



Technical & Vocational Education Training Colleges Governors' Council

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COMMISSION OF ENQUIRY INTO HIGHER EDUCATION AND TRAINING (FEES COMMISSION) HEARING POSITION STATEMENT ON HOW AUTONOMY OF THE TVET SECTOR.

Prepared by: The Officer of the National Treasurer General

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Venue: Pretoria

BACKGROUND ACCORDING TO THE LEGISLATION

Continuing Education and Training Act 16 Of 2006 as Amended (CET Act) aim to provide regulation of further education and training; to provide for the establishment, governance and funding of public and further education and training colleges, to provide for the employment of staff in the further education and training colleges, to provide for the registration of the further education and training college, to provide for the promotion of quality in the further education and training college, to provide for the transitional arrangements repeals or amendments of laws, and provide for the matter stated in the act. This defines the roles and responsibilities of the Department of Higher Education and Training (DHET).

Chapter 3 (section 9) of the CET Act deals with governance state that every public college must establish a council, an academic board and student representative council. Every public college may establish such other structures as may be determined in the college statute.

Section 10 of Chapter 3 of the CET Act deals with the responsibilities of the public College Council which among others is development of college statute, which is necessary to govern the

public college in line with all provincial and national laws and regulations. The council must in consultation with academic board:

- Develop public college strategic plan, determine language policy, ensure public college complies with accreditation requirements necessary to provide learning programmes in terms of standard and qualifications as registered by National Qualification Framework.

INSTITUTIONAL AUTONOMY IN THE TVET SECTOR

Background

- In terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998), the authority to establish TVET colleges rested with the Member of the Executive Council in terms of the Chapter 2 of the Act.
- In 2006, the above Act was repealed by the Further Education and Training Colleges Act, 2006 (Act 16 of 2006). This Act also made provision for the Standard College Statute to ensure that all Colleges are accorded the necessary institutional autonomy.
- Further Education and Training Colleges Amendment Act, 2012 (Act 3 of 2012) amended the Further Education and Training Colleges Act of 2006, so as:
 - to remove all references to provincial authority;
 - to assign functions previously assigned to the Member of the Executive Council to the Minister;
 - to remove all references to "Head of Department" and replace them with "Director-General";
 - to regulate the conduct of members of the council, members of a committee of the council and staff of a public further education and training college engaging in business with the relevant public college;
 - to provide afresh for the appointment of staff; and to provide for transitional arrangements; and
 - to provide for matters connected therewith.

Definitions:

- **Autonomy** in local governance also intersects with two related educational terms and concepts: “local control” and “site-based management,” both of which refer to the ability of local **institutions** and governing bodies to make **autonomous** decisions about the management of public schools (Glossary of Education Reform, 2014, <https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=institutional%20autonomy%20definition>).

- The autonomy basically means: Providing freedom to all people who are responsible for the execution of the job itself. The autonomy is expected to provide a better framework through a decentralized management culture. The delegation of authority with accountability for the academic as well as the associate management function is therefore, essential for the success of autonomy.
 - Academic autonomy is the freedom to decide academic issues like curriculum, instructional material, pedagogy, techniques of students’ evaluation.
 - Administrative autonomy is the freedom to institution to manage its own affairs with regard to administration. It is the freedom to manage the affairs in such a way that it stimulates and encourages initiative and development of individuals working in the institutions and thereby of the institution itself.
 - Financial autonomy is the freedom to the institution to utilize the financial resources at its disposal in a prudent way keeping in view its priorities. Autonomy and accountability are two sides of the same coin.

- Institutional autonomy as the right of institutions to decide for themselves on core academic concerns; and academic freedom to mean the absence of external interference in pursuing these concerns (Jansen, J, 2004: The 41st TB Davie Memorial Lecture University of Cape Town, Accounting for Autonomy, 26 August 2004).

Purpose of institutional autonomy:

- Institutional autonomy is based upon the argument (based on long experience) that the institutions can properly undertake the work expected of them by the government and community which support them only if they have freedom of choice and of action. This does not exempt them from public interest and criticism, nor does it mean that their policies should not be under review by themselves, and by others.
- Institutional autonomy is also in the selection of staff and students depending on the conditions of employment for staff and the acceptance or rejection of applicants for places is entirely a matter for the institutions.
- Institutional autonomy lies in the determination of curricula and the setting of standards depending upon employers' and professional bodies' needs and expectations of graduates. In some cases there will be financial limitations in some disciplines, but the responsibility for what is taught and how well it is taught lies with the institutions.

Types of autonomy:

- **Absolute autonomy** requires that institutions should be completely free of external influence. However, this position is virtually impossible to locate in practice taking into account that institutions have traditionally served a range of social and public purposes and are always in interaction with society and with the government.
- **Substantive autonomy** requires that institutions take the right of academic self-government in accordance with academic values to be central to institutional autonomy. It explicitly acknowledges the coexisting rights, duties and obligations of the government to steer the education system and the institution to conduct academic practices freely.
 - Substantive autonomy is a conceptualisation which promotes both the public good and the constitutive values of the academy, viewing the exercise of the latter as integral to higher education's social role and accountability.
 - Substantive autonomy conceives the practice of institutional autonomy to be necessarily linked to a defence by institutions of academic freedom as exercised by scholars, students, academic colleagues, and even public intellectuals.
 - Substantive autonomy conceives the practice of institutional autonomy to be necessarily linked to the substantive goals of society (rather than to functional

institutional goals of e.g. ‘independence’ or ‘discipline’, or to political or market goals of e.g. ‘efficiency’ or ‘market responsiveness’). It acknowledges the unique nature and identity of the university, as entirely distinct from the ‘firm’.

- Substantive autonomy recognises that threats to academic freedom may originate from inside institutions, as well as from outside them, and that autonomy is substantive only to the extent that it is proof against both.
- Substantive autonomy provides a viable platform for the (re-)building of trust between society, state and institutions, especially on the basis that government, institutions and academics recognise their distinctive accountabilities in line with their distinctive functions in an environment of social and economic transformation.
- Substantive autonomy recognises mutual and correlative rights, duties and accountabilities on the part of the academy, institutional leadership, government and society to ensure that higher education is governed to the public good.

Policy Development

- During the policy development phases, there has been a substantial shift in the manner in which institutional autonomy is dealt with.
- The Green Paper made reference to autonomy of institutions three times as follows:
 - “An expanded and revitalised FET college sector will have a fundamental role to play in meeting the diverse social and economic needs outlined above. The Ministry intends outlining a pathway towards **increased autonomy** for colleges, within the framework of a new Further Education and Training Act” (Page 13).
 - “As institutions acquire **greater autonomy**, they will be incorporated within the new strategic planning and governance frameworks. Institutions will need to develop clear institutional goals, expressed in mission statements, and elaborated in institutional plans” (Page 21).
 - “In order to promote the development of a vigorous, enterprising, innovative FET college sector, the Ministry has as a goal the progressive devolution to colleges of **substantially increased autonomy**, under the terms of a new Further Education and Training Act. The Act will recognise only two types of FET college: public

and private. It will provide for the composition, powers and functions of College Governing Councils, Academic Boards, Student Representative Councils and management of all public FET colleges” (Page 52).

- The White Paper 4 on Page 22 also speaks of institutional autonomy as follows:
 - o “A key means of encouraging institutional responsiveness and flexibility, and of promoting creative and necessary changes and innovations, is to allow education institutions **greater autonomy** in the determination of their missions and the management of their affairs.
 - o “The Ministry has moved decisively in this direction by granting school governing bodies significant powers in terms of the South African Schools Act, 1996 (Act No. 84 of 1996). The legislation that accompanies this White Paper will likewise grant **substantial powers to colleges** and other providers that are designated as FET institutions.
 - o “At the same time, our experience in implementing the South African Schools Act (SASA), and our awareness of the differing experiences and **management capacities of colleges, make it clear that** full institutional autonomy is not an event, the success of which can be assumed. Real autonomy ought to be the outcome of a developmental process. Some institutions will be able to move faster than others in this direction.
 - o “The Ministry’s approach will be grounded in a realistic appreciation of constraints and possibilities, while the capacity of the provincial departments of education and FET institutions is decisively enhanced to bring about sustainable systemic change.”

- The White Paper 4 provides for the establishment of a new governance framework intended to enhance the institutional autonomy and to ensure the FET is responsive to the needs of society and the country. The new framework is based on the principles of co-operative governance and provide for a strong steering, co-ordinating and developmental role for Government, substantial powers for FET institutions, and partnerships between Government, organised business and Labour, and communities.

- As provided for in the Constitution, the Minister of Education will determine national policy, norms and standards for FET. Provincial MECS for Education will be responsible for the provision of FET in FET institutions under their jurisdiction and for the funding and administration of institutions.
- FET institutions will be granted substantial powers in terms of new FET legislation. Each FET institution will be governed by a council that will have strong stake holder representation, as well as representation from the management, staff and learners at the institution. The council will perform all functions that are necessary and in the interests of the institution, including developing its mission and strategic plans, managing its financial affairs and, over and above the official establishment created by the MEC of the province, employing additional staff.
- The academic affairs of an FET institution, will be the responsibility of an academic board, subject to the final authority of the council. Learners will be represented through a student representative council.
- Since FET institutions will, from time to time be required to enter into agreements and to be the employers of additional staff, it will be important that they have the legal capacity to act. It is therefore necessary for an FET institution to be a juristic person, and for the council to act on behalf of the institution in the performance of its functions.
- In terms of the Employment of Educators Act, 1998, the power to create educator posts at FET institutions rests with the MEC, while the power to appoint educators to such posts, on the recommendation of the council of the institution, rests with the head of the provincial education department. The state as the employer of publicly funded educators in an FET institution will have the same powers as the employer of publicly funded educators in the school system.

White Paper on PSE 2013

- No reference to institutional autonomy of TVET colleges except reaffirming the 1997 White Paper:

- “This White Paper affirms the principles of academic freedom, institutional autonomy and public accountability as described in the 1997 White Paper. These principles may at times be in conflict with one another, and it is worth noting (and reaffirming) the 1997 White Paper’s unequivocal statement that “there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defence of mismanagement. Institutional autonomy is therefore inextricably linked to the demands of public accountability” (White Paper on PSE, 2013, 27).
- It also states that the
 - “The DHET’s highest priority is to strengthen and expand the public TVET colleges and turn them into attractive institutions of choice for school leavers.”
 - “Total head-count enrolments ... will increase to one million by 2015 and 2.5 million by 2030.”
 - “Key objectives in strengthening colleges include improving their management and governance, developing the quality of teaching and learning, increasing their responsiveness to local labour markets, improving student support services, and developing their infrastructure.”

Governance Audit conducted by HSRC

- The findings of the governance component of the FET audit show that there are shortcomings at each of the three levels of governance - college, provincial and national.
- Shortcomings at college level:
 - College councillors - while they may on balance have the right paper qualifications for the job - display vastly differing governance skills;
 - The fact that no college has created its own college statute or even appropriated for itself the statute proposed in the FET Colleges Act suggests a resignation to conformity rather than a quest for autonomy; and

- The widespread absence of any meaningful engagement with the King III principles on corporate governance bespeaks complacency, confirming the failure to act autonomously.
- Shortcomings at provincial level:
 - Arising from the policy that management staff should be appointed by the province and the remainder of the college staff by the college council, there appears to have been poor governance of the employment contracts of college staff, leading to confusion in many colleges about which staff are state-employed and which are employed by the council;
 - There has at best been uneven approval of colleges' strategic plans - a requirement of the FET Colleges Act of 2006;
 - Given the sheer size of the schooling sector, provincial oversight of schools and FET colleges has inevitably ushered in the relative neglect of colleges that has extended to funding disparities and, in some cases, the channelling of funds earmarked for colleges to schools;
 - Provinces have not seemed to recognise, and have therefore not adequately overseen, the distinctive governance and management functions of college councils and college management teams, which has led to tensions in the ways colleges are run.
- Shortcomings at national level
 - The number of policy interventions and the sheer speed with which they have been introduced and replaced has contributed to instability in the college sector as a whole, and to greater instability in colleges in certain provinces than in others;
 - Policy intervention has not always been accompanied by clearly formulated plans - colleges being left in some instances to interpret policy for themselves;
 - The dual accountability effected by the employment model - management staff reporting to the province, non-management staff reporting to the college council - has ushered in many tensions among council members and management staff alike, tensions that have paralysed both college governance and college

management to differing degrees in different provinces and colleges. This means, for example, that council members are not able to comment on principals' performances since they report to the provincial director for FET.

The cumulative effect of this litany of shortcomings is a sector that lacks clear direction in the area of college governance.

AUTONOMY ISSUES AT COLLEGES

As argued above, according to the CET Act, the Colleges are independent persona with legal standing that is governed by Councils in according to the quoted Act. Just like in universities, as a custodian of the colleges, Councils are expected to develop a strategic direction and governance process in colleges. Councils are expected to raise financial resources to supplement the conditional grant provided by the government.

However, there has been erosion of governance in the colleges due to the DHET interfering with councils from carrying its mandate. The following issues have threatened or even weakened the councils to a mere school governing body level and consequently affected the effective the autonomy of the TVET Colleges:

Areas of Concern impacting on Institutional Autonomy

Chapter 3:

Section 10 Council of public college

- The functions of Council as contemplated in the Act conflict now and then with the manner in which the Minister exercises some of the functions. These include:
 - o Development of a strategic plan for the public college which must be approved by the Minister.
 - o The determination of the language policy of the public college, subject to the approval of the Minister

Functions of council as per the college statute

- The Act makes provision for the public college council to govern the public college. There appears to be misunderstanding as to what governance means in relation to how certain administrative processes of the college are managed by the Ministry:
 - o subject to applicable policy and the approval of the Head of Department, determines the student admission policy of the college, after consultation with the academic board;
 - o subject to the approval of the Head of Department, determines the language policy of the college, after consultation with the academic board;
 - o determines tuition fees, accommodation fees and any other fees payable by students as well as accommodation fees payable by employees;
 - o determines conditions of service, code of conduct and privileges and functions of its employees and may, in the manner set out in the code of conduct, suspend or dismiss employees of the college; and
 - o may order an employee of the college who has been suspended to refrain from being on any premises under the control of the college and to refrain from participating in any of the activities of the college, or issue such other conditions as it may consider necessary.

Chapter 4

Section 19 Appointment of management staff creates “two centres of power” rendering the college ineffective in managing the management staff.

- The Minister must appoint the members of the management staff of a public college in terms of the Public Service Act.
- The management staff must report to and are accountable to the council in respect of matters and functions allocated to them by the council in terms of this Act.
- The principal must report to the Head of Department in terms of his or her performance agreement.

Section 20: Appointment of lecturers and support staff separates management from lecturers and support staff. This creates different conditions of service and difficulty in the application of different policies: Public Service policies vs college developed policies.

- The college is the employer of all lecturers and support staff.
- The lecturers and support staff are accountable to the principal.
- Subject to this Act, the Labour Relations Act, the Basic Conditions of Employment Act, the Employment Equity Act and any other applicable law, the council must establish posts for lecturers and support staff.
- The council must adopt a Disciplinary Code for lecturers and support staff in accordance with the college statute.

Chapter 5

Section 24 Funds of public colleges and college fees are determined by the Minister in terms of the norms and standards.

The funds of a public college consist of

- funds allocated by the State;
- any donations or contributions received by the public college;
- money raised by the public college (college fees);
- money raised by means of loans, subject to the approval of the Member of the Executive Council;
- income derived from investments;
- money received from services rendered;
- money payable by students for continuing education and training qualifications or part-qualifications provided by the public college;
- money received from students or employees of the public college for accommodation or other services provided by the public college; and
- funds from any other source.

FUNDING SITUATION AT TVET COLLEGES

Colleges are highly underfunded and it is miracle that none have closed doors. We can only thank colleges' councils for the prudent manner in which they govern colleges. This is not exaggeration at all. The reason this matter is raised with the Commission is that education is the APEX priority of government of South Africa.

Funding is not commensurate with government policy position by far. It is clear that the NDP targets will not be met if there is no meaningful change in funding levels, coupled with the fact that TVET Colleges must be the biggest sector in post school education.

The funding made available to colleges by the department covers 62% of all students in all colleges. 38% of students are not funded at all. Colleges are expected to carry this deficit indefinitely. E.g. 2016/17 there are ± 660 000 students but funding covers ± 414 000. More than 200 000 students are not funded.

The DHET uses 80% programme based cost funding model for allocations to colleges. 20% is made of NSFAS and paying students which we have explained above. The problem is that allocation is far less than 80 % because of full time equivalent (FTE) concept that reduces funding further. For 2016/17 financial year ± 210000 FTE are funded. This concept will be explained further in the meeting. Its impact to colleges is dire.

The above situation excludes the base line funding deficit resulting from when colleges were under the control of provinces. The department has not told us the degree of the deficit to base line funding, except in KZN where the deficit was ± R1.2 billion in 2012/13. This is much higher now through accumulation. Our view is that the situation is the same in all provinces as all provincial treasuries were doing re-allocations of grants from national that were reduced.

**DHET TVET Colleges Strategic Planning Meeting Financial Planning and Coordination
of 3 Sept 2016**

Funding Overview: 80%					
PROGRAMME FUNDING ESTIMATES (80%)					
TECHNICAL VOCATIONAL EDUCATION AND TRAINING COLLEGES	APP Target				MTEF Total 2016 to 2019
	2015/16	2016/17	2017/18	2018/19	
Target	725,000	829,000	948,000	1,084,000	2,861,000
Occupational enrolment	65,000	74,000	86,000	99,000	259,000
Headcount (NCV + Report 191)	660,000	755,000	862,000	985,000	2,602,000
Conversion to FTE's for NCV and Report 191					
FTE (NCV + Report 191)	322,737	368,888	422,008	482,355	1,273,252
	R'000				
Estimated Budget Required	9,211,472,000	11,244,814,000	13,610,183,000	16,458,713,000	41,313,710,000
Less: Baseline budget	6,179,574,000	6,513,120,000	6,860,921,000	7,227,294,000	20,601,335,000
Budget Shortfall	-3,031,898,000	-4,731,694,000	-6,749,262,000	-9,231,419,000	-20,712,375,000
No of Funded FTE	233,708	238,744	246,547	255,522	740,813
No of Unfunded FTE	89,029	130,145	175,461	226,833	532,439
Total	322,737	368,888	422,008	482,355	1,273,252
No of funded Headcounts	437,427	429,638	423,348	417,917	1,270,903
No of Unfunded Headcounts	222,573	325,362	438,652	567,083	1,331,097
Total	660,000	755,000	862,000	985,000	2,602,000
% Funded (Average)	54%				

Funding Overview:20% Bursaries

Bursaries (20%)				
<u>TECHNICAL VOCATIONAL EDUCATION AND TRAINING COLLEGES</u>	APP Target			
	2016/17	2017/18	2018/19	MTEF Total 2016 to 2019
Budget Shortfall on Bursaries	-2,488,998,000	-3,382,540,000	-4,456,520,000	-10,328,058,000

<u>TECHNICAL VOCATIONAL EDUCATION AND TRAINING COLLEGES</u>			
	2016/17	2017/18	2018/19
Baseline Growth	6.2%	5.8%	5.8%
Enrolment Growth	14.0%	14.4%	14.3%

With enrolment growth exceeding budget growth by 125% per annum year-on-year, this target is not achievable and targets have to be realigned to fit within financial capability of DHET and the TVET Colleges

Maintaining 2015/16 Enrolment

2015/16 Audited Outcome:

- NCV and Report 191: 664,748
- Occupational : 45,787
- Total: 710,535**

Option 1: Maintain 2015/16 enrolment with DHET funding approximately 54% of required funding level (80%) and TVET Colleges to subsidize the shortfall

- Headcount: 664,748
- FTE's: 322,737

Option 2: TVET Colleges to enroll only funded Headcount and FTE's provided BY DHET for 2016/17:

- Headcount: 429,638
- FTE's: 238,744

TVETCGC POSITION ON TVET COLLEGES AUTONOMY

The Technical Vocational Education and Training Governors' Council (TVETGC) is an organization composed of the TVET Colleges' External Council Members appointed by the Minister of Higher Education and Training. The strategic intent of the organization is to create a College Mindset which can serve as a foundation for the development of a Model College. The Mindset will also serve as a beacon for carving a Road Map, intended to guide the development and growth of TVET Colleges.

The TVETCGC Strategic Road Map is an integrated strategy which requires a review of the Strategic Vision, Mission, Values, Strategies, Systems and Policies with a view to ensuring alignment with the characteristics of the envisaged Model College: Excellence in: Governance, Empowering Leadership, Management, Teaching and Learning, and Community Engagement Programmes. Following a Road Map towards a Model College avoids floundering and waste of time and resources. Therefore, the Road Map should be implemented in a coherent and integrated manner.

The TVET Colleges have from inception operated at the school level: Foundation programmes, most of the lecturers with inadequate qualifications, each lecturer offering 2 or 3 programmes as is the case in high schools. This arrangement makes it difficult, if not impossible, to undertake research and scholarship.

What is required is the liberation of colleges, especially the academic programme, from the confines of the school structure to a new strategic framework at a higher education and training level and free to explore, determine and incorporate new knowledge. For this reason, the Road Map represents a critical path leading to a model college. It is an integrated strategy which requires a review of the Strategic Vision, Mission, Values, Strategies, Systems and Policies with a view to ensuring alignment with the Mindset of the envisaged Model College. Therefore, the Road Map should be implemented in a coherent and integrated manner and be done right the first time.

As advocates for the TVET sector, TVETCGC believes that the TVET sector and TVET Colleges can be able to thrive and respond to the needs of the country if the governing councils are allowed undertake their legally imposed mandate to operate within the prescribes of the CET Act. DHET needs to support the councils and not suffocate them by ensuring that they have no authority in the colleges. This is against the law.

TVETCGC appreciates that the DHET has after lots of engagements with the governors considered that they cannot develop and impose policies and strategies for the colleges. However, the TVETCGC is of the view that the only success of the TVET Colleges and subsequently the growth of the country due to skills availability would be possible if the CET Act is reviewed for amendments in order to change the TVET Colleges culture from being of a school based system to the post-education system.

TVETCGC argues that the CET Act needs to make a provisions to ensure that there is an enforceable performance agreement between the college staff and the council as opposed to such being with the Minister.

TVETCGC further proposes that the CET Act be amended such that there is a staff secondment to the college by the Minister which will provide the colleges with autonomy to run its processes and procedures and be able to monitor and enforce them.

TVETCGC acknowledges the initiative by the DHET to provide capacity support to TVET Colleges through SAICA support CFO and Corporate Services Resources.

TVETCGC views DHET as the authority/shareholder assigned by National Government responsible for the regulation and performance management, monitoring evaluation of the higher education in the country. TVET Sector is a vehicle responsible for the implementation of the TVET education.

DHET is expected to fully assign Financial and other Resources as a shareholder and a regulator contribution to TVET Sector and its further expected to performance manage, monitoring, evaluation and control of colleges in partnership with College Councils.

DHET plays a monitoring and evaluation role to the TVET sector and ensure that there is segregation of duties from the department and TVET sector ensuring compliance of roles and responsibilities assigned to the TVET Sector by Legislation.

However, TVETCGC notes that the initiative of DHET to provide financial management capacity in the Colleges has not yielded expected outcomes at large and this is due to lack of accountability and oversight systems for this initiative by Governors of Colleges. TVETCGC believes that the DHET cannot successfully execute such a programme without involving Councils of Colleges. Hence, we are proposing more inclusivity in this initiative in a form of partnership between DHET and TVETCGC.

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Signed by

Daniel Mabuyakhulu

The National Chairperson TVETCGC (For and on behalf of the TVETCGC)