over 12 months:

iii) Average overall attendance expressed as a % of all council members of council meetings measured over 12 months:

Comments:

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5.10 Attendance of council committee meetings

iv) Average attendance expressed as a % of external members of council committee meetings measured over 12 months:

v) Average attendance expressed as a % of internal members of council committee meetings measured over 12 months:
vi) Average overall attendance expressed as a % of all council members of council committee meetings measured over 12 months:

Comments:
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5.11 General comments:
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Requirements with regard to the above governance scorecard:

a) The initial governance assessment is to be conducted by the executive committee of council and this assessment must then be presented to council itself for discussion, amendment and final approval.

b) This governance scorecard is to be signed by the chairperson of council, the vice chancellor, and the secretary of council (registrar) containing a declaration that the final outcome carries the approval of the whole council.

c) In cases where deemed necessary DHET may require this scorecard to be verified by the institution’s external auditors.

8.5 Use of governance scorecard by DHET

It has not been deemed feasible to develop a set of quantitative indicators only as this would not have given a reliable assessment of the level of governance at universities. Instead, and as found in some of the international examples, the ‘indicators’ rather take the form of qualitative assessments on a number of crucial institutional governance factors. Care must, however, be taken not to treat the eventual ‘scores’ as quantitative measurements suitable for statistical analyses normally applied to quantitative measurements. Despite this the distribution of ‘scores’ and the frequencies of the
various ‘scores’ can yield valuable information and if needed more advanced statistical techniques suited to qualitative data can also be employed.

The DHET will use the outcomes of the governance scorecard in conjunction with the outcomes of its sets of financial indicators and institutional performance indicators that form part of annual performance plan reporting, in order to come to a conclusion on the level of governance being exercised by a particular institution’s council.

The strengths of the approach outlined in section 8.4 is that it does not attempt to artificially reduce complex qualitative governance issues to a quantitative approximation. In addition this approach will allow DHET to cover a wider area of governance than would be possible when using only a quantitative approach. The downsides of this approach are that DHET would have to rely on an ‘honest’ assessment by the institution and only where doubts arose require external audit verification.

It should be emphasised that the scorecard will by no means be used as a basis for comparing universities against each other.
CHAPTER 9. RECOMMENDATIONS AND WAY FORWARD

The following recommendations are made on the basis of the findings contained in this report:

a) DHET proposes the implementation of the good governance scorecard given in section 8 to be submitted annually together with the annual performance plan report.

b) DHET proposes that institutions over time to amend their institutional statutes in order to provide for separate institutional statutes and institutional rules. In so doing institutions would then include the detailed provisions of good practice set out in section 6 and the competency frameworks set out in section 7 in their institutional rules. In this regard the various sets of criteria for membership of council and its committees and the duties of council and its committees are of paramount importance; and

c) DHET will review the standard institutional statute with regard to its suitability given the changes that have occurred in the higher education environment during the past 15 years.

While this code is a practical tool to help university councils develop standards of governance, it is recognised that it may not be adequate to address all the governance challenges and failings that beset institutions. The DHET may have to embark on separate processes in a medium to long term, to address some of the challenges that affect governance that may fall outside this code, namely:-

a) Some of the challenges could be largely attributed to the manner in which councils are structured. Serious consideration should be given to amending the Higher Education Act, to reduce the maximum size of councils from the present 30 to a maximum of say 24 or even better 20 although this latter figure may not be feasible in the short to medium term.

b) While the DHET is in the process of developing a framework to regulate university student fees, consideration should be given to extending this exercise to develop a framework for regulating council honoraria and salaries for executive staff.

c) Universities are already reporting on many of the aspects covered in the governance indicators in fulfillment of the requirements set in the Regulations for Reporting by Public Higher Education Institutions” (2014) in terms of section 41 read with section 69 of the Higher Education Act. The DHET should review the Reporting Regulations to ensure alignment.

d) The role of UCCF-SA should be sharpened in order to give effect to the promotion of good governance at universities without interference in internal affairs of institutions. They should
play a more active role in collaboration with other substantive stakeholders than is the case currently.

REFERENCES

American Association of University Professors: Indicators of sound governance. Sourced via google search. (2001


Quyen, Do Thi Ngoc: Developing university governance indicators and their weighting system using a modified Delphi method. Procedia Social and Behavioural Sciences, 141, p 828-833. 2014

Universities South Africa (unpublished report): Analysis of Assessor Reports for 5 Universities. 2010


World Bank: The University Governance Screening Card: A tool for Benchmarking University Governance. Sourced via google search (2009)
## APPENDIX 1: COUNCIL COMPOSITION IN THE SOUTH AFRICAN UNIVERSITIES

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<thead>
<tr>
<th>Institution</th>
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<th>Internal Members</th>
<th>External Members (Excluding Co-opted members)</th>
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*Guidelines for Good Governance Practice and Governance Indicators for Councils of South African Public Higher Education Institutions: Approved by the Minister of Higher Education and Training, Professor H B Mkhize, MP, on 13 December 2017*
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VC: vice-chancellor; DVC: deputy vice-chancellor; SEN: senate; AS: academic staff; NAS: non-academic staff; SRC: Student representatives; IF: institutional forum chairperson/member; OTH: Dean or Campus Head; MIN: Ministerial appointees; DON: Donors; ALU: alumni; CON: convocation; P-GOV: Provincial Government; L-GOV: Local Government; COM: Community representatives; LAB: Organised Labour; BUS: Organised Business; SKI: Persons appointed on basis of skills; FET: Foundation/Entity/Trust representatives; OTH: other categories as may be determined by the council.

The exact number not specified in the statute; The maximum number of persons in the category.
### APPENDIX 2: COUNCIL COMPOSITION OF SOME UNIVERSITIES IN AMERICAN AND THE UNITED KINGDOM (2017)

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**Notes:**
- **CHA:** Chancellor; **MAN:** Management; **SEN:** senate; **AS:** academic staff; **NAS:** non-academic; **STU:** Students.
- **ALU:** alumni; **STA:** State Representatives; **SKI:** Persons appointed on basis of skills, often referred to as lay members; **OTH:** Others.
- a The membership reflected consists of university council (internal stakeholders) and the Board of Governors (appointed by the Minister of Education).

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12 The compositions of the governing structures of these universities were obtained from their institutional websites.
APPENDIX 3: COUNCIL COMPOSITION AT SOME AFRICAN UNIVERSITIES (2017)\(^\text{13}\)

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\(^{13}\) The compositions of the governing structures of these universities were obtained from their institutional websites and/or University Acts or Statutes.
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CHA: Chancellor; MAN: Management; SEN: Senate; AS: Academic staff; NAS: Non-academic; STA: Staff; STU: Students; OTH: Other internal members of staff such as campus principals.
MIN: Ministerial or Presidential Appointees; CHAA: Chancellor Appointees; PS: Permanent Secretary; AG: Attorney General; L-GOV: Local Appointees; SKI: Persons appointed on basis of skills; CIV: Persons nominated by private sector, civil society or trade unions; ALU: Alumni; CON: Convocation; CONG: Members appointed by the congregation; OTH: Other categories as may be determined by the council.