

Examining deliberative democratic engagement in private general education and training

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Declaration

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Abstract

Single-subject private education providers are prejudiced by the perceived misinterpretations and subtle changes to current policies regarding quality assurance, accreditation and registration in South Africa's educational framework. This problem is illustrated through a case study of an existing institution that offers school subjects, but is not a school. It is also not a college for further education and training. As a result, the institution is not able to receive accreditation and registration status with the state.

What makes this particularly problematic and urgent is that single-subject providers of tuition of Mathematics and Physical Science are being excluded from contributing to the development of scarce and necessary skills in this field. This study raised the question why legislation, policies and regulations have been amended to exclude specialist providers, when the Department of Higher Education has published a White Paper for Post-School Education and Training, which stipulates the need for programmes that focus on Mathematics and Physical Science that may not be available in Technical Vocational Education and Training colleges. The overarching aim of this study was therefore to present a convincing argument suggesting possible opportunities for the quality assurance and regulatory bodies, to consider the advantages of providing accreditation and registration to private providers of general and further education and training.

This thesis concludes with the reminder that section 29(1)(a) of the Constitution of the Republic of South Africa states:

[E]veryone has a basic right to education, including adult basic education ... and that the State must consider all reasonable educational alternatives, including single medium institutions taking into account equity; practicability; and the need to redress the results of past racially discriminatory laws and practices.

Opsomming

Privaat verskaffers van enkelvakke word benadeel deur wanopvattinge en subtiële veranderinge aan huidige beleid vir gehaltewaarborg, akkreditering en registrasie in die Suid-Afrikaanse onderwysraamwerk. Hierdie probleem word geïllustreer deur 'n gevallestudie van 'n bestaande instelling wat skoolvakke aanbied. Hierdie instelling is nie 'n skool of 'n Verdere Onderwys- en Opleidingskollege nie, gevolglik kan dit nie akkreditering verkry of by die regering geregistreer word nie.

Wat hierdie veral problematies en noodsaaklik maak is dat die enkelvakverskaffers van Wiskunde en Fisiese Wetenskap uitgesluit word van 'n bydrae tot en ontwikkeling van skaars en noodsaaklike vaardighede op hierdie gebied. Hierdie studie het dus bevraagteken waarom wetgewing, beleid en regulasies aangepas is om spesialisverskaffers uit te sluit, terwyl die Departement van Hoër Onderwys 'n witskrif vir naskoolse onderwys en opleiding gepubliseer het, wat die behoefte geïdentifiseer het aan programme wat op Wiskunde en Wetenskap, wat nie meer by die tegniese en beroepsgerigte opleidingskolleges (TVET) aangebied word nie, fokus. Die oorkoepelende doel van hierdie studie was gevolglik om die gehaltewaarborg en regulatoriese liggame te oortuig om privaatverskaffers te akkrediteer en as verskaffers van algemene en verdere onderwys en opleiding te registreer.

Die studie het afgesluit met 'n verwysing na artikel 29(1)(a) van die Grondwet van die Republiek van Suid-Afrika wat verklaar:

Elkeen het die reg (a) op basiese onderwys, met inbegrip van basiese onderwys vir volwassenes ... (en) moet die staat alle redelike alternatiewe in die onderwys, met inbegrip van enkelmediuminstellings, oorweeg, met inagneming van (a) billikheid; (b) doenlikheid; en (c) die behoefte om die gevolge van wette en praktyke van die verlede wat op grond van ras gediskrimineer het, reg te stel.

Dedication

The study is dedicated to the institution on which the study is based, for the integrity and ethical manner in which they operate. The quality product that they provide to thousands of learners around this country in order to provide them with the extra opportunity to enter into tertiary institutions is outstanding – when considering the number of learners who have passed through this institution over a forty-year period, the numbers of learners is commendable. The hard work and dedication of the staff are evidence of their capability to offer a product, which, in many instances, may be superior to that offered by the state. This, together with their willingness and desire to be included in the quality assurance framework, earns them a seat at the quality assurance table.

The hope is that outcome of this study will provide all learners who, for whatever reason, are no longer in the formal education structures, with an opportunity to receive quality education at a provider of their choice.

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I would like to express my gratitude and thanks my family for their support, encouragement and patience over the last three years, while their mom and wife went back to study. I pray that this will inspire my children, Courtney and Liam, to work hard and keep going always, especially when you believe in something bigger than yourself. Most importantly, I would like to thank my husband Dion, who has been an inspiration and who continually supports and encourages my efforts, always believing in my ability to achieve new heights.

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Abbreviations

ACE	Accelerated Christian Education
AET	Adult Education and Training
ANC	African National Congress
ASC	Amended Senior Certificate
B.Ed	Bachelor of Education
CEO	Chief Executive Officer
CEPD	Centre for Education Policy Development
CHE	Council for Higher Education
COO	Chief Operating Officer
COSATU	Congress of South African Trade Unions
DDG	Deputy Director General
DBE	Department of Basic Education and Training
DHET	Department of Higher Education and Training
ERS	Education Renewal Strategy
ETDP	Education, Training and Development Practices
ETQA	Education and Training Quality Assurance body
FET	Further Education and Training
FETC	Further Education and Training Certificate
GENFETQA	General and Further Education and Training Quality Assurance
GET	General Education and Training
GETC	General Education and Training Certificate
GFETQSF	General and Further Education and Training Sub-Framework
HESA	Higher Education South Africa
IEB	Independent Examinations Board
ICG	Independent Colleges Group
IMSTUS	Institute for Mathematics and Science Teaching
ISASA	Independent Schools Association of South Africa
MEC	Member of Executive Council

MST	Maths, Science and Technology
NASCA	National Senior Certificate for Adults
NDP	National Development Plan
NEEDU	National Education Evaluation and Development Unit
NEPI	National Education Policy Initiative
NGO	Non-governmental organisation
NLRD	National Learners Record Database
NQF	National Qualifications Authority
NSC	National Senior Certificate
NSDS	National Skills Development Strategy
NUMSA	National Union of Metal Workers of South Africa
QC	Quality Council
QCTO	Quality Council for Trade and Occupations
RPL	Recognition for Prior Learning
SACAI	South African Comprehensive Assessment Institute
SAIDE	South African Institute for Distance Education
SAQA	South African Qualifications Authority
SARS	South African Revenue Services
SC	Senior Certificate
SETA	Sector Education and Training Authorities
SUNCEP	Stellenbosch University Centre for Pedagogy
TIMSS	Trends in International Mathematics and Science Study
TVET	Technical and Vocational Education and Training
VAT	Value Added Tax
WCED	Western Cape Education Department

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Chapter 1: Introduction to the study

1.1 Introduction

This project aimed to show how the possible misinterpretation of South Africa's current educational policy frameworks has inadvertently excluded established, previously recognised institutions from formal recognition and registration. This problem is illustrated by means of a case study of one such institution.¹ The provider of education in question is ideally situated to assist in addressing the mathematics and physical science requirements of the National Senior Certificate, the National Senior Certificate for Adults as well as the Amended Senior Certificate as registered on the National Qualifications Framework (NQF). The study aimed to develop a critical understanding of the complexity of the accreditation and registration of private single-subject providers within the general and further education framework. Methodologically the research made use of a critical historiographical engagement with an autobiographical case study of the M² institution. The theory of deliberative democracy was used to develop possible contributions to this problem, which was intended to facilitate 'fair terms of cooperation that cannot reasonably be rejected' (Gutmann & Thompson, 2004, p. 3).

The South African Qualifications Authority (SAQA) Act, 58 of 1995 established SAQA with a mandate to oversee the development and implementation of an integrated national framework of quality assured learning achievement that would:

- facilitate access, mobility and progression within education, training and employment;
- enhance the quality of education and training;
- accelerate redress of educational and job opportunities; and
- advance personal, social and economic development (Department of Education & Department of Labour, 2003, p. 30).

The implementation of SAQA stipulated that whether workplace-based or institution-based, every provider of NQF-registered education and training qualifications would be subject to the appropriate elements of the NQF quality assurance system (Department of Education & Department of Labour, 2003, p. 30). This resulted in

¹ In this thesis, 'M² institution' refers to Master Maths (Pty) Ltd. Ethical clearance has been given by the institution for this research to take place.

providers of education and training in all sectors seeking accreditation and registration for their provisioning.

Prior to the implementation of SAQA and the NQF, providers of education and training were registered with the National Department of Education and Training. With the implementation of SAQA and the NQF, a new education and training landscape was introduced, which included the establishment of three quality assurance bodies, namely Umalusi (General and Further Education and Training) the Council for Higher Education (Higher Education and Training) and Sector Education and Training Authorities (Industry).

The present research provided a biographical historiographic, narrative account of the M² institution established in 1976, formally recognised with the National Department of Education and Training in 1991 and now, 25 years later, has been excluded from formal accreditation and registration. This research sought to employ this case study in order to analyse current policies, regulations and legislation in an attempt to seek a sound argument that would support the need to afford this M² institution (and others like it) the opportunity to be formally recognised through accreditation with Umalusi as well as registration with the National Department of Basic Education as an education provider of mathematics, mathematical literacy and physical science.

In order to meet changing legislative and policy requirements, even though already recognised as an education institution with the Department of Education (DoE), the M² institution applied for accreditation and registration as per the regulations promulgated through the South African Qualifications Authority Act, 58 of 1995 (RSA, 1995) and the National Qualifications Framework Act, 67 of 2008 (RSA, 2009) respectively.

The tuition provided by the M² institution is in accordance with the curricula as stipulated by the registered National Senior Certificate (NSC), the Amended Senior Certificate (ASC) and the National Senior Certificate for Adults (NASCA) qualifications as registered on the NQF. Quality assurance regulations place these registered qualifications with Umalusi, the quality assurance body for the General and Further Education Training Framework. Umalusi granted the M² institution the status of “provisional accreditation” for a six-year period from 2003 to 2009. The M²

institution's head office and over 40 of its now 154 centres from major cities around South Africa were provisionally accredited. Subsequent to this, Umalusi has withdrawn the provisional accreditation status on the basis that the M² institution does not offer full or part qualifications (personal communication, April 4, 2007). Without the ability to maintain their accreditation status, the M² institution is unable to retain their status as an educational institution with the Department of Basic Education (DBE).

The General and Further Education and Training Quality Assurance Act, 2001, 58 of 2001 (Umalusi, 2011) provides for Umalusi to develop policy and criteria for the quality assurance, accreditation and monitoring of private education institutions, including Further Education and Training (FET) colleges and Adult Education and Training (AET) centres. This mandate has however not provided policy for the monitoring of quality in the growing private tuition industry.

1.2 Statement of the problem

This section provides the introduction into the challenges facing the M² institution by situating the research problem in greater contextual detail.

1.2.1 Research problem

Single-subject private education providers are prejudiced by the initial misinterpretation and subtle changes of current policies regarding quality assurance, accreditation and registration in South Africa's educational framework. This problem will be illustrated through a case study of an existing institution. The M² institution offers school subjects but is not a school and is also not an FET college. As a result, the M² institution has been informed it is not able to register with either the provincial Department of Education (as a school would) or continue with its recognition status as an education institution with the National Department of Education (DBE) due to legislative changes and barriers created as a result of the new education landscape. This problem statement will be discussed in more detail in section 2.2.

1.2.2 Further discussion of the research problem

Single-subject private education providers are prejudiced by the misinterpretation (and application) as well as subtle changes to current policies regarding quality assurance, accreditation and registration in South Africa's educational framework.

What makes this particularly problematic and urgent is that single-subject providers of mathematics and physical science are being excluded from contributing to the development of scarce and necessary skills in these fields. The White Paper for Post-School Education and Training (Department of Higher Education and Training [DHET], 2013) indicates the need for suitable institutions to offer programmes to post-school learners who may not be in Technical and Vocational Education and Training (TVET) colleges (DHET, 2013, p. 13). The White Paper also stipulates that these programmes will be for matriculants who need additional instruction in Mathematics and Science before going onto college or university programmes (DHET, 2013, p. 13).

In addition, the introduction to the Centre for Development and Enterprise report, 2013 (Spaull, 2013 p. 3) states,

South Africa is significantly underperforming in education, particularly mathematics teaching and learning. Mathematics teaching is often poor quality, with teachers not able to answer questions in the curriculum they are teaching, one indicator of the challenge. Often national testing is misleading, as it does not show the major gap at lower grade levels. Of the full complement of learners who start school, only 50 per cent will make it to Grade 12 and only 12 per cent will qualify for university entrance. Fundamental reforms are needed in the public sector.

The field of educational policy research is one of the ways in which this problem can best be engaged and understood.

1.2.3 Presenting the problem in greater contextual detail

Umalusi is mandated to accredit private providers of education and training, and assessment bodies (RSA, 2009b). The accreditation process is closely linked and dependent upon the process of registration with the state, with which private providers of education and training (schools, FET colleges and adult learning centres) are obliged to comply.

South Africa faces a complex problem with mathematics and physical science education due to the complex set of social and economic challenges that teachers

and learners face. Second-chance² opportunities for maths and science education are thus of critical importance. However, restrictive educational policies and frameworks, as well as limited resources, further problematise this mode of teaching and learning.

In March 2000, Sector Education and Training Authorities (SETAs) were established as Education and Training Quality Assurance (ETQA) bodies as set out in the South African Qualifications Authority Act, 58 of 1995 (RSA, 1995). The regulations under the South African Qualifications Act, 58 of 1998 (South African Qualifications Authority, 1998, p. 8), stipulate, “a body may be accredited as a provider by an ETQA body whose primary focus coincides with the primary focus of the provider”. As a result, providers of education were required to apply for accreditation with the relevant quality assurance body and to register with the DoE subsequently. The first step for applicants was to submit their programmes and particulars to the relevant quality assurance body for scrutiny and approval. Umalusi was the quality assurance body for the M² institution. The M² institution’s application to Umalusi was successful, and the company was accorded provisional accreditation in 2003. As a result, the M² institution was able to apply to the Department of Basic Education (DBE) for registration as an educational institution.

The M² institution submitted its application to the DBE for registration at which time they were advised by the then Acting Director General, that as the M² institution did not offer full qualifications they were not required to register with the DBE (personal communication, August 8, 2008).

The M² institution informed Umalusi of this outcome, and was then advised by Umalusi to continue with the accreditation process since the registration of ‘short course’ providers by the DBE would happen at a later stage (personal communication, April 5, 2007).

In 2007, the M² institution again asked for clarification whereupon the chief operating officer (COO) at Umalusi informed the M² institution that Umalusi should not have granted provisional accreditation to the M² institution, as they were not a school or a

² The term ‘second-chance education’ in mathematics and science is used throughout this essay to describe a category of learners and learning that allows learners who failed mathematics and/or science or who did not achieve the required marks for entry into tertiary education programmes, to repeat those specific subjects in order to attempt to gain entry into their desired programmes. The terminology originates from an article by Ndlovu (2011), The pedagogy of hope at IMSTUS: Interpretation and manifestation.

private FET college (personal communication, April 5, 2007). Umalusi was however of the opinion that provision had to be made for organisations such as the M² institution and that the registration for 'single course providers' would still happen in the future. Umalusi were in fact having talks with SAQA and the DBE in this regard (personal communication, April 5, 2007). They would therefore not withdraw the provisional accreditation status of the M² institution as long as the M² institution continued to comply with Umalusi requirements.

As instructed, the institution continued to submit self-evaluation reports and attempted on a regular basis to revive earlier discussions with Umalusi; however, due to changes in management at Umalusi at the time (2009), no progress was made.

After no further communication was received from Umalusi with regard to the accreditation and recognition status of the M² institution since 2008, the M² institution discovered in 2009, that their provisional accreditation had been withdrawn (personal communication, 2009). In an attempt to revive the accreditation status, the M² institution secured a meeting with the same COO of Umalusi in 2011 to discuss the way forward. It was during this meeting that the COO indicated that, in light of the changing education landscape, the time might have been right to revisit the company's accreditation/registration status.

At the time of this study (2016–2017), the changing educational landscape has still not addressed the lack of a framework that provides for the accreditation and registration of single-subject educational institutions, especially those that cater for the growing need to address mathematics and science education to meet the needs of the economy as highlighted by both basic education (Anon, 2015) and higher education (Nzimande, 2014).

The quality of education in South Africa is constantly in question, particularly with regard to mathematics and physical science. The TIMSS (Trends in International Mathematics and Science Study) 2015 report placed South Africa in the bottom 5 performing countries in the world (Reddy et al., 2016). As a result, we have hundreds of youth seeking second opportunities to redo their mathematics and/or physical science in order to be considered for further education at tertiary institutions.

Umalusi stipulated that current legislation does not make provision for accreditation of single-subject providers of tuition (personal communication, December 17, 2013). With the growing industry of extra tuition providers, the result of such stipulations is resulting in a number of providers who fall outside of the quality assurance monitoring system of the General and Further Education and Training (GFET) arena. A further spinoff of the lack of accreditation is that these providers are also not afforded registration status with the DoE for the tuition provided by this industry (personal communication, August 8, 2008).

1.3 Research questions

In order to address this complex problem, the following primary and secondary questions were addressed in this research:

Primary research question: Which contribution could the approach of deliberative democracy make towards the accreditation and registration of single-subject private education providers of general and further education and training?

Secondary research questions:

- What is the current legislation on private further education and training?
- How has legislation been interpreted to exclude tuition providers which are not included in the definition of an Independent School?
- What is deliberative democracy, and which contributions could it make towards engaging this policy impasse in South African educational legislation?

1.4 Scope of enquiry, methodology and limitations

The present study took the form of an autobiographical reflection on the M² institution as a case study to illustrate and explicate the problem highlighted in this research project. The reason for choosing an autobiographical approach³ was to present a textured and nuanced consideration of an existing case in the study, Abrahão (2012). Naturally, such an approach required a careful historiographical method⁴ that

³ A danger in autobiographical research is the subjectivity of the author or researcher. In his article, Abrahão (2012) offers helpful insights into this methodological approach while showing how such research could be engaged in a credible manner that is sufficiently objective for academic discourse, while drawing upon the necessary elements of lived experience and involved insight to shape the understanding of the issues at stake.

⁴ Since this research was based upon an autobiographical account of an existing case study, it was necessary to approach the case from a critical historiographical orientation in order to gain an

attempted to present events and situate them within the nested complexity of legislation governing South Africa's education system at the time of the research. The employment of a case study approach allowed for a theoretical point of reference around which relevant literature could be identified, considered and brought into critical dialogue in order to understand and present relevant theoretical insights into deliberative democracy as a contributor towards understanding and addressing the current legislative impasse.

The use of autobiographical methodology was applied as an interpretive process of research conducted over the last five years. The methodology was used to make meaning of the situation by 'looking backwards' again and again, resituating and reinterpreting the events and dialogues which have culminated in this study (Given, 2008, p. 47). This was done by reviewing empirical sources from which data could be generated critically. These included written communication, reports, minutes of meetings and discussions around accreditation and the relevant legislation. The autobiographical methodology applied to this study attempted to 'make sense' of the data in order to gain a better understanding of decisions that have affected the accreditation and recognition status of the M² institution. The autobiographical methodology uses memory as a key element in its research process (Abrahão, 2012, p 30). Biographical memory was used as a component to reconstruct elements of analysis that might have helped in understanding the object of the study. This naturally necessitated constant reinterpretation of the events of the past into the present (Abrahão, 2012, p. 30).

In addition to an autobiographical approach, a historiographical methodology was applied to the study in order to identify educational policy changes over time, and their influence on private providers in this sector. The present research engaged in policy historiography, which included the analysis of educational policies and primary data sources as indicated above. A qualitative review was conducted on data, after which a narrative is presented here for discussion. In order to ensure the validity of the data, an interpretive lens was applied using the methodology of deliberative democracy to create an understanding of what transpired, what it may mean and

understanding of the various educational policies and frameworks in relation to this case study. This approach allowed for an academically credible engagement with the policies themselves and the data used to evaluate them. Please see Trevor (2001) for further information on a historiographical approach to educational policy analysis.

what might be seen as an outcome of this study. The object of the study was to develop an academically rigorous and nuanced understanding of the problems encountered with the accreditation and registration of single-subject providers and a potential way forward.

1.5 Purpose of the research and contribution

The first purpose of this study was to gain a critical academic understanding of accreditation policy frameworks at General Education and Training (GET) and FET level, in order to add to the scholarly discourse on deliberative democracy.

A second purpose was to analyse educational legislation, regulations and policy in order to identify potential barriers and/or opportunities for the M² institution to gain formal accreditation with the relevant quality assurance body as well as registration with the state. Through the process of deliberative democracy, it was envisioned that a possible place on the table of stakeholders would be opened that would allow the opportunity to justify the laws, engage their interpretation and subsequent imposition on providers who are ideally positioned to contribute positively to the national mathematics and physical science requirements. A third purpose of this research was to formulate a response to the relevant stakeholders that the M² institution has, “the capacity to contribute to the justice of our society” (Waghid, 2010, p. 55).

A fourth purpose of this research was to identify possible opportunities that could contribute to the achievement of democratic justice in this discourse (Waghid, 2010, p. 56). As mentioned in the initial discussion (see 1.2.3), there is an important educational sector that is being excluded from the current educational legislative frameworks. Thus, a purpose for this research was to propose to the relevant stakeholders the possibility of the established institutions to be provided with the opportunity to operate within the quality assurance arena by “recognising that they have to be respected on account of their difference” (Waghid, 2010, p. 57). The research aimed to argue that “the achievement of democratic justice can be enhanced through deliberating together” and taking calculated risks (Waghid, 2010, p. 58).

The purposes above contributed towards an exploration of the history of the M² institution and its former registration status. This included an exploration of the changes to legislation and regulations that govern education provision in South

Africa. This research sought to show the influence that these changes have imposed on established institutions and how the misinterpretation of the legislation excluded those who are ideally positioned to contribute towards the mathematics and physical science education of GET and FET learners in South Africa. The overarching aim was to identify possible opportunities to present to the quality assurance and regulatory bodies, through a convincing argument, the need for accreditation and registration of the M² institution by employing the processes of deliberative democracy. The outcome is the creation of a space for providers who fall within this level of the education framework and the possibility to offer programmes that meet curriculum requirements, are examinable, are quality assured, and ultimately provide recognition of achievements for their registered learners. This will permit these providers to furnish learners with certification that will be recognised and which holds currency at tertiary education institutions.

Section 1.6 below shows an initial exploration of literature that shows the demand for such providers in South Africa due to the shortage of skilled educators in the formal schooling sector set against a strategy that seeks to increase the number of learners participating (and performing) in mathematics, physical science and technology.

1.6 Literature review: Facilitating learning for second-chance Mathematics and Science learners in South Africa

In a media release dated 17 July 2015, Minister Motshekga (cited in Anon, 2015) made the following announcement:

It is not acceptable for any public ordinary high school not to offer mathematics to learners. In a democratic South Africa much has been done to transform the education system, we are at a point where almost all schools offer mathematics, and great strides have been made to reintroduce mathematics in the FET Phase (Grade 10, 11 and 12)

In this media release, the minister of Basic Education announced a strategy that the DBE planned to implement in order to increase the participation and performance of learners in maths, science and technology (MST), through their development of an MST sector plan (see Department of Basic Education, 2015), which set targets at both national and provincial level.

Minister Motshekga stated that this was a deliberate move of the Department of Basic Education to increase the number of learners taking mathematics in order to meet the National Development Plan (NDP) (see National Planning Commission, n.d., 2012 targets of increasing the number of learners eligible for entry into Bachelor's degree programmes with Mathematics and Science to 450 000 by 2030. By setting these targets, the NDP highlighted the number of schools that had stopped offering mathematics to their Grade 10–12 learners and only offered mathematical literacy. It is unthinkable that after 22 years of democracy, there are schools that do not offer mathematics.

Much research has been conducted into the provisioning of Mathematics and Science at schools in terms of the quality of education provided (or a lack thereof). The Centre for Development and Enterprise is one of many examples of this research that has been conducted with regard to the quality of education in Southern Africa after apartheid. The report, commissioned by the CDE in October 2013, titled *South Africa's Education Crisis: The quality of Education in South Africa 1994-2011*, highlights that while the NSC pass rate has been increasing in recent years, this measure should not be seen as an accurate indication of the quality of education in the country. It is flawed because it only reflects the achievement of the best-performing 50% of a cohort, i.e. those that make it to Grade 12, and it does not take into account subject combinations and the fact that an increasing number of learners are opting for easier subjects, such as mathematics literacy, compared to challenging subjects, such as mathematics (Spaull, 2013, p. 8).

President Jacob Zuma (2013) stated in a speech he made to the finalists of the Eskom Expo for Young Scientists that government's biggest challenge is to make Mathematics and Science exciting and popular for school learners. He also said that by producing more science and technology graduates, the country was assured of a bright future economically. He went on to state that it means our country will have all the scientists, technologists, engineers, artisans and other skills that we need for economic development (Zuma, 2013).

As a result of poor schooling and the lack of subject choice for some learners, South African youth are not meeting the entry requirements for tertiary studies, predominantly in the science faculties (Vorster, 2014). Professor Irma Eloff, Dean of

Education at the University of Pretoria, says that universities need to bolster enrolments for maths and science degrees. In addition she stated, “In maths, science and African languages, we still need to increase numbers substantially” (Vorster, 2014). As a result of this, universities are not producing enough engineers, doctors and scientists, as most university degrees require a minimum of 60% for maths and/or physical science (Admission Requirements for Undergraduate programmes, University of Stellenbosch 2017).

Adding to the many voices, Professor Phakeng (formerly professor of mathematics and Unisa’s vice-principal) shared her concern for the state of mathematics education in South Africa, and its dire consequences for the development of the country. Professor Phakeng was addressing guests at the launch of the Tshawaga regional maths and science teacher strategy on 31 January 2015, where she cautioned: “Unless we increase the quality of learners who can become the next generation of scientists, engineers and technical specialists, South Africa’s vision for a sustainable democracy will not come to fruition” (Phakeng, 2015).

Research conducted by Prof. Mdutshekelwa Ndlovu at the Institute for Mathematics and Science Teaching (IMSTUS) at University of Stellenbosch found that South Africa relies on just more than 400 top schools for half its mathematics passes at the 50% level and about 350 schools for half its science access at the 50% level out of a total of 5 903 schools nationally (Ndlovu, 2011, p. 419). In addition, Ndlovu stated that no education system can exceed the quality of its teachers, and that as an institution, IMSTUS is committed to a social justice perspective that recognises that all learners are equally entitled to good teachers, irrespective of socio-economic disadvantages, race, gender or creed (Ndlovu, 2011, p. 420).

Of the few institutions who are providing quality repeat provisioning⁵ to learners in mathematics, I have chosen to focus my research on two: the Stellenbosch University Centre for Pedagogy (SUNCEP) and Master Maths. SUNCEP operates under the accreditation and registration of the Stellenbosch University and Master Maths has been formally registered as an examination centre with the Independent

⁵ Repeat provisioning refers to institutions who provide tuition to learners who have already completed their NSC, with the opportunity to rewrite single subjects in order to improve their marks.

Examinations Board (IEB). However, registration as a provider of Mathematics and Science provisioning is still been sought with the quality assurance bodies.

1.6.1 Selection of literature on deliberative democracy

Four points stood out for me during my initial readings of *Deliberative Democracy* by Gutmann & Thompson (2004). namely:

- Thomas Nagel (1987, cited by Gutmann & Thompson, 2004, p. 68) suggest that to justify state action, we have to satisfy a higher (ethically based) standard of objectivity: the reasons for the policy must be adjudged true from “a standpoint that is independent of who we are” (Gutmann & Thompson, 2004, p. 68).
- The failure of the state to act could subject citizens to as much coercion and violation of their rights as a decision to act (Gutmann & Thompson, 2004, p. 69).
- Citizens are not objects of legislation, but are active participants who participate in the governance of their own society (Gutmann & Thompson, 2004, p. 4).
- The rights claims are not about what exists; rather –
 [W]e ask whether our lives together within, outside, and betwixt polities ought not to be guided by mutually and reciprocally guaranteed immunities, constraints upon actions, and by legitimate access to certain goods and resources. Rights are not about what is, but about the kind of world we reasonably ought to want to live (Benhabib, 2011, p. 66).

The present research sought to explore these and other principles further as I tried to analyse, understand and consider possibilities for a way forward. This was explored in greater detail as part of the research.

1.7 An outline of the thesis

Chapter 1: Introduction – introductory chapter and discussion around the nature of this research project, research problem, research questions, methodology, overview.

Chapter 2: Legislation governing South African education and its influence on the accreditation and registration on private tuition providers operating in the GET phase.

Chapter 3: Autobiographical narrative of the case study.

Chapter 4: Deliberative democracy through deliberative engagement.

Chapter 5: The importance of deliberative democratic engagement in the process of policy formation to the inclusion of private tuition providers at GET and FET level.

Chapter 6: Conclusion of this study.

1.8 Conclusion

This chapter has provided the outline for the study and an overview of the problem. The private provision of education at school level as single-subject provision is a growing industry. Parents are desperate to find alternate options for their children in areas where they believe the formal structures are failing them. With the growing number of individuals and institutions emerging, I believe it is essential that this industry be quality assured, and any individual or business offering tuition in whatever form should be included in the quality assurance frameworks governing all education practices in South Africa. The following chapter will explore a possible consideration of the misinterpretation of legislation that is exclusive rather than inclusive, and if possible, identify a way forward that would provide a sound legislative reason for the inclusion of these providers for the benefit of the common good.

Chapter 2 – Legislation governing the accreditation and registration of private tuition providers

2.1 Introduction

This chapter focuses on the legislative changes that have situated the M² institution at the accreditation and registration impasse. I will explore the influence of policies, regulations and Acts that have resulted in barring this institution from the formal recognition structures. I shall also discuss the consideration of the misinterpretation of legislation that is exclusive rather than inclusive, and seek to identify a way forward that would provide a sound legislative reason for the inclusion of these providers for the benefit of the common good. In addition, this chapter will reflect an attempt to develop a critical understanding of the complexity of the accreditation and registration of private single-subject providers within the general and further education framework.

In order to situate the study, I first provide a historical account of the events that led to the implementation of SAQA and the implementation of the new skills development landscape. Following that, I will systematically introduce and discuss the policies, regulations and Acts governing South African education, which have created significant barriers to accreditation and which continue to exclude the growing industry of private tuition.

2.2 The history of the skill development framework in South Africa

Skills development and the formal recognition of it is a topic that has been under discussion in the South African landscape for many years. The debate around the formal recognition of skills development dates back as far as the early 1970s when black unskilled workers sought training as a means to ensure a living wage. The National Union of Metal Workers of South Africa (NUMSA) was the first to establish a research group comprising workers and union officials who formulated recommendations on training. The proposal included the need for basic education as well as the “portability and national recognition of training so that workers would not be at the mercy of a single employer” (SAQA, 2014). The Congress of South African Trade Unions (COSATU) formally adopted this proposal in July 1991 (SAQA, 2014).

Along with the skills development debates taking place in industry, the early 1970s also saw a growing demand for a change to the education sector, culminating in the 1976 nation-wide student protests, which eventually led to the entire education system being discredited and rejected by the 1980s (see SAQA, 2014). The non-governmental education sector resistance eventually resulted in the formulation of the National Education Policy Initiative (NEPI), which set about developing proposals for the restructuring of the formal education system. The NEPI reports and frameworks were eventually published in 1992, and were premised on the principles of non-racism, non-sexism, democracy and redress, and the need for a non-racial unitary system of education and training (SAQA, 2014).

The DoE simultaneously initiated its own process of policy discussion, which culminated in the Education Renewal Strategy (ERS). The ERS advocated three streams – academic, vocational, and vocationally oriented. The education employer sector participated in the process, advocating a seamless framework similar to that adopted by Scotland and New Zealand (SAQA, 2014).

A task team was established in 1992, which comprised eight working groups who were tasked with the development of a new national training strategy (SAQA, 2014). These working groups had representation from trade unions, employers, the state, providers of education and training, the ANC Education Department and the democratic alliance (SAQA, 2014). The year 1994 saw the publication of three documents which laid the foundation for the SAQA Act (RSA, 1995):

- the (ANC, 1994);
- the discussion document on a National Training Strategy Initiative (NTB, 1994); and
- the CEPD Implementation Plan for Education and Training (Ministry of Education, 2001).

White Papers on Education and Training (DBE, 1995) and on Reconstruction and Development (RSA, 1994) followed, both of which underscored the need for the development and implementation of the NQF (SAQA, 2014).

The NQF Bill established by an Inter-Ministerial Working Group, was passed into law as the South African Qualifications Authority Act (No. 58 of 1995) on 4 October 1995, and the first appointments to the first Authority were made in May 1996 (SAQA,

2014). In 2007, the Ministers of Education and Labour published a joint policy statement that sanctioned legislation that would put in place a new structure for the NQF such that three sub-frameworks would be established under three quality councils (GFET, Higher Education, and Trades and Occupations). Operationally, these three quality councils would take responsibility for the development of qualifications and quality assurance. The National Qualifications Framework Act No. 67 of 2008 gave legislative effect to the new policy. This Act then replaced the South African Qualifications Authority Act (SAQA, 2014).

The new Act aimed to strengthen South Africa's NQF and sought to ensure that the various elements of the education and training system were brought together more effectively. Furthermore, it sought to streamline the implementation of the NQF and to make it more responsive to the needs of the country (SAQA, 2014).

According to the South African Qualifications Authority Act, No. 58 of 1995, the objective of the NQF is to:

- create an integrated national framework for learning achievements;
- facilitate access to and mobility and progression within education, training and career paths;
- enhance the quality of education and training;
- accelerate the redress of past unfair discrimination in education, training and employment opportunities; and thereby
- contribute to the full personal development of each learner and the social and economic development of the nation at large (RSA, 1995).

The NQF was essentially a quality assurance system, with the development and registrations of standards and qualifications as the first important step in the implementation of a quality education and training system in South Africa (Isaacs, 2000, p. 3). SAQA adopted an eight-level framework against which to register these standards and qualifications. Level 1 is the least complex, and Level 8 the most complex with both levels 1 and 8 regarded as open-ended (Isaacs, 2000, p. 4).

In terms of section 5(1) of the SAQA Act (1995), one of the functions of SAQA was to accredit bodies responsible for monitoring and auditing achievement in terms of qualifications and standard developed (RSA, 1995). These bodies were called Education and Training Quality Assurance bodies (ETQAs).

In March 2000, Sector Education and Training Authorities (SETAs) were established in accordance with the Skills Development Act No. 97 of 1998 (RSA, 1998). Act 97 of 1998 states that the objective of the Skills Development Act is to –

- provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce;
- integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995;
- provide for learnerships that lead to recognised occupational qualifications;
- provide for the financing of skills development by means of a levy-grant scheme and a National Skills Fund;
- provide for and regulate employment services; and
- provide for matters connected therewith.

SETAs were established to manage the many skills development needs and each SETA was (and still is) required to manage skills development in its particular sector (RSA, 1998). For the purposes of planning and managing the delivery of training, the economy was divided into 23 sectors, each of which had its own SETA. For example, one SETA exists within the banking sector, another is concerned with skills development in the information technology sector, yet another is responsible for the manufacturing sector, and then there is a SETA for agriculture. The SETAs cover both the public and private sectors and replaced the National Training Boards (SAQA, 2014).

Each SETA, once established, had to apply to SAQA to seek recognition as an Education and Training Quality Assurance body (ETQA). As an ETQA, each SETA is required make sure that the training programmes and qualifications for which it is responsible are of the same high standard no matter where in the country the programmes are presented. SETAs therefore have to ensure that providers are competent to deliver quality training programmes. In promoting quality assurance, SETAs are required to accredit education and training providers, monitor the training provided and verify learner achievements.

The establishment of this system resulted in training providers seeking accreditation as providers of education with the relevant SETA. Once this had been received,

providers then sought registration as education institutions with the DoE. The Skills Development Levies Act 9 of 1999 (RSA, 1999) was designed to encourage skills development and investment in training and development. Employers who comply with the requirements by providing learning opportunities that could be recognised were entitled to claim a percentage of the levy back (RSA, 1999).

Prior to the implementation of the new skills development landscape, training and skills development individuals, companies and institutions operated outside of any monitoring system. The only 'recognition' as it were lay with the DoE. Even this recognition was not so much around quality and monitoring of providers as it was about recognition for value-added tax (VAT) exemption. Section 12(h)(i) of the Value-Added Tax Act, No. 89 of 1991 encouraged suppliers of education services to seek registration with the state (including any provincial administration) in order to qualify as exempt suppliers in terms of this Act. Requests for recognition as education institutions were made directly to the DoE, who either approved or rejected the request for recognition (RSA, 1991). The implementation of the VAT Act resulted in the M² institution requesting and receiving recognition from the state to be viewed as an education institution. At this stage, education (of any sorts) was perceived as an essential service, and therefore a human right (RSA, 1995). Providers of education other than schools, further and higher education institutions therefore sought recognition as education institutions with the South African Revenue Services (SARS).

How then did this affect the M² institution? In terms of the NQF, the eight levels of the framework spanned over the three Quality Councils as indicated earlier in this section i.e. GFET, Higher Education and Trades, and Occupations. Senior secondary schools, technical and community colleges, private providers and non-governmental organisations (NGOs), industry training and labour market schemes all fell within levels 2–4 of the framework. The institution offers subjects that fall within the senior secondary school system that sits within this level of the framework. Schools that focus on skills development at industry level are not included in the SETA framework. They fall under the GFET quality council, of which Umalusi is the ETQA. This means that the institution, which is a provider of single-subject tuition at GET level, can therefore not apply to a SETA for accreditation as the core business

does not fit within the Education, Training and Development Practices SETA (ETDP SETA), but with Umalusi.

The introduction of this new skills development landscape introduced with it recognition of prior learning (RPL). This firstly creates the opportunity for learners to be accredited with certain learning achievements. Secondly, it makes provision for the assessment of learners through RPL to gauge their potential for entry to a specific learning programme (SAQA, 2013). If the objectives of facilitating access to and mobility and progression within education, training and career paths as well as accelerating the redress of past unfair discrimination in education, training and employment opportunities are to be met, then exploring ways in which both these aspects can be addressed in learning programme design, especially in respect of assessment, is critical. Traditional methods of assessment, e.g. written examinations, are an option for learners who have experienced learning in formal institutions. However, they are not helpful for learners who have gained skills outside the formal learning institutions and often serve only to entrench barriers to progression (SAQA, 2013, p. 5).

In summary, RPL is a process through which formal, non-formal and informal learning can be measured, mediated for recognition across different contexts and certified against the requirements for credit, access, inclusion or advancement in the formal education and training system or workplace (SAQA, 2013, p. 5).

The aim of RPL is to make it possible to obtain formal recognition for knowledge gained throughout life, such as in workplaces and through own reading or experiences. The RPL process also entails providing support to a candidate to ensure that knowledge is discovered and displayed in terms of a relevant qualification registered on the NQF. What makes RPL relevant to this discussion is that the single subjects offered by the M² institution are designed so that any learner who receives tuition through the M² institution meets the Mathematics and Physical Science outcomes as included in the registered NSC as well as the ASC as registered on the NQF. Learners who receive tuition through the M² institution, should at the very least have their outcomes and knowledge recognised against this qualification, either through the formal assessment pathway or through RPL. This brings me to the next section in which I will explore the Acts, regulations and policies implemented over the years that have affected the M² institution and the way the M²

institution sought at each step to meet these new demands on the training industry as a whole.

2.3 Constitution of the Republic of South Africa, No. 108 of 1996

Before I even continue to identify and discuss the various Acts that have influenced recognition status of the M² institution as an education institution, I feel it is appropriate to reflect on the foundation upon which this chapter is based, and in my opinion, it seems right to begin with the Constitution of the Republic of South Africa, Act 108 of 1996.

In section 1(a), it is clearly stated that the Constitution of South Africa is founded on values that include human dignity, the achievement of equality and the advancement of human rights and freedoms. It then continues to state in section 3(2)(a) that all citizens are equally entitled to the rights, privileges and benefits of all citizenship; and equally subject to the duties and responsibilities of citizenship; section (3) states that national legislation must provide for the acquisition, loss and restoration of citizenship. These rights are formulated in Chapter 2 of the Constitution, which focuses on the Bill of Rights that state in section 7(2) that the state must respect, protect, promote and fulfil the rights in the Bill of Rights. These two sections highlight the importance of respecting the rights of all citizens, which include to right to equality. Waghid (2010, p. 550) states, “if one learns to respect the liberties of others as being equally as important as one’s own, then one recognises that others have similar freedoms to live their lives according to how they see it”. He links this to the notion of democratic justice, which suggests that we give due consideration to the views of others. Waghid (2010, p. 57) also raises the importance of –

[T]aking responsibility for the rights of others, by introducing the idea that to understand democratic justice could potentially extend the mere recognition of, and respect for others’ rights to a position where we assume appropriate responsibility for the rights of others as friends.

When considering the rights of others in terms of citizenship and democratic justice, I would like to suggest that sections 29(1) of the Constitution form an important building block in this process: Everyone has the right to a basic education, including adult basic education; and to further education, which the state, through reasonable measures, must make progressively available and accessible. Subsection 2

continues to reinforce this by stating, “the state must consider all reasonable educational alternatives, including single medium institutions taking into account, equity; practicability; and the need to redress the results of past racially discriminatory laws and practices”. In order to enforce this right, the Constitution continues with subsection 3 by stating:

“Everyone has the right to establish and maintain, at their own expense, independent educational institutions that:- do not discriminate on the basis of race; are registered with the state; and maintain standards that are not inferior to standards at comparable public education institutions.”

According to my limited interpretation of the laws, I would like to suggest that this provisioning by the Constitution highlights the right for basic and further education for all. It also states clearly that everyone has the right to provide that education, providing it is offered without discrimination and is not inferior to public schooling provided by the state. This becomes relevant to the M² institution, in that, in terms of section 29(3), the founder of the institution at his own expense had the right to establish the institution, which provides education at a standard comparable, if not superior – in my opinion – to that offered by the state.

The sections that follow focus on various Acts, policies and regulations implemented in order to maintain the quality provisioning of education in South Africa. It will include how the amendments to these Acts have affected the private provider industry, with specific focus on providers operating in the general education and training arena.

2.4 Value-Added Tax Act, No. 89 of 1991

I have chosen to include the introduction of the Value-Added Tax Act, No. 89 of 1991 in this chapter. Its inclusion introduces the ideal that the legislative frameworks that govern South Africa seem to operate in silos without regard for the implications that amendments to the Acts may have on other sectors of the economy.

The VAT Act signifies the beginning of the accreditation journey for the M² institution. The introduction of the VAT Act, No. 89 of 1991 made provision for the supply of education services to be exempt from VAT (RSA, 1991). In order for the M² institution to receive this exemption, a request was made to the DoE to recognise the institution as an education institution. In September 1991, the M² institution received

a letter from the department of education confirming the recognition of the M² institution as an education institution.

2.5 South African Qualifications Act, No. 58 of 1995

As highlighted in section 2.3, the SAQA Act was promulgated as a result of the NQF Bill that was passed into law. The aim of this act was to provide for the development and implementation of an NQF and for this purpose, to establish SAQA and to provide for matters connected with it.

Two definitions included in this Act are worth highlighting for this study:

“company” means a company or close corporation registered under any law, which provides education or training for its employees or clients (RSA, 1995); and

“qualification” means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose by the South African Qualifications Authority (RSA, 1995).

These definitions describe the intention for which SAQA Act was originally implemented, in that it sought to include companies engaged in the provision of education (RSA, 1995). The M² institution, even though a registered company, fell into this category, as it had been recognised by the DoE in 1991 (see section 3.2 personal communication, 1991). The definition of ‘qualification’ is also important, as it shows the intention to recognise the learners’ achievements of the required number or range of credits. This recognition of learners’ achievements becomes important when considering the objectives of the NQF, which as a reminder, are to:

- create an integrated national framework for learning achievements;
- facilitate access to, and mobility and progression within education, training and career paths;
- enhance the quality of education and training;
- accelerate the redress of past unfair discrimination in education, training and employment opportunities; and thereby
- contribute to the full personal development of each learner and the social and economic development of the nation at large (RSA, 1995).

From the first two objectives listed above, one could deduce that the implementation of the SAQA Act (No. 58 of 1995) was to create opportunities for learner recognition, regardless of where or when that learning was achieved. As the education landscape developed to include recognition of skills and knowledge outside of the formal education structures together with the implementation of the Skills Development Levy's Act (No. 9 of 1999), providers of education and training sought accreditation with the relevant ETQA and then registration with the state (in the form of the DoE) (Umalusi, 2011). Having worked in the education and training industry for over 25 years, it is evident and my professional opinion is that companies and individuals seeking recognition for learning achievements gave preference to providers of education and training who are able to recognise and certify learner achievements rather than those who merely provided tuition and those who provided certificates of attendance. This preference is linked to the percentage rebate a company may claim against the skills development levy based for making use of the services of accredited and registered training providers.

Having discussed the SAQA Act, and before further discussion on the legislative regulations are presented, section 3.6 focuses on the SAQA criteria and guidelines documents.

2.6 SAQA criteria and guidelines documents

Point 2 of the Executive Summary of the SAQA policy document for the General Education and Training Certificate (GETC) states, "each GETC will provide access to various learning pathways, both vertical and horizontal, in terms of the purpose of the qualification. The scope of access provided by each GETC will be determined by the qualification itself" (SAQA, 2001, p. 3). For the purpose of this study, the relevant qualifications are discussed in more detail section 2.7.

Section 4.1 of SAQA's criteria and guidelines document provides SAQA's definition of a qualification. This includes a paragraph stipulating that according to the rules governing the award of the qualification, the qualification may be achieved in whole or part through RPL, of which concepts include but are not limited to learning outcomes achieved through formal, informal and non-formal learning and work experience (SAQA, 2001, p. 10). The concluding remarks from this document state that one of the strengths of the SAQA system is that it is an open system, allowing

for the flexibility of different bodies to put forward the qualifications that serve their needs (SAQA, 2001, p.10). The regulations should not be restrictive and drive the system back towards closing pathways rather than opening up pathways. Consideration of more flexible organisational arrangements within the system are likely to have the effect of 'loosening up' the system and encouraging life-long learning (SAQA, 2001, p. 27).

2.7 SAQA criteria and guidelines for short courses and skills programmes

The publication of these guidelines documents, although focused on the criteria and guidelines for short courses and skills programmes, highlights the stated intentions of the SAQA and the implementation of the NQF structures. The need for registration and accreditation stems from the need to award credits for learning, i.e. that learners who enrol for learning programmes be given formal recognition for their learning attained through short learning programmes (SAQA, 2004, p. 9).

The COO of Umalusi stated in an email to the M² institution that, whilst it should be acknowledged that the education and training system is evolving, the DoE may wish to focus on providers offering full qualifications (2007), and that short course provisioning must be brought into the system (personal communication, April 5 2007). The content of the email reinforced the intended purpose of SAQA as discussed in this document (SAQA, 2004, 12). The issue of the registration of providers offering short learning programmes had to be resolved (SAQA, 2004, p. 12). Appendix C of the guidelines document reinforces this argument by stating, "the issue of short course provision is unquestionably important" (SAQA, 2004, p. 42).

As the SAQA exercise emphasised, this is a very extensive and exceptionally varied component of the national learning system. It makes a significant contribution to the enhancement of personal learning and the national skills base. Many sectors of the economy rely on short courses for the upgrading of employees' skills and professional development (SAQA, 2004, p. 42).

There is therefore a direct link between short course provision and workplace skills plans. Countless citizens take short courses to enhance their own understanding or for cultural enrichment. At the same time, especially in an unmonitored area of provision, citizens may be taken advantage of by unscrupulous and incompetent providers. SAQA's actions should result in an acceptable taxonomy of short course provision and should ensure that short

course providers too are assisted to engage appropriately with the NQF quality processes and enable providers to align themselves with the requirements of the Skills Development Act, 1998 (SAQA, 2004, p. 42).

The inclusion of this statement in the criteria guidelines booklet reinforces the argument continuously presented by the M² institution. The extra and second-chance tuition industry is continuing to grow at a rapid pace (Centre for Education and Development (2013); yet, in my opinion, the legislative frameworks do little to engage with and assist these institutions or providers with the opportunity to fall within the NQF quality processes. In addition, the lack of monitoring has left this industry open to unscrupulous and incompetent providers who are taking advantage of citizens (SAQA, 2004, p. 42).

In addition, the guidelines document includes a note on the term 'conditional registration'. SAQA (2004, p. 12) states:

'conditional registration' is particularly associated with the registration of a private higher education institution as specified in the Higher Education Act (No. 101 of 1997) and therefore also deals with the requirements to register to be given the 'right to practice' as an education and training provider.

This is all that the institution is seeking – the right to practice as an education or training provider.

Chapter 3 provides insight into the many conversations over the four years (2011–2014). The final reason for being 'barred' from accreditation is that the institution does not offer a full qualification; however, the guidelines document indicates that the DoE would only register providers that offer 'full' qualifications, and therefore, also part qualifications derived from such 'full' qualifications. Until such time that the DoE developed a system whereby providers of short learning programmes, i.e. providers offering programmes which will lead to credits towards 'part' qualifications, could be registered, providers cannot be prevented from developing and offering such short learning programmes (SAQA, 2004, p. 12). Section 2.5 shows that the qualification in question is registered on the NQF, and the subjects the institution offers make up 20 credits each – which are assessed toward the achievement of the 'full' qualification, which accordingly offers programmes that will lead to credits towards 'part' of the qualification.

In addition, the document goes on to indicate, “short learning programmes can be developed against any part of a qualification, but it is critical that the credits awarded through the short course will have currency in terms of the full qualification” (SAQA, 2004, p. 19). The M² institution offers tuition designed specifically to meet the assessment criteria and learning outcomes of the NSC. Each subject carries 20 credits. According to this statement, learners who are able to meet the outcomes through internal assessment by this institution should then be able to use the credits achieved through this institution to hold currency toward the achievement of the ‘full’ qualification. As will be highlighted and discussed further in section 2.7, the qualification does not stipulate that the learning must take place in a school.

The guidelines document includes a section that focuses on models of accreditation, under which a sub-heading focuses on categories of providers. It is in this section that the document highlights, “according to the ETQA Regulations (No. R1127 of 8 September 1998), a ‘provider’ is identified as being a body who delivers learning programmes which culminate in specified National Qualifications Framework (NQF) standards or qualifications and manages the assessment therefore” (SAQA, 2004, p. 23). It continues to indicate (SAQA, 2004, p. 24):

[P]roviders can include companies, work-based training centres, a collaboration amongst a range of partners (organisations, institutions, companies, tuition centres, RPL centres, assessment centres, etc.), and finally confirms that providers – including providers of short learning programmes – come in all shapes and shapes and sizes, and include providers who only deliver learning, but not summative assessment and includes single-purpose providers include providers that focus on one field of learning.

Finally, this document concludes by stating, “short learning programme provisioning, if it is brought into the quality assurance loop in a systematic and coherent fashion, is pivotal in achieving the objectives of the NQF and the [National Skills Development Strategy] NSDS” (SAQA, 2004, p. 33). It is therefore important that this type of provisioning be acknowledged and valued. The accreditation of providers of short learning programmes does not differ substantially from the accreditation of providers of full qualifications, which obviates the need for the establishment of ‘different’ accreditation processes (SAQA, 2004, p. 33).

This guidelines document makes it very clear that the implementation of SAQA had every intention of including all providers in the quality assurance systems. It is therefore unclear why the Acts, policies and regulations through amendments over the years have continued to change definitions and objectives that have resulted in my opinion in a system that is far removed from the statements issued at the inception of the NQF.

2.8 National Qualifications Framework Act, No. 67 of 2008

The National Qualifications Framework Act replaced the SAQA Act in 2008. The object of the NQF Act, was to “provide for the further development, organisation and governance of the NQF” (RSA, 2008, p.4). This Act defined an education institution as “an education institution that was established, *declared or* registered by law” (RSA, 2009, p. 2). As indicated earlier, the DoE and SARS recognised the institution as an educational institution (personal communication, 1991), because in terms of the Act, the institution fell within the definition of this Act. The definition provided for ‘part qualification’ by the NQF Act, which means “an assessed unit of learning that is registered as part of a qualification” (RSA, 2009, p. 4).

This Act however omits the definition of a company, which was included in the SAQA Act. In my opinion, this is the first significant omission that affected the M² institution. By including the definition of a company, the SAQA Act made provision for the inclusion of providers engaged in the provision of education or training. The omission of this definition from the NQF Act, and the inclusion of ‘education institution’ that is declared or registered by law, was the first step in the process barring providers from membership. To be declared or registered as an education institution by law meant receiving accreditation status with the relevant ETQA first, and only then could a provider receive registration as an education institution with the State.

Section 3(1) of the NQF Act (RSA, 2009, p. 4) states:

“the Act applied to (a) education programmes or learning programmes that lead to qualifications or part qualifications offered within the Republic by: (i) education institutions; and (ii) skills development providers; and (2) Every qualification or part qualification contemplated in subsection (1) must be registered on the NQF in accordance with this Act”.

The tuition offered by the M² institution is designed to meet the curriculum requirements as set out for the NSC as registered on the NQF (SAQA ID: 49647) as well as the National Certificate: Vocational, Level 4 (NCV) (SAQA ID: 50441) and the NSC for Adults (NASCA) (SAQA ID: 91672) (Reference).

The purpose and rationale for the NSC qualification stipulates that, “schools will continue to offer learning programmes and qualifications based on subjects to learners” (DBE, 2015a). It continues to state, “it also lays the foundation for a variety of learning pathways and life-long learning and different career paths” (DBE, 2015a). The rationale includes:

“while an [Further Education and Training Certificate] FETC can be obtained in a number of learning pathways, each with its own particular focus, the FET (General) is aimed at providing general formative education organised into subjects. It will be offered *mainly* in schools – note that it does not stipulate that it will be offered *only* in schools” (DBE, 2015b).

When examining the underpinning principles of the FETC (General), it is worth noting that outcomes-based education (OBE) and articulation pathways and portability within the NQF are stated as two of the underpinning principles of this qualification.

Access to the qualification is stated as “open to all learners who have successfully completed Grade 11 or who have received *recognition of prior learning* of Grade 11 or equivalent at NQF level 3” (DBE, 2015b). A reminder, as discussed earlier (see section 2.2) RPL is “a process through which formal, non-formal and informal learning are measured, mediated for recognition across different contexts and certified *against the requirements for credit*, access, inclusion or advancement in the formal education and training system or workplace” (SAQA, 2013, p. 30). This qualification stipulates, “each subject is worth 20 credits with the exception of Life Orientation that carries 10 credits” (DBE, 2015b). In terms of the subjects offered by the institution, it provides tuition towards 40 credits of the 130 total credits for this qualification – 20 credits for Mathematics and 20 credits for Physical Science. As suggested by the rationale for this qualification, “these credits may be achieved mainly in a school; it does not state only in a school” (DBE, 2015b)

In addition, the qualification addresses the requirements of integrated assessment of the qualification. With reference to internal assessment, it clearly states, “Internal

Assessment is assessment conducted by teachers in schools or other sites of learning, in which the achievement of learning outcomes will count towards the achievement of the qualification” (DBE, 2015b).

On the basis of the purpose, rationale and assessment criteria of the NSC qualification, the institution therefore sought to be incorporated into the accreditation systems so that learners who wish to receive recognition for their learning could receive recognition and certification for their learning achieved through this learning pathway – another site of learning.

In its purpose and rationale of the qualification, the National Certificate: Vocational (see DBE, 2015a, 2015) also stipulates, “the qualification will be offered primarily in FET Colleges, although other accredited providers can offer it” (DBE, 2015a). This relates to the institution as this qualification is also offered as programmes in the form of subjects that will consist of academic knowledge and theory integrated with the practical skills and values specific to each vocational area. This qualification provides access to learners who have undergone an RPL assessment for Grade 11 learners. In addition, the NCV lists Mathematics as a compulsory subject and Physical Science as an optional subject, both of which are assigned 20 credits (DBE, 2015a).

In addition to the two qualifications already discussed, the NQF includes the NSC for Adults (NASCA) (SAQA ID: 91672). The NASCA (Umalusi, 2015) aims to –

service an identifiable need in the basic adult education system, not currently met by other qualifications on the NQF and to create pathways for further learning. It is designed to provide opportunities for people who have limited or no access to continuing education and training opportunities”.

The rationale for this qualification is that “the NASCA examination provides people with an opportunity to indicate what they know through taking a series of examinations” (Umalusi, 2015).

Should candidates wish to improve their results in the NASCA they may register and write a *subject* more than once. The structure of the NASCA accommodates a variety of education delivery options; face-to-face, distance, or a combination of the two as well as the possibility of private tuition or self-study. Full-time and part-time study can be accommodated by the qualification structure and design (Umalusi, 2015).

As with the two previous qualifications, this qualification also lists Mathematics as compulsory subject. The certification requirements (Umalusi, 2015) include that

[T]he results of two or more NASCA *subject statements* will be combined to allow a successful candidate to receive a National Senior Certificate for Adults: A qualification at Level 4 on the NQF, provided that the promotion requirements in paragraph 10 (1-3) of the qualification policy have been fully met. Such a combination must be requested on behalf of the candidate by the assessment body concerned.

Again the reference to subject statements suggests that accreditation of providers who offer tuition towards single subjects should be included in the quality assurance framework. As stipulated earlier (section 2.7), monitoring of providers should be critical to avoid the offering provided by unscrupulous providers who take advantage of learners.

To conclude the discussion on the NQF Act, the final quote is from section 34 of the NQF Act 67 of 2008, which stipulates, “where there is conflicting interpretation between this Act, the Higher Education Act, the Skills Development Act and the GENFETQA Act, this Act must be given preference” (RSA, 2009b, p. 20).

Government Notice 549, The National Qualifications Framework (NQF) Act (67/2008): Publication of the General and Further Education and Training Qualifications sub-framework and Higher Education Qualifications sub-frameworks – Gazette No. 36721, point 73 states, “the Umalusi certification process recognise partial achievement of qualifications through the issue of subject statements and under the prerequisite conditions, allow the combination of partial achievements to result in a full qualification” (SAQA, 2013, p. 25). Point 78 in terms of certification further stipulates (SAQA, 2013, p. 25):

[A] subject or learning area statement (that is, ‘a subject statement’) is issued by Umalusi if a candidate has not met with the full certification requirements for the qualification. A subject statement, as a record of learning, may be used as the vehicle for credit accumulation and transfer.

Points 80 and 97 state that Umalusi may issue several subject statements as records of learner achievement (see SAQA, 2013). A combination of the subject statements may be requested through an accredited private assessment body or the

state should the requirements now be fulfilled. Umalusi is obliged to ensure that certificates it issues are credible both nationally and internationally (SAQA, 2013).

In 2015, the M² institution was informed that it could not receive formal accreditation, as it did not provide tuition towards full qualification. This reasoning seems to be in contradiction to the statements provided by the official government notice, as well as those included in all three qualifications discussed above. One might state that this Government Gazette was issued in 2013, before the final decision was made with regard to the institution; however, it is worth stating that it was long before 2015 that both Umalusi and the DBE decided to exclude the institution from the quality assurance framework.

2.9 General and Further Education and Training Quality Assurance Act, No. 58 of 2001

The General and Further Education and Training Quality Assurance Act, No. 58 of 2001 assigns responsibility for quality assurance of general and further education and training in South Africa to Umalusi, the Quality Council (QC) for quality assurance in GFET. The GENFETQA Act 58 of 2001 was established with the purpose of maintaining norms and standards in general and further education and training and as such its mandate includes amongst other points, the “quality assurance of all exit point assessment of such qualification; and certification of learner achievement” (RSA, 2001, p. 5).

The principles 1(a) and (b) state that, “the QC for the sub-framework in GFET, aims to achieve quality assurance of an education institution that offers provision towards the achievement of a qualification or part qualifications on the sub-framework; and assessment and the accreditation and monitoring of an assessment body that externally examine the qualification or part qualification”. (RSA, 2001, p.6).

The amendment to the Act in January 2009 included in the definition of ‘accreditation’, in section 2(a) which stated that “the certification of a person, body or an institution as having the capacity to fulfil a particular function in the quality assurance system set up by the South African Qualifications Authority in terms of the SAQA Act (Act No. 58 of 1995) (RSA, 2009). The amendment replaced the definition to now read “accreditation means accreditation by this council in terms of

this Act. There is now no reference to ‘person, body or institution’ in the definition of ‘accreditation’.

Section 23(1) of the amendment of this Act specified, “the Council must develop policy and criteria for quality assurance of private education institutions” (The RSA, 2009). This amendment brought with it the omission of the use of the word ‘private’ and in its place the term ‘education institution’ was used. These subtle amendments made it difficult for providers to become accredited as the burden shifted from being a private provider to being recognised as an education institution. At this stage, the institution still held the recognition through the DoE and SARS as being an education institution; however, in order to maintain this status, accreditation with the relevant QC was required.

Policy and Criteria for the Quality Assurance, Accreditation and Monitoring of Independent Schools and Private Assessment Bodies (RSA, 2017) again changed the definition of ‘accreditation’ to now mean:

[T]he outcome of the quality assurance process of evaluating (a) private assessment body to determine whether its capacity, systems, processes and products are of the appropriate quality to deliver valid, reliable, fair and credible assessments and (b) an independent school to determine whether it has, in accordance with the policy and criteria for quality assurance as set out in this policy, the capacity to offer a qualification **or** programmes leading to a qualification on the GFET Qualifications sub-framework.

In addition, this latest policy has also amended the definition of an ‘accredited provider’ to mean, “a legally established independent school that has been recognised by Umalusi Council as having the capacity or provisional capacity to offer a qualification or part-qualification registered on the GFETQSF as the required standard” (RSA, 2017). A ‘registered independent school’ means, “an independent school registered by the Provincial Department of Education in which the school is located in terms of section 51⁶ of the South African Schools Act, 1996 (Act No. 84 of 1996)” (RSA, 1996b, p. 28).

⁶ While conducting this research, I would like to highlight that Notice 281 of 2017 incorrectly references section 51 of the Schools Act, as referring to the registration of independent schools. It is Section 46 of the Schools Act No. 84 of 1996 that provides the criteria for the registration of independent schools.

A review of the criteria to register an independent school according to Section 46(1) states:

No person may establish or maintain an independent school unless it is registered by the Head of Department (Head of an Education Department). Subsection (3) states that a Head of Department must register an independent school if he or she is satisfied that:- (a) the standards to be maintained by such a school will not be inferior to the standards in comparable public schools; (b) the admission policy of the school does not discriminate on the grounds of race; and (c) the school complies with the grounds for registration contemplated in subsection (2). Subsection (2) states that the Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department (RSA, 1996b, p. 28)”

The Schools Act (No. 84 of 1996) does not stipulate anywhere that provision must be provided towards the ‘whole qualification’. In addition, the application for the registration of an independent school only requires that such institution stipulate which curriculum will be implemented and whether the curriculum meets the outcomes of the NSC (see RSA, 1999, p. 28). Even the Independent Schools Association of South Africa (ISASA), in their Guidelines for Establishing a New Independent School, stipulates that it is difficult to draw up a set of prescriptive steps for the setting up of a new school as these steps depend to a large extent on the type of school that is being set up (ISASA, 2011, p. 2). As will be explained in the case study (see Chapter 3, the M² institution was informed on more than one occasion that the institution could not register as an independent school as it does not offer the whole qualification. On review of the Schools Act (1996), as well as the registration documents, it is evident that the notion of ‘whole’ qualification is not prescriptive from these documents. The question then remains: when and why were the GET Act (No. 38 of 2001) and the FET Act (No. 58 of 2008), regulations and policies amended to include ‘whole’ qualification as a requirement for registration as a private school, if it clearly states that it is up to the head of the provincial department to make the decision (see RSA, 2001)?

2.10 FETC policy document

As discussed in section 2.8 of this chapter, the NSC qualification clearly states that it recognises previous learning (see DBE, 2015b). The rationale of the qualification also states that the NSC will be offered mainly (i.e. not only) in schools and that internal assessment conducted by teachers in schools OR other sites of learning, which the achievement of learning outcomes will count towards the achievement of a qualification.

Principle 5.3 of the FETC policy document stipulates that the 16 of the 120 credits assigned to the qualification must be obtained at level 4 of the NQF and that the Mathematics outcomes as indicated by the 16 credits may be obtained in different contexts (SAQA, 2003, p. 1). The introduction of the NSC resulted in the Mathematics credits being increased to 20 credits. It is important to note that nowhere in the FETC policy document does it stipulate where the credits must be achieved.

In addition, principle 8 (SAQA, 2003, p. 2) stipulates:

[T]he rules governing the award of the qualification must indicate whether the qualification may be achieved in whole or in part through recognition of prior learning, which concepts includes but is not limited to learning outcomes achieved through formal, informal and non-formal learning and work experience.

Discussion point 2 of the FETC policy document (see SAQA 2003, p. 3) highlights the various deficiencies within the current system at Senior Certificate level. The FETC policy document preceded the NSC; however, in my opinion these deficiencies still exist. The DoE discussion document on FET highlighted some of the deficiencies in the current system, namely (SAQA, 2003, p. 3):

Poorly articulated FET programmes and qualifications for technical colleges and high schools that inhibit learner mobility across programmes and provider/learning sites; Programmes differ widely with respect to quality, standards of provision, outcomes and curricula thus affecting equivalence and portability; and learners exiting the system and having to repeat passed subjects when they re-enter the system, lead to high levels of inefficiency. It was these deficiencies and other problems that exist in the education and training system that the objectives of the National Qualifications Framework were trying to address.

Gradually, with the amendments to the various Acts and regulations since the initial Acts, the vision seems to have shifted further away from addressing these deficiencies.

2.11 General and Further Education and Training Qualifications Framework – final draft

In 2001, Umalusi, the Council for Quality Assurance in General and Further Education and Training, was mandated by parliament. Its founding Act, the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001) lists Umalusi as (Umalusi, 2011, p. 5):

[T]he quality assurance body for Levels 1-4 of the NQF. Its responsibility is to quality assure programmes; exit point assessments and provisioning in schools, FET colleges and for adult basic education and training centres, as provided for under the:-

- South African Schools Act, 1996 (Act 84 of 1996)
- Further Education & Training Colleges Act, 2006 (Act 16 of 2006), and
- Adult Basic Education and Training Act, 2000 (Act 52 of 2000 amended 2010).

In terms of the GENFETQA Act 58 of 2001, point 5.2 of this General and Further Education and Training Qualifications Framework document (Umalusi, 2011, p. 7) stipulates:

Umalusi is required to undertake quality assurance of provision responsibilities that include the development of policies and criteria for the quality assurance of private education institutions, including independent schools, private colleges and private adult education and training centres.

Point 21 of this framework document (Umalusi, 2011, p. 10) states:

[T]he General and Further Education and Training Qualifications Framework is constituted as a register of qualification types. Qualification types allow for the registration and/or the development of designated variants and/or part-qualifications. Qualification variants are designed to share a common structure while allowing some flexibility for learner interest and preference. All qualifications are underpinned by a curriculum for the subjects within the qualifications. The subjects are quality-assured through external assessment”

Again, reference is made to the curriculum for the subjects within the qualification, which are quality assured through external assessment and again the question is why the change to 'whole' qualification if there are so many references to the quality assurance and recognition of learner achievement at subject level.

Point 23 of the framework document (Umalusi, 2011, p. 10) states, "the policy applies to all general and further education and training offerings leading to a qualification, or part qualification offered in both public and private educational institutions in South Africa". Later in the document, point 32 (Umalusi, 2011, p. 32) supports this by stating:

[A] part-qualification on the General and Further Education and Training Qualifications Framework means that a substantive unit or units of learning are registered as part of a qualification. Candidates may be assessed against such units or unit of learning and have their achievements formally recognised.

A substantive unit of learning would be one that was assigned a minimum of 20 credits, which constitutes a minimum of 200 notional hours of learning (see Issacs, 2009, p. 9). Both the subjects offered by the M² institution are designed to meet the NSC curricula. The programmes hold the 20 credits required to make up the unit or units of learning that can be formally recognised if achieved by each individual learner. In addition, point 35 of the framework document (Umalusi, 2011, p. 13) states, "a programme of learning is defined as a structure and purposeful set of learning experiences based on a curriculum, which is precisely how the programme at the institution is constructed".

Draft 11 of the GFET Qualifications Framework document (Umalusi, 2011) includes a number of points, which supports the need to include private institutions in the quality assurance frameworks. It goes as far as to state in point 61 (Umalusi, 2011, p. 18),

[T]o obtain a qualification or unit of learning/subject statement, a learner must be examined by a public examination body or an accredited private assessment body. The assessment policy for each qualification must include a measure or set of measures that allows the generation of a report on a learner's achievement, as achievement is necessarily taken into account in progression decisions.

Point 63 states that "the Umalusi certification processes recognise partial achievement of qualifications through the issuing of subject statements, and, under

the prerequisite conditions, allow the combination of partial achievements to result in a full qualification” (Umalusi, 2011, p. 18).

To conclude the discussion of this document, point 65.1 (Umalusi, 2011, p. 20) in terms of the characteristics of this framework states, “it should be sufficiently flexible to accommodate different types of general and further education needs and to enable a variety of public and private institutions to pursue their teaching and learning obligations responsibly”. As learners have different learning styles, the M² institution provides a flexible alternative for learners to progress through the same curricula as that of the NSC in order to meet the stated outcomes successfully. This therefore provides an alternate learning pathway for the learners to continue to Further Education and Training.

This policy document clearly defines certification options for units of learning (see Umalusi, 2011). The subject offering of the programmes of the institution meet the definition of units of learning, and should therefore be allowed to be recognised formally as an education institution that offers tuition towards these with the intention of learners achieving formal recognition through the certification and provisioning of subject certificates.

The question remains: why had almost every point raised above been omitted from the policy document in the November 2011 draft of the General and Further Education and Training Qualifications Framework document? These omissions in my opinion signified a move towards the exclusion of private provisioning. Considering the reasoning for the implementation of SAQA and the NQF, the system became less inclusive and significantly more difficult for the recognition of learner achievements. It closed the option of accessibility to lifelong learning even further for learners who had no other options available to them.

2.12 Conclusion

The National Education Policy Act, No 27 of 1996 (RSA, 1996a), section 4(a) states,

[T]he advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 3 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right:-

...(b) enabling the education system to contribute to the full personal development of each student, and to the moral, social, cultural, political and

economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes...;

...(f) achieving an integrated approach to education and training within a national qualifications framework...

My question remains: if the legislative processes make amendments that change definitions subtly over the years that exclude private provisioning, how are we as a nation addressing both the mandate of SAQA and Umalusi in addressing the issue of accessibility, recognition and mobility within an integrated framework?

In Chapter 1, insight into the proposed notion of this study was provided to highlight the 'plight' of private tuition providers and the influence changes in legislation have had, resulting in these providers being regulated out of the quality assurance framework. Chapter 3 presents a case study of an institution affected by the changes to educational legislation. The institution under consideration previously received recognition as an educational institution and received provisional accreditation by Umalusi; yet, somehow, after being willing to meet all and any criteria for accreditation, still finds itself outside of these frameworks as a result of the subtle changes to various regulations, policies and Acts without adequate consultation. In Chapter 5 the notion of deliberative engagement was introduced how, by actively participating in deliberative engagement, the M² institution could broaden its concept of rights to ensure that all are considered equal before the law in all activities pertaining to the provision of public services, whether the provider or recipient of that service, which in this study refers to the provisioning of tuition in Mathematics and Physical Science. These chapters, together with the above overview of legislation, provide a sound basis upon which a critical discussion of the case study, the principles of deliberative democracy and the legislation can be undertaken.

Chapter 3: Autobiographical narrative of the case study

3.1 Introduction

This chapter provides an autobiographical case study of the M² institution recognised as an educational institution with the national DBE in 1991. I have decided to use an autobiographical case study approach in order to offer some measure of critical objectivity in relation to the case study under consideration. In other words, I did not want to predetermine the outcome of this study or its findings, as I was open to the fact that a possible outcome might be that the M² institution had been treated justly and fairly by the DBE and Umalusi.

Twenty-five years after the M² institution received recognition as an educational institution, the implementation and promulgation of new quality assurance bodies, legislation and regulations, have resulted in the M² institution being excluded from the quality assurance frameworks that govern the South African education system. The exclusion from the quality assurance frameworks has resulted in the M² institution being unable to maintain its provisional accreditation status with the quality assurance body and thereby unable to maintain its recognised status as a provider with the state.

For this task, it was necessary to provide a narrative of aspects of the events and engagements that constitute this case study. The narrative illustrates that the engagement between the M² institution, officials and decision-makers lacked a deliberative democratic process

The chapter provides some background to the M² institution and its offering. It presents an overview of discussions and various meetings on the part of the M² institution to secure formal recognition. In addition, alternative options to accreditation that were considered by the M² institution are presented and discussed in order to show why they were not viable. Finally, the chapter concludes with a presentation of the current position within which the M² institution finds itself in relation to the quality assurance framework.

The M² institution appointed me as a consultant to investigate why the provisional accreditation of the M² institution had suddenly been revoked without any formal notification from the relevant quality assurance and registration bodies. In addition,

my appointment was to research and identify which avenues could be followed going forward, to ensure the reinstatement of formal accreditation and recognition.

As a participant to meetings, I was able to gain first-hand knowledge and experience during my research through the many telephone conversations and various meetings that were attended. As a result of my appointment to the M² institution, I am therefore able to provide insights into this autobiographical case study. This chapter provides an account of the actions taken in an attempt to identify opportunities in order for the M² institution to be included in the quality assurance framework once again. In addition, this chapter highlights the willingness and determination of the M² institution to meet the quality assurance requirements and operate within the quality assurance framework in accordance with the regulations implemented through changes to educational legislation over the last 20 plus years.

An autobiographical methodological approach was applied because it could provide a reconstruction of events that took place, as well as a review of empirical data as experienced by myself as participant and researcher and now as the narrator. Brian Fay suggests that our stories are comprised of not just actions and their intentions, but also of the results of these actions and intentions (Fay, 1996, p. 184). In 3.2, the narration of the story of the M² institution will comprise a series of actions taken over four years and will include the intentions and the results of those actions. As the biographer (narrator), I will attempt to extract meaningful, recognisable, intelligible details of this 'story' in order to demonstrate that it is not so much about the dates as it is about the events, the deliberation (or lack thereof), and the causal outcomes, which make up this study (Fay, 1996, pp. 182–184).

3.2 Background

This section gives some insight into the history of the M² institution. The history is important, because it provides a framework against which to understand this written piece and why I have elected to focus on the accreditation and recognition of private extra tuition providers in the education arena, particularly those focusing on extra tuition to school-going learners.

The M² institution is a for-profit institution that was established in 1976. Due to the nature of the business falling within the education sector and its provision of extra

tuition to school-going learners, the M² institution was recognised as an educational institution by the DoE in 1991 (personal communication, 1991).

As the private tuition industry began to grow, resulting in an increased number of private tuition and skills development providers in the country, the Department of Labour introduced Sector Education and Training Authorities (SETAs). The aim of these SETAs was to formalise the sector in an attempt to ensure that individuals were receiving instruction that was formally assessed and nationally recognised. In order to monitor these SETAs, ETQA bodies were introduced. The aim of these bodies was to provide quality assurance in terms of the learning and assessment and to verify the outcome of learning. In order to be viewed seriously and to operate with perceived integrity within the private tuition industry, it became necessary and extremely desirable for any institution to ensure compliance with this new system, in order to maintain existence.

Providers then sought accreditation with the SETA, which was representative of the core business (such as education, finance, health and safety). Umalusi was formed as the quality assurance body for GFET to oversee the functioning of schools and providers of tuition to learners in school, up to and including level 5 on the National Qualifications Framework (NQF). As the M² institution provides extra tuition in terms of the NSC, the core business of the M² institution rests with Umalusi as the identified ETQA.

Before the M² institution sought to apply for accreditation, it received a letter from the Chief Executive Officer (CEO) of Umalusi, inviting it to apply for accreditation. Given the pressure on tuition providers to comply with this new system, the invitation to fall within the quality assurance framework was welcomed by the M² institution. Every effort was then made towards developing and implementing policies and procedures to meet the accreditation requirements. The M² institution made its formal application for accreditation and was awarded provisional accreditation by Umalusi in 2003

At that stage, accredited providers were also required to register with the Department of Basic Education (DBE) in addition to accreditation with the relevant quality assurance body. It is important to note that registration status could only be granted if an institution had been awarded accreditation status (see Umalusi, 2011). As it had been awarded provisional accreditation status, and in order to meet

legislative requirements, the M² institution submitted its application for registration to the DBE. The M² institution was informed that it was not required to register with the Department as a private FET provider at that stage. The DBE informed the M² institution that, because its core business is the provision of single subjects and not the full NSC qualification, registration was not necessary, even though single subjects had to be registered as part of the NSC. The M² institution was however informed by the Umalusi that it was imperative for the M² institution to ensure that it continued with the accreditation requirements as stipulated by Umalusi. By then, this process had by default resulted in the M² institution losing its recognition status.

The following year (2007), the M² institution received communications from Umalusi indicating that, as the M² institution offered single subjects and not the full NSC qualification, Umalusi should not have provided the M² institution with provisional accreditation from the start. Umalusi stated that this decision was in accordance with the General and Further Education and Training Quality Assurance (GENFETQA) Act 438 of 2001.

Umalusi indicated that they would not withdraw the provisional accreditation from the M² institution; however, they would not be able to award full accreditation (personal communication, April 5, 2007). In addition, Umalusi indicated that they hoped this situation would change in the near future. This 'hope' resulted from discussions that were taking place at the time between the South African Qualifications Authority (SAQA) and the DBE. These discussions were to address situations around accreditation and registration, such as those experienced by the M² institution. It was against the backdrop of this discussion that the institution continued to ensure that they met all quality assurance requirements.

Two years later, the M² institution found that its status of provisional accreditation had been suspended, without any formal communication from Umalusi. The M² institution, recognising the importance and value of formal recognition, in addition to the great cost already incurred in the accreditation process, were not satisfied with the sudden 'suspension' of its provisional accreditation. The result of this sudden suspension resulted in the M² institution actively seeking options that would open an avenue for formal recognition, this time not only with Umalusi, but also with the highest office within the National Department of Basic Education (DBE) – the Minister of Basic Education.

Section 3.3 provides details of the journey undertaken by the M² institution to show the determination and willingness to meet the quality assurance requirements. The section will also highlight the unwillingness of officials in the system to engage sincerely with and incorporate the M² institution into the quality assurance and formal recognition frameworks, even after instructed to do so by the minister.

3.3 Timeline of events

In April 2011, the M² institution continued to operate as instructed by Umalusi (personal communication, April 5, 2007). Increasingly, the M² institution received enquiries from individuals who had been home-schooled or had matriculated and were seeking opportunities to improve their mathematics and/or physical science marks. Enquiries included learners seeking to add these subjects to their NSC in order to gain entry into tertiary institutions. These enquiries were not limited to recent matriculants; they also included individuals with incomplete Senior Certificates (SCs) who were seeking reputable institutions where they could finish their studies. Further enquiries included those from individuals seeking promotion within their workplace, and who were required to show mathematical competence to be promoted. It was and still is becoming increasingly obvious that individuals are seeking opportunities to further their mathematics and/or physical science knowledge. These learners are frustrated as they are unable to find suitable, reputable institutions able to issue subject certificates for their competence.

In an interview with the CEO of the M² institution, a request was made as to whether I would be able to assist him in identifying potential accreditation and registration opportunities. With immediate effect, the research began. This research included seeking opportunities that would identify any progress in the quality assurance framework systems that would incorporate the rights of private providers of single subjects at GET and FET level to receive accreditation and registration status in the education arena.

With previous experience in the quality assurance industry, primarily focusing on the accreditation of private providers at industry level and with the SETAs, research now had to be geared at the GET and FET level. Initially, the research comprised an analysis of the –

- South African Schools Act, 1996, 84 of 1996. (RSA, 1996c);

- NQF Act, 67 of 2008 (as amended by the Higher Education Laws Amendment Act, 26 of 2010. (RSA, 2009b);
- Policy and criteria for the quality assurance, accreditation and monitoring of independent schools and private assessment bodies. (RSA, 2017).
- National Education Policy Act, 27 of 1996. (RSA, 1996a); and the
- National Skills Development Strategy III. (DHET 2005).

This research expanded to many more Acts, regulations and policies, all of which have been explored, analysed and discussed in Chapter 2.

Research and discussions with the CEO of the M² institution resulted in a decision to make contact with the Western Cape Education Department (WCED). The aim of this meeting was to discuss the potential registration of the M² institution as an independent school. An initial telephonic conversation revealed that the M² institution could not register as an independent school as it did not offer the full subject content required for the NSC. Considering the notion of deliberative democracy, which is discussed in detail in Chapter 4, this conversation was to become the first of many conversations that lacked any form of deliberate engagement.

The next conversation took place with the then legal advisor to the minister, WCED. The advisor could see why the M² institution would want to continue to seek accreditation in light of the enquiries received by the M² institution. It was suggested that the M² institution addressed the matter with the office of the Member of the Executive Council (MEC) of the WCED. The legal advisor made contact with the MEC on behalf of the M² institution requesting a meeting to discuss the matter further. This conversation proved to be one of a few opportunities where the M² institution was afforded the opportunity to engage collectively in legitimate deliberations where it was able to provide a sound argument that resulted in the first discussions focusing on the issue around formal recognition. It was one of a few meetings where the voice of the M² institution was heard and acted upon.

The Deputy Director General (DDG), WCED agreed to meet with the M² institution as requested. He too added to the sentiment of the 'majority' that the 'full qualification' was still a requirement for registration and as a result the quality assurance frameworks did not cater for this type of institution. He did however suggest a few

options that the M² institution had to consider, which included the possibility of taking legal action against Umalusi and the DBE and/or making contact with the IEB to establish whether they could accommodate the M² institution. As legal action was not an option the M² institution was prepared to follow at this stage, a decision was made to contact the IEB in order to discuss other possible options available through them.

Further research led to discussions with the Senior Manager Projects: Programme Accreditation, the Higher Education Quality Committee and the Council on Higher Education (CHE). The result of this discussion highlighted the Higher Education Qualifications Framework, which led to the Higher Education Act, 101 of 1997. The CHE is not mandated to accredit programmes offered by the M² institution as the CHE does not offer NQF level 5 whole qualifications (personal communication, September 16, 2011). The M² institution was however encouraged to contact the Executive Director of the CHE to seek advice on a possible way forward.

It was during this discussion that the M² institution was advised to write to the office of the Minister of DBE directly and to consider entering into discussions with SAQA. So far, the research and engagements had continued to reinforce that the M² institution was and still was a minority voice in the education arena. It was also becoming abundantly clear that the M² institution was going to have to find good reason to demand that its voice be heard.

Following the advice of the Executive Director of the CHE, the first letter was drafted and sent to the Minister of Basic Education. This letter addressed what the M² institution experienced as 'the gap' in legislation at the time to accredit, register and certify single-subject achievements at FET level outside of a registered school or private FET colleges.

A response was received from the Special Advisor, office of the minister, requesting that the M² institution provide her with an overview of the progress made and of the various discussions held by the M² institute. This overview was compiled and sent as requested.

Three months later, the M² institution was able to secure a meeting with the CEO of SAQA. As usual before meetings, preparation research was conducted and included research of –

- the South African Schools Act, 1996, 84 of 1996;

- NQF Act, 67 of 2008 (as amended by the Higher Education Laws Amendment Act, 26 of 2010);
- Policy and criteria for the quality assurance, accreditation and monitoring of independent schools and private assessment bodies. Republic of South Africa, 2017;
- National Education Policy Act, 27 of 1996;
- The GENFETQA Act, 483 of 2008;
- Adult Basic Education and Training Act, 52 of 2000;
- Further Education and Training Colleges amended Act, 38 of 2001,
- Skills Development Act, 97 of 1998 as amended; and
- SAQA – criteria and guidelines for short courses and skills programmes.

Whilst this meeting created favourable conditions for expression, in that the M² institution was provided with the opportunity present its case, this meeting also marked the start of a series of meetings where the M² institution was in no way treated as equal to the discussions. This signified the beginning of meetings where the voice of the ‘majority’ was seen to be presenting the institution with opportunities to share its voice. On reflection however, it appeared that there was no intention to engage actively in a meaningful debate on how to include this type of institution again into the formal structures. Rather, the debate ended with the M² institution been instructed to contact the provincial DBE in order to seek registration status as an examination centre. As examination centres are registered at provincial level, the M² institution had no option but to secure another visit to the WCED. The CEO of SAQA however stipulated that, ultimately, he believed the solution to the possible accreditation and registration barrier lay with the DBE.

Considering the principles of deliberative democracy, the M² institution continued to follow suggestions that would continue the debate. A meeting was secured with the Chief Director: Assessment and Examinations, WCED. Again the M² institution presented its argument during this meeting and again the M² institution was encouraged to consider approaching the IEB. Only this time, the M² was encouraged to rather seek registration status as an examination centre with the IEB and not as a registered independent school. The M² institution could not pursue this option; as yet again accreditation by Umalusi was raised as a requirement for registration as an examination centre. Accreditation status had now become a barrier for examination

venue registration status too. This was another meeting, which on reflection, resulted in no form of deliberative engagement. It was yet another meeting where the M² institution was 'talked at' rather than 'engaged with'. In addition, the regulations for registration as an examination centre are the same for private and public institutions (see RSA, 2017), even though private institutions appear to be held to a much higher standard (see RSA, 2017). At the time, the M² institution was still beginning to understand all these regulations, which in my opinion, the Umalusi and Department of Basic Education officials used to their advantage.

Further research identified that a conversation with the CEO of the National Education Evaluation and Development Unit (NEEDU) could be beneficial. The M² institution used this opportunity to seek his advice on any ideas that the M² institution might not have considered. He reinforced the need for the M² institution to continue discussions with the DBE as well as with Umalusi. Finally, the M² institution's voice had been heard and an argument had been presented that was so convincing that the CEO admitted that he too felt so strongly about the need for such an M² institution that he immediately would immediately make contact with relevant parties in Umalusi. In July 2011, he requested that the impasse be discussed further and that a meeting be set as a matter of urgency.

As suggested by SAQA and the WCED, the M² institution initiated a conversation with the CEO of the IEB. This conversation proved to be promising as the IEB recognised the need for an institutions such as M², and was willing to consider options for the way forward. The IEB undertook to discuss potential options with their board. It was during the discussions held with the IEB, that I believe the first indication of what Waghid (2011) refers to as recruitability was shown towards the M² institution. 'Recruitability' refers to both the capacity to elicit another's regard in you and your capacity to become invested in the lives of others ... it is an enhanced ability to listen and respond to the others (Waghid, 2011, p. 99). That the CEO of the IEB was prepared to discuss options with the IEB board of directors was the first indication of their investment in the lives of our learners.

About one month after sending the letter to the Minister of Basic Education, the M² institution received feedback from the special advisor of the officer of the minister, informing the M² institution that the minister had reviewed the current situation and indicated that an administrative solution needed to be considered as a means to

cater for this type of institution. The matter had been referred to the Chief Director: National Assessment and Public Examinations, for further discussions.

When queried what an 'administrative solution' meant, it was explain that the persons and division in the department responsible for accreditation and related matters had been tasked with responding to the request by the M² institution. The special advisor also sent an email to the Director in the Director General's Office and the DDG at the national DBE informing them that the minister had directed their department to attend to the matter highlighted by the M² institution and to ensure that the administrative solution occur. Reviewing the process, one cannot help but wonder if 'tasking' a department with seeking an administration solution might have been more fruitful had it been a discussion to understand each other rather than an instruction to be carried out. The M² institution received the feedback in a positive light and saw it as a step in the right direction; however, it was clear that the department did not have clear instructions about what the minister intended by an 'administrative solution'.

Soon after this news from the minister, the scheduled meeting with Umalusi took place at the Umalusi offices. Discussions at this meeting focused on the accreditation challenges faced by the M² institution. Umalusi indicated that the focus had been changed from quality assurance to standards at GET and FET level. The Umalusi COO indicated that their position on accrediting part of a full qualification might become a possibility. She indicated that, if the institution could achieve registration with the DBE, Umalusi would consider accreditation. Registration is however not possible without accreditation. Umalusi was expected to know this, so it is not clear what their intention was by making this statement.

Further meetings were held with the DBE – the DDG, a legal advisor, the Deputy Director: Enhancement of Programmes, the Director General (DG) and a legal advisor. These meetings resulted in further discussions around the potential format of the administrative solution as directed by the minister. On reflection, these meetings could not truly be considered discussions, as even though the M² institution was a participant at these meetings, the officials were not open to discussing a way forward. The meeting had a clear agenda, which did not include discussions around accreditation and identification of an administrative solution.

As per recommendations, the M² institution made contact with the CEO Higher Education South Africa (HESA) (now known as Universities South Africa). The purpose of the discussions was to determine whether, in terms of section 37 of the Higher Education Act, 101 of 1997, the universities would consider endorsing certificates of achievement from the learners studying at the M² institution. The M² institution consequently sought to establish whether South African universities would consider certificates from M² institution as acceptable entry certificates, together with their NSC. The response by HESA indicated that HESA did not have a statutory mandate to either endorse certificates of achievements or register new qualifications and that the mandate rested with Umalusi, the DBE and SAQA. HESA urged the M² institution to continue engaging with these agencies with a view to finding a lasting solution to the challenge facing the institution.

Further discussions were then held with the legal advisor from the DBE. It was during this discussion that the M² institution received the first 'olive branch' from the DBE. The legal advisor indicated telephonically that he could not find anything in the policies stating why the institution could not offer part-time tuition given the existence of the M² institution prior to the implementation of SAQA. He stated that, although the registration of the M² institution as a 'school' was not catered for, there was nothing in the regulations that prevented the provincial Departments of Education registering the M² institution as a private FET provider even on the basis of offering a single subject based on exactly the same curriculum as the NSC. He stated that it should be allowed on condition that the institution assists learners through part-time tuition. It is important to note that this was a telephonic conversation held between the legal advisor and myself. At that stage, the practice of following up all discussions with minutes or emails to document the discussions had become essential. As with all previous meetings and discussions, this telephonic conversation was also followed up with an email to confirm the discussion. This information was what the M² institution had been waiting to hear. An email was sent, and confirmation of the account of the discussion requested. The advisor however would not agree to confirm this discussion in writing, and did not participate in any further meetings between the officials and the institution. This discussion ended as soon as it had started.

At each meeting, the M² institution would be provided with reasons why formal recognition in its current state would not be possible. As soon as these reasons were provided, suggestions to partner with 'other' institutions were introduced. One of these suggestions included discussions with the Independent Colleges Group (ICG). In good faith, the institution followed each suggestion provided, and a meeting was held with the academic head of Damelin Correspondence College's High School. At the meeting, the M² institution discovered that Damelin was not registered with DBE or accredited by Umalusi to offer single subjects. This meeting further established that Intec College was operating as a distance learning entity. During a previous meeting held with the WCED, the officials indicated that distance learning institutions were also not provided for in the GET legislation. As an institution, it was extremely troubling to discover that these well-known institutions were in a sense operating outside of the formal frameworks. As a result of our findings, the M² institution made a decision not to partner with the ICG as they could not offer a viable solution.

At the suggestion of both Umalusi and the national DBE, the institution set up a meeting at provincial level to revisit the option of registering as an independent school, specifically as a 'second-chance' school with the focus on Mathematics and Science. The outcome was the same as our initial findings: unless the M² institution offered the full curriculum and unless it had potential learners, teaching staff and venue, registration as a school was not possible.

The provincial DoE indicated that the regulations stipulates that the DBE – both at national and provincial level – did not cater for learners to enrol for one subject only at any school (public or private) (see DBE, 2014). Again it was raised that the DBE did not provide for distance learning in any form at school level, and that the provincial DBE therefore was not in a position to assist with the implementation of the administrative solution. This outcome reinforced what the M² institution had already established at previous meetings: registration of the M² institution was only possible at the direction of the national DBE

At the beginning of the following year (2012), another letter was sent to the Minister of Basic Education providing her with a report on the events and discussions from the previous year. This time, however, instead of waiting for the National DBE to identify a solution, the M² institution provided the minister of the national DBE with what it viewed as possible solutions within the current legal framework:

- **for tuition purposes:** the M² institution registers as satellite campuses of selected schools;
- **for examination purposes:** the option to register the M² institution as examination centre with the option for learners to write Grades 9 and 12 exit examinations at these centres; and
- **accreditation** – the mandate of Umalusi provides for it to issue certification on a per-subject basis. It was suggested that the M² institution's accreditation be reinstated and the accreditation be extended to the satellite campuses (centres), subject to them complying with Umalusi requirements.

This update to the minister resulted in her special advisor instructing those in the national DBE whom she had authorised to take the necessary steps in resolving the matter.

The Director of Examinations at the DBE received the request from the office of the Minister, to register the M² institution as an examination centre. The director indicated that he would be able to register the M² institution as an examination centre provided that the M² institution was registered with the provincial DoE as a learning centre as it is a provincial responsibility. It is evident that there was no form of deliberative engagement taking place at any level in terms of these instructions. The matter was being passed from one end of the department to the other. At no stage did the national and provincial officials agree to set a meeting date where all parties could sit around one table to discuss or even debate this matter together. Instead, the burden rested with the M² institution to attend meetings at the offices of either provincial or national departments, at Umalusi and SAQA. All meetings were held independently of each other. As a result, deliberations between all parties did not occur. Where the national DBE intervened at provincial level on behalf of the M² institution, no response was received. An email to the Superintendent General at the WCED was met with no response.

The M² institution received an invitation to attend another meeting at the national DBE. This meeting was chaired by the Director General: General Education and Training, DBE. Other departmental members in attendance at the meeting included the DDG, the Director of Examinations and the Acting Chief Director: Curriculum. Very soon into this meeting it was evident that the participants were not seeking the 'administrative solution' stipulated by the minister for the M² institution, rather the

participants changed the focus of this meeting to discuss how the M² institution could be used in schools to improve the matric outcome, as well as how the programme could be used to influence teacher training. Quite early, it was highlighted that this meeting was to establish how the product of the M² institution could be used by the DBE to improve Grade 12 learner results as well as the performance of their teachers. Chapter 4 introduces the notion of ‘free reasoning’ as discussed by Cohen (1998). He suggests that parties to the deliberation should regard each other as free as well as equal, in that the rules do not allow the treatment of some as advantaged and others as disadvantaged. Instead, each party should be provided with an equal standing at each stage of the deliberations (Cohen, 1998, p. 193). At no stage during this meeting, was the M² institution regarded as either ‘free’ or ‘equal’.

As with all previous meetings, the M² institution furnished the office of the minister with minutes of this meeting and was later informed by the special advisor that the matter had been handed over to the deputy minister, whose delegated responsibility was Mathematics, Science and Technology.

This resulted in the M² institution being invited to a meeting with the Chief Director in the office of the Director General (DG) where the M² institution was informed that the minister had spoken to the DG and wanted to find a solution. After months of what appeared to be one-sided meetings, the M² institution was provided with the opportunity to share its voice by providing an overview of the situation. The Chief Director indicated that he would need to go back to Pretoria and discuss the matter with Umalusi. After nearly two years of travelling between provincial and national DBE and being directed to various sub-departments, the M² institution finally had a contact that drove all further communication between the relevant bodies, in the position of the DDG from the office of the minister.

In June 2012, the institution received an email indicating that the DDG had met with Umalusi and that they had agreed on a way forward. He informed the M² institution that he had to brief the DG and the minister and would be able to respond formally to the request by the M² institution soon.

After two months of silence, the M² institution initiated a conversation with the DDG, at which time he indicated that the national DBE was still finalising the process and they were hoping to get the minister to sign off on the ‘solution’ that week, and that

they would email the M² institution a copy as soon as they had finalised the documentation.

Weeks passed, and turned into another month of silence from the DBE. After numerous emails and phone calls, the M² institution received communication indicating that the department was finalising the matter and would be able to provide formal feedback soon. Finally, after two months of communication and follow-up from the M² institution, an email was sent informing the M² institution that our request was a “rather complex matter” (personal communication, November 6, 2012) In this email, the DDG informed the M² institution that they had encountered numerous difficulties, but had finally agreed on a way forward with Umalusi. The office of the ministers had proceeded to formalise its discussions by writing to Umalusi and was awaiting their official response. The M² institution would be informed as soon as a positive reply had been received.

Just short of two years into this process, the M² institution was contacted by the DDG. He indicated that the Minister of National DBE had signed the proposal for Umalusi to grant the M² institution provisional accreditation as a private provider in the GET band. All that was required now was for the proposal to be signed off by Umalusi and the MECs in each province. The proposed administrative solution had already been distributed for signatures, and the DBE was waiting on the MECs for their signed copies by the end of that particular week (personal communication, November 2012).

The Minister of national DBE had sent a formal request to Umalusi requesting them to provide the institution with provisional accreditation, and Umalusi had agreed. The national DBE was waiting to get the formal documentation signed off to make it binding, which was a time-consuming process and had been the cause for the delay. The DDG indicated that this was the formal recommendation from the Minister of national DBE, which had been accepted by both Umalusi and the MECs in each province.

One month later, conversations had gone quiet again and the M² institution had received no documentation. The M² institution soon realised that this was inevitably not a good sign, and initiated communication with the national DBE again, in order to establish whether the documentation had been signed off yet. In the spirit of moving

the process forward more speedily, the M² institution enquired as to the possibility of focusing on Gauteng and the Western Cape so that it could at least begin the process of meeting the quality assurance requirements again.

It was then, five months into the new year (2013) and over a year of meetings later, when the M² institution was invited to a meeting with the DDG and his representatives where the M² institution was informed that the national DBE had not been able to effect the proposed solution and that until the law had changed, the national DBE was no longer in a position to assist the M² institution going forward. Hours of meetings, conversations, research, following up on suggestions, and travelling between national and provincial department DBE had therefore come to nothing.

The M² institution responded to the meeting in writing, requesting that the national DBE revisit this matter and should the only solution be to amend legislation and/or policy frameworks, the M² institution respectfully requested that the necessary steps be taken. The M² institution received a letter from the Minister of national DBE indicating that the MECs and the CEO of Umalusi agreed that it would not be possible to register and accredit the M² institution as a provider, and she could therefore not accede to our request. With that, the conversation/debate or the lack thereof, came to an end.

3.4 Other avenues explored

The M² institution relooked at the idea of registering as a private school; however, the requirements for registration remained the same. The M² institution would need to offer a minimum of six subjects and have the necessary facilities, such as teachers, staff and venues to be able to do this. This option would move the M² institution away from its core function and was not considered a viable option at that stage.

The option of registering as a Home School Support Centre was then considered. Other than the ACE Home School Academy, it seemed that there were no institutions registered for home schooling. Section (51)(1) of the Schools Act, 84 of 1996 (RSA, 1996c), p. 30) stipulates, “a parent may apply to the Head of Department for the registration of a learner to receive education at the learner’s home”. The Schools Act does not make provision for ‘home school institutions’. Yet such

institutions exist, such as IMPAK (now known as Impaq), ACE and others. These institutions are registered as examination centres with another examination body, i.e. SACAI (South African Comprehensive Assessment Institute) and are not registered as schools with the DBE.

Research conducted by the M² institution into potential registration with SACAI showed that SACAI were only provisionally registered with Umalusi and were only due to offer their first round of final NSC examinations in the following year (2014). It was also established that Impak (now known as Impaq) a well-known home schooling institution (see <http://www.impaq.co.za/>), was registered with SACAI regardless of the provisional accreditation status. In addition, learners wishing to register to write the final NSC examinations through SACAI were themselves required to register as private candidates with the DoE before March each year. This applied to learners from Grade 10–12.

In light of our findings, the M² institution decided not to follow the registration route with SACAI, and made the decision to revisit discussions with the IEB.

The possibility of registration as an FET provider, through the distance learning options was also explored. As a result of this research, conversations were held with the South African Institute for Distance Education (SAIDE). Unfortunately, the same full qualification requirements became a barrier, yet again.

As the 'full qualification' requirements continued to be the barrier with no possible way around, the M² institution decided to explore the option of registering a National Certificate in Science or Mathematics with SAIDE, only to be informed that all registrations of new programmes with SAQA was on hold. SAQA was in the process of 're-imagining' the reason for their mandate in terms of vocational education, adult education, higher education and workplace learning. It was highly unlikely that SAQA would look at any programmes until 2015 (personal communication, 2013).

Without a registered programme on the NQF, the M² institution was unable to register as a private FET provider or a distance provider. SAIDE then also suggested the M² institution look at the options of 'social lobbying' and linking with like-minded people or interest groups.

As any form of formal recognition at GET level seemed impossible, the M² institution began looking into other options, which included re-considering accreditation with the

Education, Training and Development Practices (ETDP) SETA. Discussions were held with the Quality Council for Trade and Occupations (QCTO) manager. She however reinforced that there was no agreement between the SETAs and universities, which meant that there was no guarantee a university would accept a learner who completed a skills programme in Mathematics or Science with our M² institution, should accreditation be achieved via the SETA route.

The ETDP SETA indicated that mathematics was highlighted as a scarce skill on their Sector Skills Plan (see ETDP SETA, 2016), and suggested selecting content from Mathematics unit standards at level 5 from existing qualifications in order to design a skills programme. The skills programme then had to be presented to HESA in order to establish whether they would accept the content of the programme based on NQF level 5. Should this route be approved, the M² institution then had to apply to ETDP SETA as a provider, submit the programme for quality assurance and then issue learners with statements of results. The challenge with this suggestion was that HESA had already indicated that it was not in their mandate to register new qualifications. This would have been an ideal option to follow; however, the M² institution had by this time learnt which suggestions would be worth considering or not, and unfortunately, this suggestion would again reach a dead end.

As Grades 10–12 fall within the FET band in education, which rests with the DHET, the M² institution considered approaching the DHET. Previous meetings indicated that the ‘hoped-for solution’ would lie with the DBE, and the DHET is responsible for registration of private and public providers at the FET (Further Education and Training). In addition, the accrediting body for FET was still sitting with Umalusi. It was agreed that the M² institution would need to establish if the DHET had more influence with Umalusi than the DBE.

3.5 The current status

The M² institution decided to re-visit discussions with the IEB, and a meeting was held with the CEO and senior manager of the IEB. The M² institution was provided with the opportunity to brief the IEB on the challenges facing the M² institution with regard to the accreditation and registration barriers it had experienced over the last four years (2011–2014). Finally, the need for a service, such as the one provided for by the M² institution was recognised and heard. This was the first instance where the

institution was afforded the opportunity to provide a sound argument to the majority. The voice of the minority had been heard.

The IEB undertook to present the argument to their board of directors. Less than a month later, the M² institution received a letter indicating that the IEB had agreed to register the M² institution as an examination centre. The registration would specifically be for repeat candidates who wish to improve their results or upgrade their NSC by offering a new NSC subject, e.g. Mathematics. The M² institution was granted permission to enrol its first candidates who would sit for the 2015 NSC examinations.

In terms of the Regulations of the Conduct, Administration and Management of the National Senior Certificate Examination (Section 27) (see Department of Basic Education, 2014), the IEB may register examination centres in accordance with set physical criteria (see Department of Basic Education, 2014). The M² institution was required to meet these criteria in order to register identified provincial centres as examination venues with the IEB.

Learners registering with the M² institution would write the IEB national examinations with all IEB-registered Grade 12 learners in the country. The learners register as private candidates through the M² institution with the IEB and write their final examination at the institution's IEB-approved examination venues. Due to the successful first round of examinations and a clean report for the 2015 NSC examinations, the M² institution applied to add Physical Science to this offering. This application was successful. The M² institution was granted permission to extend its offering from Mathematics to include Physical Science. Learners sat for the M² institutions first Physical Science examinations in November 2016, and 2017 has seen the third year of examinations with over 200 who learners sat for over 300 subject examinations. The number of enrolments has increased from the 38 learners who sat for the mathematics examination in November 2015 to 284 in 2017.

3.6 Conclusion

Examination centre registration status with the IEB has come as a result of many years of research and meetings. Examination venue registration status has provided the M² institution with the opportunity to show its determination to fall within the quality assurance frameworks. The M² institution has not cut corners or sought out

loop holes, but is insistent on operating from an ethical and honest standpoint. It is therefore proud of the achievement of examination centre registration status with the IEB in 2015. This status has not come easily, but is the result of years of meetings with various stakeholders identified or suggested.

The M² institution continues to seek accreditation and registration status with Umalusi and the DBE respectively. In June 2016, the M² institution re-submitted its intention to apply for accreditation with Umalusi, and it will continue to seek registration status with the national DBE and is awaiting a response.

The next chapter will present a discussion of deliberative democracy that formed the theoretical framework through which the narrative case study and the relevant legislation were considered.

Chapter 4: Deliberative democracy through deliberative engagement

4.1 Introduction

Why deliberative democracy and what makes it an appropriate approach for this study? In order to answer the question, this chapter will focus on the discourse of deliberative democracy with reference to scholars such as Gutmann & Thompson (2004), Cohen (1998) and Benhabib (2011) among others. Chapter 4 will focus on the framework of deliberative democracy, by discussing the fundamental characteristics of deliberative democracy as well as the alternatives. In addition, the presentation will draw from other sources such as Cohen (1998), while discussing the notion of democracy and liberty. An attempt will be made to show how, through understanding deliberative democracy, a space could be created where citizens can engage with one another under conditions that manifest mutual respect, with the aim of finding terms of fair cooperation (Gutmann & Thompson, 2004, p. 14).

I then draw on Benhabib's (2011) notion of democratic exclusion and democratic iterations. Benhabib raises the concept of the 'rights of others'. An aspect Benhabib (2011) emphasises is that of 'political membership' – the practice of incorporating 'strangers' into existing politics (Benhabib, 2011, p. 138). This chapter will provide an outline of Benhabib's four conceptual schemes, of which one scheme in particular has been selected to support the argument of how the M² institution, through polity, had been barred from membership. Finally, this chapter will present a discussion of communicative freedom, and how the lack of communicative freedom resulted in M² institution's capacity for embedded agency being disregarded (Benhabib, 2011, p. 68).

4.2 Deliberative democracy and the alternatives

It would appear that the term 'democracy' is often viewed as a single form of democracy; however, there are a number of rival theories or models of democracy, each offering its own version of popular rule (Heywood, 2007, p. 76). In order to understand deliberative democracy as a method of democracy, Gutmann & Thompson (2004) suggest that we need to consider other alternatives (Gutmann & Thompson, 2004, p. 13).

The alternative presented by Gutmann & Thompson, (2004) is that of aggregated democracy. “Aggregation is achieved through a process of voting, whereas deliberation provides the opportunity for public discussion and debate, which create opportunities for people to reflect on their judgements” (Perote-Pena & Piggins, 2015, p. 93).

Gutmann & Thompson, (2004) argue that the deliberative conception of democracy considers the reasons that citizens and their representatives provide for their expressed preferences. Aggregation asks for justification. Aggregation, on the other hand, takes preferences as given and requires no justification for the preferences themselves (Gutmann & Thompson, 2004, p. 14).

Gutmann & Thompson, (2004) provide two types of methods used during aggregated democracy. The first method suggests putting a scenario to a vote, where the preference is recorded in a public survey and the decision is made by the majority. The second method comprises the use of a cost-benefit analysis filter, which is intended to identify the best outcome. Both these methods favour the majority and neither create the space for justification, and little if no attention is paid to the reasoning behind the decisions (Gutmann & Thompson, 2004, p. 15).

Aggregative democracy provides a system where once the ‘majority’ have voted, strategies are devised or developed in response to the voters’ demands. This form of democracy is largely based on the preferences of the majority, even where those preferences may be misinformed. Preferences do not need to be justified, and little or no attention is given to the reason for the preference. There is no space in this scenario for reasoned discussions or any means for citizens to challenge the outcome of the vote. Gutmann & Thompson, (2004) suggest that aggregative democracy may even reinforce existing distributions of power in society (Gutmann & Thompson, 2004, p. 16).

As indicated above, there are a number of rival theories of which aggregative democracy as discussed above seems to be the most obvious alternative. There are, however, various contrasting models of democracy, which are discussed briefly below.

Most likely the oldest model of democracy was the classical mode of democracy (see Heywood, 2007). This model of democracy was a form of direct democracy that

operated in ancient Athens and was referred to as Athenian democracy (Heywood, 2007, p. 76), which amounted to a form of government by mass meeting (Heywood, 2007, p. 76). This form of democracy operated between the fourth and fifth century, and is often portrayed as the only pure or ideal system of popular participation. In practice however, it could only operate by excluding the mass of the population from political activity, and all major decisions were made by the Assembly, to which all citizens belonged. Participation on a political level, however, was restricted to Athenian-born males over the age of 20. Slaves, who made up the majority of the population, women and foreigners had no political rights whatsoever (Heywood, 2007, p. 76). Classical democracy formed the basis for the wider use of referendums, particularly in relation to constitutional issues, and for new experiments in democracy, such as people's panels and electronic democracy (Heywood, 2007, p. 77).

The protective model of democracy is viewed less as a mechanism through which the public could participate in political life, and more as a device through which the citizens of a country could protect themselves from the encroachments of government; hence, protective democracy (Heywood, 2007, p. 77). This model became known as the system of 'government by consent', whereby consent was exercised through voting in regular and competitive elections (Heywood, 2007, p. 78).

Jean-Jacques Rousseau developed the developmental model of democracy (Heywood, 2007, p. 78). For Rousseau, democracy was ultimately a means through which human beings could achieve freedom or autonomy, in the sense of "obedience to a law one prescribes to oneself". In other words, citizens are 'free' only when they participate directly and continuously in shaping the life of their community (Heywood, 2007, p. 78). In Rousseau's view, such a system of radical developmental democracy required not merely political equality by a relatively high level of economic equality (Heywood, 2007, p. 79). It was under this banner of developmental or participatory democracy that the notion of deliberative democracy was highlighted through other authors such as Alexis de Tocqueville (1947) and Mills (1951). Alexis de Tocqueville (1947) famously described the "tyranny of the majority" – in other words, democracy always contains the threat that individual liberty and minority rights may be crushed in the name of the people. Mills' (1951) particular concern was that democracy could

undermine debate, criticism and intellectual life in general by encouraging people to accept the will of the majority, thereby promoting uniformity and dull conformism. Quite simply, the majority is not always right (Heywood, 2007, p. 80).

The fourth model of democracy is called the people's democracy (see Heywood, 2007), which refers broadly to the various democratic models that the Marxist tradition has generated. Marxists were drawn to the concept or ideal of democracy because of its clear egalitarian implications in terms of the social equality brought about through the common ownership of wealth ('social democracy' in its original sense) (Heywood, 2007, p. 80).

What makes deliberative democracy different and in many senses more important, is that it provides the opportunity for communication where parties to the discussion are afforded the opportunity to reflect on their own views in the light of what others have to say (Dryzek & Dunleavy, 2009, p. 215). Deliberative democracy is grounded in an assumption about individuals who emphasise their capacity to reflect upon their own preferences, values and other judgements in the light of their participation in political dialogue with other individuals (Dryzek & Dunleavy, 2009, p. 216). The promise of deliberative democracy lies in a concern for "finding terms of cooperation that each citizen can accept" for the reason that contemporary societies are driven by deep conflict and moral disagreement (Gutmann & Thompson, 1996, p. 26).

According to Benhabib (1996) and Cohen (1989), what distinguishes deliberative democracy from other methods of democracy, is that in a deliberative democracy, legitimacy depends on the right, opportunity and capacity of those subject to a collective decision to participate in consequential deliberation about the content of the decision in question (Benhabib, 1996, p. 68; Cohen, 1989, p. 22; Dryzek & Dunleavy, 2009, p. 217). Citizens need to be able to participate in deliberations about a decision rather than simply vote upon it (Dryzek & Dunleavy, 2009, p. 217). Waghid states, "democracy cannot work through representation alone; it also requires participation" (Yusef Waghid, 2001, p. 31).

Benhabib (1996, p. 69) states:

the deliberative model of democracy is a necessary condition for attaining legitimacy and rationality with regard to collective decision-making process in a polity, that the institutions of this polity are so arranged that what is considered in

the common interest of all results from processes of collective deliberation conducted rationally and fairly among free and equal individuals.

So then, why deliberative democracy?

4.3 Why deliberative democracy?

During my studies, I was introduced to the field of deliberative democracy. The idea of entering into discussions where the minority could possibly convince the majority of an outcome for the common good is one that resonates strongly with my conception of justice for the common good. Engaging with texts, which reflect upon the differing of opinions of theorists, such as Habermas and Rawls, as to what constitutes justice within a framework of deliberative democracy has been extremely constructive and informative in this project. Habermas (2015) indicates that the fundamental source of legitimacy of deliberative democracy is the collective judgement of people; however, his critics indicate that this is at the expense of liberalism, namely the ideas of liberty and equality among citizens (Gutmann & Thompson, 2004, p. 9). It is important to note, however, that both Habermas (2015) and Rawls (2001, p. 86-88) state that it is important to keep in mind that the democratic element of deliberative democracy should focus on how fully inclusive the process is, in other words, who is included in the process of deliberation (Gutmann & Thompson, 2004, p. 9). One should guard against excluding minority voices or perspectives from democratic processes (Gutmann & Thompson, 2004, p. 9).

The notion of deliberative democracy seems to suggest an alternate strategy to follow as a way forward for the M² institution within the current accreditation stalemate. A core conviction of this research project was that the M² institution has a sound reason to be heard by the stakeholders. As a participant to meetings with various role players during 2011–2014, I witnessed how the M² institution had to retell the story of their accreditation impasse repeatedly at each new meeting. Again and again the M² institution was expected to explain the desire to achieve accreditation and registration status to participants who seemed to have no real interest in reaching any kind of workable solution, or agreement that would enable accreditation and registration for the M² institution.

Having learnt about the notion of deliberative democracy, it became obvious that the principles of deliberative democracy were not evident in these meetings. Even though the M² institution was provided with the opportunity to share its perspective, it was repeatedly confronted with ‘other’ reasons why the meetings had been agreed to, or ‘other’ solutions that would require the M² institution to change their core business significantly; thus, losing their primary focus and identity (autonomy) in the process. These meetings mostly ended with the M² institution being informed why they would not receive any kind of formal recognition.

A second reason why I chose to focus on the concept of deliberative democracy, is that it provides a framework of social and institutional arrangements that facilitates free reasoning among equal citizens by providing favourable conditions for expression, association and participating, while ensuring that citizens are treated as free and equal in that discussion (Cohen, 1998, p. 186). In other words, Cohen suggests that parties to the discussion are, and should be, treated as equals, who have the ability to participate in a manner that permits the equitable exercise of power. What Cohen (1998, cited in Elster, 1998) attempts to show, is how the exercise of public power can be tied to public reasoning, and the ability to generate what Cohen refers to as “communicative power”, that is, the influence of will and opinion on the exercise of political power (cf. Cohen, 1998; Elster, 1998, p. 186).

Fearon suggests that deliberative democracy allows one person or group to represent to others ‘how things look’ from perspectives, situations and vantage points that the others had never considered or encountered (Fearon, 1998, p. 52). Przeworski argues that deliberation is a form of discussion intended to change preferences on the basis of which people decide how to act. In addition, he suggests that deliberation is ‘political’ when it leads to a decision binding on a community (Przeworski, 1998, p. 140). Przeworski goes on to suggest that in a democracy, one desires to convince others through deliberation so that all participating parties can arrive at a rationally motivated consensus. Our task is therefore to find a reason that would be convincing enough to persuade all of the participants in the engagement of the importance of accreditation and recognition for all providers of extra tuition. Przeworski raises an interesting notion, however, in that he says people may discover that their arguments are not sufficient to persuade others. The other party may listen to the argument, and still choose to vote in favour of their own interests

(Przeworski, 1998, p. 141). Looking back on the numerous meetings attended, in the light of Przeworski's statements, I tend to agree with such an assessment. The M² institution was provided with the opportunity to present its argument, which at the time may not have been convincing, resulting in the parties to these meeting voting in their own interest. Having had the time to reflect on those meetings, and the opportunity to read and learn more, I would like to suggest that the M² institution should be given an opportunity to develop and present a more convincing argument. The challenge facing the M² institution going forward will be to provide a convincing argument that will persuade relevant stakeholders in such a manner that they will be persuaded on the basis of good reason, rather than self-interest.

These are the primary reasons why the deliberative democratic approach was favoured for this study. In section 4.4 the notion of deliberative democracy, as it relates to this study, is discussed in greater detail.

4.4 What is deliberative democracy?

Gutmann & Thompson (2004) suggest that deliberative democracy comprises four characteristics. The first of these is reason-giving (Gutmann & Thompson, 2004, p. 3). This characteristic suggests that reasons provided in deliberation should be in line with the aim to find "fair cooperation" that cannot reasonably be rejected. Gutmann & Thompson (2004) go on to suggest that the characteristic of reason-giving is also based on the principle of mutual respect, where citizens are not objects of legislation, but active participants in the governance of their own society. The deliberative process therefore is one of presenting reasons and responding to reasons with the intention of justifying laws under which citizens are expected to live. In other words, the reasons are meant both to produce a justifiable decision and to express the value of mutual respect (Gutmann & Thompson, 2004, p. 4).

Waghid (2002, p. 990) suggests that, to improve the possibility for deliberation, two significant features need to be present, namely recruitability and respect. According to Fay (1996, p. 237), 'recruitability' refers both to the capacity to elicit another's regard in you and your capacity to become invested in the lives of others. It is therefore an enhanced ability to listen and respond to others. As Waghid (2002, p. 99) suggests, to listen and respond to others implies in the first place unconditional deliberation.

Fay (1996, p. 239) supports Gutmann & Thompsons' (2004) notion of respect by stating as the second feature to improve deliberation:

Respect demands that we hold others to the intellectual and moral standards we apply to ourselves and our friends. Excusing others from demands of intellectual rigor and honesty or moral and sensitivity and wisdom on the grounds that everyone is entitled to his or her opinion no matter how ill-informed or ungrounded, or – worse – on the grounds that others need not or cannot live up to these demands, is to treat them with contempt. We honour others by challenging them when we think they are wrong, and by thoughtfully taking their [justifiable] circumstances of us. To do so is to take them seriously; to do any less is to dismiss them as unworthy of serious consideration, which is to say, to treat them with disrespect.

As I ponder this statement by Fay (1996), and think back to the many meetings held between the M² institution and the various stakeholders, it is clear that neither of these two features were present in the meetings held with the M² institution.

Cohen (1998, p. 193) introduces his notion of public reasoning, suggesting that it be placed at the centre of political justification. He suggests that democracy is a system of social and political engagements that ties the exercise of power to free reasoning among equals. He is thus saying that parties to the deliberation should regard each other as *free* as well as *equal*, in that the rules, do not allow the treatment of some as advantaged and others as disadvantaged; instead, each party should be provided with an equal standing at each stage of the deliberations.

Generally speaking, according to Cohen (1998), a reason is a consideration that counts in favour of something, in particular, a belief or an action. He says that what is needed, however, is an account not of what a reason is, but of which considerations count as a reason, and the answer to this question depends on context (Cohen, 1998, p. 194). In terms of this statement by Cohen, the present study aimed to show how the M² institution engaged on numerous occasions with various stakeholders in an attempt to put forward considerations that would count as reasons. The M² institution also provided details to place the consideration of reasoning in context in an attempt to be considered a free and equal partner to the deliberations.

The second characteristic of deliberative democracy requires that the reasons given should be accessible to all citizens to whom they are addressed (Gutmann &

Thompson, 2004, p. 5). This characteristic understands that, for the reasons to be accessible, they must be presented in a manner that takes place in the open (meetings, emails, telephone calls) with relevant stakeholders and in a manner in which all participants are able to understand the content.

The third characteristic is that deliberative democracy aims at producing decisions that are binding for a set time frame. The participants intend their discussion to influence a decision government will make, or a process that will affect how future decisions are made (Gutmann & Thompson, 2004, p. 5). The challenge in this regard is to consider whether the original decision was just and fair within the framework of deliberative democracy. Cohen (1998, cited in Przeworski, 1998) suggests that the aim of deliberation is to arrive at a rationally motivated consensus – to find reasons that are persuasive to all. Hence, reasons are offered with the aim of bringing others to accept the proposal (Przeworski, 1998, p. 141). His argument focuses on the difference between a discussion and deliberation, suggesting that discussions make provision for individuals to learn and later decide how to act, whereas, deliberation is political in nature, as deliberations lead to decisions that are binding on communities (Przeworski, 1998, p. 141). According to this argument, the aim of the M² institution is to engage in democratic deliberation to find a way to influence the relevant stakeholders' views. The M² institution seeks to find a solution that is reached through mutual consensus and one that is applicable to all those who operate in the private tuition industry. Due to the growing industry of private extra tuition, the M² institution strongly believes that a quality assurance, monitoring function should be binding on this 'community'.

The fourth characteristic of deliberative democracy is that its process is dynamic (Gutmann & Thompson, 2004, p. 6). Gutmann & Thompson (2004) describe here how decisions that seem reasonable and sound at a particular time, may seem less so over time due to the imperfections that exist in the decision-making process as well as the understanding of it. In addition, Gutmann & Thompson (2004) raise the obvious point that, in politics, most decisions are not consensual. Gutmann & Thompson (2004) suggest that the implication for "this dynamic feature of deliberative democracy is that the continuing debate it requires should observe what she refers to as the economy of moral disagreement" (Gutmann & Thompson, 2004, p. 7). Gutmann & Thompson (2004) suggest that practicing this feature promotes the

value of mutual respect. The aim of debate is to seek some form of common ground, if not on the particular policy creating the problem, then potentially on another one that may provide a better opportunity to reach an agreed outcome. The challenge for M² institution would therefore be to find some form of common ground that would convince the majority and move the discussions closer towards reaching an agreed outcome.

In terms of this fourth characteristic, the present study attempted to provide details of how the M² institution continued to seek decisions that seemed reasonable and sound at the time, and that would identify and create opportunities for the M² institution to be formally recognised by the South African education system once again as had been the case in 1991. In addition, this study aimed to show how at each step, the M² institution was informed of decisions taken by the various parties that were by their very nature exclusive and therefore did not seem to meet the criteria of being reasonable or sound, resulting in few opportunities for continued debates. Considering this fourth characteristic of deliberative democracy, it is suggested that the process was therefore not dynamic.

A combination of the four characteristics highlighted above results in the following definition by Gutmann & Thompson (2004, p. 7) of deliberative democracy:

It is a form of government in which free and equal citizens (and their representatives), justify decision in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future..

4.5 The purpose of deliberative democracy

The general aim of deliberative democracy is to provide the most justifiable conception of dealing with a moral disagreement in politics (Gutmann & Thompson, 2004, p. 10). This aim of deliberative democracy provided by Gutmann & Thompson (2004), rests at the heart of this study. This thesis begins by suggesting that the study aimed to show how the possible misinterpretation of the current South African policy frameworks have inadvertently excluded established, previously recognised institutions from formal recognition. Considering the writings of Gutmann & Thompson (2004, p.10), I have reached a point in this study, that has shifted my thinking to include the possibility that in addition to the possible misinterpretation,

that this research posits that the M² institution could possibly also have a moral disagreement with the DBE and Umalusi (both of which are representative of government), which therefore suggests that this is a disagreement in politics. The moral disagreement is the result of stated intentions, invitations and even instructions from the Minister – of the national DBE herself to her staff,⁷ which to date have yet to culminate in action that is inclusive and just. The shift to include the notation of a moral disagreement stems from the State's possibility that the State are dealing unjustly with the right to adequate education, which as a result makes this a moral disagreement. When considering the changes to legislation, the M² institution finds itself falling within a quality assurance framework with legislation that has been stacked against it, in that legislation now excludes possible inclusion of multiple stakeholders. M² institution has at each step indicated their willingness to be quality assured, however, we are not even afforded the opportunity to be considered, and that is unjust. It is therefore a fundamental moral disagreement about the right to contribute.

Gutmann & Thompson (2004, p. 10 & 11) suggest four related purposes to deliberative democracy. The first purpose is to: –

Promote the legitimacy of collective decisions. This aim is as a response to one of the sources of moral disagreement – scarcity of resources. The second purpose of deliberation is to encourage public-spirited perspectives on public issues. This aim responds to another source of moral disagreement – limited generosity.

In the light of this, Gutmann & Thompson (2004) suggest, “deliberation is more likely to succeed to the extent that the deliberators are well informed, have relatively equal resources, and take seriously their opponents' view”. Gutmann & Thompson (2004) states, “this responds to an often-neglected source of moral disagreement – incompatible moral values”. Gutmann & Thompson (2004, p. 11) suggest that deliberation could “help deliberators distinguish those disagreements that arise from genuinely incompatible values from those that that can be more resolvable than they first appear”.

⁷ On 5 March 2012, the skills advisor to the Minister of the national DBE, emailed the Director of Examinations at the National Department of Basic Education. This email stipulated that the minister had agreed with the M² institution, that a way had to be found to make what the M² institution required legally possible.

This brings us to the fourth purpose of deliberative democracy as identified by Gutmann & Thompson (2004), which is that of helping correct mistakes made by officials when taking collective action. This aim is a response to the fourth source of disagreement, namely, incomplete understanding (Gutmann & Thompson, 2004, p. 12). In this fourth purpose, it is hoped that future deliberations between the relevant stakeholders to the accreditation and registration impasse will be found. Gutmann & Thompson (2004) suggest that this fourth purpose creates the platform for discussions between parties that involve some give and take, where participants are afforded the opportunity to learn from each other and to identify new ideas and policies together through a process of negotiation and bargaining with the aim to find a solution that best suits our fellow citizens (Gutmann & Thompson, 2004, p. 12). The M² institution has made it clear at each stage of the process that falling within the quality assurance and registration framework is its goal. However, there is a concern that in an attempt to be respectful toward the relevant stakeholders, the M² institution did not realise their right to negotiate and in particular their right to bargain with the aim to learn more and to identify a solution that best suits all parties concerned. In addition, it is very clear that the stakeholders failed to negotiate and bargain as equals with the M² institution, as their interests were not in line with that of the M² institution. It is clear that there seemed to be little desire to learn about the M² institution, as the interest appeared to be more along the line of what the stakeholders could gain from the M² institution. Meetings focused on how the M² institution could benefit the department without meeting the greater need of an industry that requires monitoring. Suffice it to say there has been an incomplete understanding with much giving from the side of the M² institution and very little giving from the stakeholders in their attempts to see the bigger picture.

Deliberative democracy therefore provides another strategy with which to engage the various stakeholders moving forward. It will be important for the M² institution to identify a sound, just, realistic and persuasive argument that convinces the majority of why they should consider the voice of the minority for the common good. There has to be a better solution than one that excludes a reputable, well-established, previously recognised and accredited institution. Such a solution should have a more reasonable outcome – one that is more ‘just’ (equitable) and in the interest of the common good. Moreover, it is contended that such a decision should be reached

through conversations where participants learn from each other, recognise individual and collective misapprehensions, and develop new views and policies that best serve our fellow citizens (Benhabib, 2011, p. 12). Such an approach recognises the right of the M² institution to have rights.

4.6 Deliberative democracy and the right to have rights

In this section, the principle of the 'right to have rights' will be argued with reference to Benhabib (2011). Benhabib maintains that, in her work, the right to have rights is viewed principally as a political right and is narrowly identified with the 'right to membership in a political community'. Benhabib proposes that the "right to have rights" needs to be understood more broadly as the claim of each human person to be recognised and to be protected as a legal personality by the world community (Benhabib, 2011, p. 9).

Waghid (2010, p. 27) introduces the writing of Callan (1997), who "stresses the importance of taking responsibility for the rights of others. Taking rights seriously means 'accepting appropriate responsibility for the rights of others, not just making a fuss about our own'". To a certain extent, the private tuition industry attempts to take responsibility for the 'rights of others' by providing for the additional needs of learners in South Africa (McCarthy & Oliphant, 2013). The only challenge is that these providers are not formally recognised by the legislating bodies in South Africa, which is resulting in an industry where the 'rights of others' are potentially being abused. This need has arisen as a result of the shortfalls of the South African education system, and the present study therefore aimed to show the importance of recognition and quality assurance to fall within a system that takes responsibility for the rights of others. It is argued that including extra and/or private tuition or distance learning providers into the quality assurance frameworks, would demonstrate a system that accepts the appropriate responsibility for the rights of others, by ensuring that the provision of a service meets the minimum quality requirements.

The following example illustrates the lack of accountability taken for the rights of others. In April 2016, the Minister of Basic Education, Angie Motshekga in her media release highlighted the importance of offering Mathematics in all schools; however, a shortage of qualified mathematics teachers in the system has been a challenge in this regard (Mhlanga, 2016). According to the DBE, "non-availability of qualified,

competent teachers of FET Phase Mathematics” is one of the reasons some schools do not offer the subject (DBE, 2015, cited in Pillay, 2015). In terms of section 29(1)(a) of The Constitution of the Republic of South Africa (see RSA, 1996b), everyone has the right to a basic education including adult education and 29(1)(b) to further education, which the state must through reasonable measures, make progressively available and accessible.

Mathematics is a core subject listed on the NSC, which is a qualification registered on the NQF (SAQA Qualification ID: 49647). In addition to this, circulars s13 of 2014 (DBE, 2014) and s1 of 2016 (see DBE, 2016c) stipulate the mandatory offering of mathematics as a choice subject in all secondary schools for the completion of the NSC. Circular s13 of 2014 states that part of the NDP is to get every school in the country to enrol more learners for Mathematics while decreasing the number of learners taking Mathematical Literacy. This M² institution has the ability to assist the DBE with the achievement of the NDP goals (DBE, 2015), however, the barrier to accreditation excludes the M² institution from providing South African post-school learners with a reasonable alternate opportunity to study Mathematics and/or Physical Science. Post-school learners are not able to return to schools and with limited reasonable options available to post-school learners, the learners are being denied access to further tertiary studies in the fields of Science and Technology. In the light of the above, it is contended that these learners have had their basic human right to Mathematics and Science education denied. This would then mean, that “we have not taken responsibility for the rights of others” (Waghid, 2010, p. 27) .

This argument can be reinforced further through what Benhabib (2011) refers to as “liberty rights” (Benhabib, 2011, p. 66). This argument states that other rights are about entitlement rights. These liberty rights, are rights that include a right to an elementary school education or to secure neighbourhoods, for example, they entail obligations on the part of others, whether they be individuals or institutions, to act in certain ways and to provide certain material goods (Benhabib, 2011, p. 66). Benhabib (2011) states, “according to Jeremy Waldron, these are what he terms ‘cascading obligations’” (Benhabib, 2011, p. 66). Hence, in terms of cascading obligations, the M² institution has the right to provide material goods in the form of resources – Mathematics and Physical Science education – which as stated earlier

in this subsection, the national DBE is unable to provide consistently and at an equal quality at all schools in South Africa.

Benhabib (2011, p. 66) refers to the Kantian morally constructivist tradition, which states:

[R]ights claims are not about what exists; rather, we ask whether our lives together within, outside, and betwixt polities ought not to be guided by mutually and reciprocally guaranteed immunities, constraints upon actions, and by legitimate access to certain goods and resources. Rights are not about what *is*, but about the kind of world we reasonably *ought* to want to live in.

The argument presented to the M² institution for why accreditation and registration cannot take place, falls within the ‘what exists’ argument. Hence, a cascading obligation, accreditation and registration of private providers could fall within the “world we reasonably *ought* to want to live in” (Benhabib, 2011, p. 66), where learners who choose to be home-schooled or who offer Mathematics or Physical Science as a second chance have the ‘right’ to achieve this, through an individual or an institution of their choice – “as long as the quality is not inferior to that which is provided by the State” (RSA, 1996a).

In support of this argument, Benhabib (2011, p. 69) continues her discussion by introducing the standpoint of the “generalised other and the concrete other”.

[T]he “generalised other” requires us to view every individual as being entitled to the same rights and duties we would want to ascribe to ourselves. The “concrete other”, by contrast, requires us to view each other and every being as an individual with an effective emotional constitution, concrete history, and individual as well as collective identity. In many cases as having more than one such collective identity. Benhabib (2011) suggests that in many cases, these differences complement rather than exclude one another.

In other words, individual learners and students should be entitled to the same rights that we would want for ourselves. We should be doing whatever we are able to, in order to create as many opportunities for these learners and students in order that they too may have access that could be considered complementary rather than enforcing barriers that exclude them from achieving these rights.

Earlier in this subsection, Benhabib’s (2011) notion of the ‘rights of others’ was touched upon by emphasising the focus on ‘political membership’ – “the principle

and practice of incorporating strangers ... into existing politics” (Benhabib, 2011, p. 138). Benhabib approaches political membership against the backdrop of four conceptual schemes, namely

- the movement of individuals across state boundaries versus adherence to universal human rights principles;
- the question whether a discourse-ethical approach could throw any light on conditions of just membership;
- acknowledgement of the difference between the *principle of rights* and the *schedule of rights*; and
- the conceptual scheme on which we shall focus in support of this study, ‘the human right to membership’. This, she argues is the right which entails that no democratic polity ought to stipulate conditions of naturalisation such that the ‘other(s)’ would be permanently barred from membership.

Reasons that bar one from membership because of the kind of being you are, would not be acceptable from a discourse-ethical point of view (Benhabib, 2011, p. 139). Thus, the M² institution has a right to membership of the quality assurance frameworks (accreditation and registration). The barring of the M² institution from membership, due to their core business (how and who they are), would not be ethical in terms of this argument.

Barring the M² institution from membership brings us to the crux of the argument, Benhabib’s (2011) principle of the “affected interests”. Here, she argues that a democratic rule must be justified to all whose interests the rule affects. She states that if we did not presuppose equal moral respect, we would not care whether the interests of some were simply neglected by the majority or overruled by the majority (Benhabib, 2011, p. 157). As discussed (see subsection 3.2), the M² institution was registered with the state in 1991. The change in legislation, it is contended, neglected to consider the ‘affected interests’ of the M² institution as a result of the legislative changes, resulting in an institution that counts as a minority, being either neglected or overruled by the majority, which therefore presupposes a lack of moral respect.

Benhabib (2011) continues her argument by introducing the determination of “all concerned” At any point in time, if an agent or group of agents can show that they have been arbitrarily excluded from participating in processes through which norms

are formulated, if their points of view have been suppressed, if their rights to symmetrical participating in conversation have been violated, and the like, then the presumptive norm cannot be valid until subject to further deliberation (Benhabib, 2011, p. 159). The M² institution has on many occasions been arbitrarily excluded from participating in the quality assurance processes. The case study shows how at each meeting, the M² institution's points of view were suppressed by participants to the meetings.

The example provided by Benhabib (2011, p. 160) makes this argument very clear:

if an agent A (regulatory bodies) exercises power over an agent B (the institution), from the standpoint of an egalitarian-universalist morality, A has a duty to justify to B why such constraints on B's actions are legitimate. A owes B a duty of justification, because A has restricted B's communicative freedom. B has a moral right to seek an answer from A, the validity of which B could be convinced of with good reason. According to the latter, it is the obligation we owe to each other to justify the coercive use of force that is primary, and not the consideration of the affected interest of each. Of course, insofar as in coercing one in one form or another, it can be said to affect your interest as well.

Benhabib (2011) continues to argue that the argument of justification must resume and not be terminated unless the objections of those concerned have been voiced, listened to, and resolved upon. It means that all such decisions are subject to criticism if they have violated the right of those concerned to have their voices and views heard in the process (Benhabib, 2011, p. 159). Benhabib (2011) suggests that the first step in such a procedure of discursive validation is to show that one belongs among the circle of those concerned, and can act as a moral and political agent who has standing to "participate in practical discourses" (Benhabib, 2011, p. 159).

Benhabib (2011) introduces what she refers to as the "Scarf Affair", where Muslim women in France and Germany were banned from wearing headscarves as well as any other "ostentatious signs of religious belonging in the public sphere" (Benhabib, 2011, p.173). Benhabib goes on to describe how the voices of these girls were not heard and their perspectives were hardly listened to. Recognising that the M² institution is by no means a 'head scarf', I recall many meetings with the DBE, where those in attendance from the M² institution left the meetings feeling as if we had

attended a meeting that had no interest in hearing our voice or where no one listened to our perspective.

During her discussion on the “Scarf Affair”, Benhabib refers to the notion of an egalitarian society (Benhabib, 2011, p. 178). She introduces this notion in her discussion around the Turkish “Turban Affair” (Benhabib, 2011, p. 178) where, according to the Turkish Constitution, everyone is considered equal in the eyes of the law and as such, organs of the state and administrative authorities are obliged to act according to the principles of equality before the law in all their transactions and in all activities pertaining to the provision of public services (Benhabib, 2011, p.178). The discussion was left ambiguous whether the providers as well as the receivers of public services would benefit from non-discrimination in receiving the public service. Benhabib (2011, p.179) continues to state that from a moral standpoint, one could argue that any distinction between the receivers and providers of public services is indefensible.

Considering the arguments already addressed earlier in this chapter with regard to the standard and provisioning of education in the South African public system (see 4.5), surely Benhabib’s argument presented above would reflect hope that all South African children are considered equal before the law in their transactions pertaining to the provision of education (public service). The perceived inability of the DBE to provide sufficient Mathematics and Science education based on the distinction between who does and does not qualify as a provider, in my opinion seems indefensible. To quote Benhabib (2011, p.180), “no one can be denied their right to attain higher learning on the basis of reasons not clearly formulated in writing by law”. In chapter 2, I attempted to show how, in my opinion, the reasons for the exclusion of the M² institution have not been clearly formulated in writing by the laws that govern the South African education system.

The case of the “head scarf” is very definitely symbolic of the M² institution; it is a battle for identity within the public sphere of accreditation and registration. This study by no means seeks to suggest that the M² institution and the “head scarf” scenario’s are the same. What this study draws from this analogy is the issue that it is right for citizens to give expression to their identity in ways that are not the norm. For example in a predominantly Christian country we protect the rights of expression of identity for the religious minority. So then in a predominantly public full

qualification education system, we should protect the rights of private tuition providers to offer partial or single subject offerings. A denial of this right is an onslaught on their identity in that it tries to normalise one identity to the exclusion of others. Benhabib (2011) clearly raises the importance of engaging in a process of deliberative iterations, which for the M² institution, strongly suggests challenging and rearticulating the public sphere with reference to who belongs in the circle from which it has been excluded. In a sense, the M² institution should demand its right to be heard through what Benhabib (2011 p. 172-183) calls “strategic bargaining” with officials. From three accounts, Benhabib (2011, p. 172-183) provides examples in ‘L’affaire du Foulard’ (“the veil affair”), The German “Scarf Affair” and The Turkish “Turban Affair” that, in each case, the women were prepared to challenge the status quo and demand to be heard in an attempt for their rights to be recognised. Unfortunately, this cannot be said of the meetings held between the officials from the DBE, Umalusi and the M² institution. As a participant to these meetings, I am not sure that a space emerged where principles and norms were permeable and fluid enough for the M² institution’s voice and perceptions to be heard. Considering Benhabib’s (2011) argument presented here, the M² institution, in my opinion, should ask the question whether it is a potential threat to the structures that a space was not permitted. Is it possible that the threat was too great and the M² institution and others like it had to be regulated out of the formal system? Have the ‘law makers’ respected the importance of legitimate pluralism in terms of our democracy? It is against the backdrop of Benhabib’s (2011) notion of democratic iterations that the M² institution must claim that it belongs within the quality assurance arena and it must demand recognition as an education institution, to be included once again in the circle from which it has been excluded. Indeed, it could be argued that 40 years of operation and a national standing have earned the M² institution this right.

4.7 Conclusion

This chapter presented a theoretical discussion on deliberative democracy and why this approach was selected for this study. It presented an understanding of the principles and aims of deliberative democracy as discussed by Gutmann & Thompson (2004). In addition, it provided a brief outline of other models of democracy. It has considered the notion of the right to have rights by Benhabib. Of particular importance, I reflected on her discussion of cascading obligations as well

as liberty rights and entitlement rights, by drawing on the rights of learners to engage in quality learning at an M² institution of their choice, when the state fails to provide such a resource. Benhabib's principle of "all concerned" was presented, by highlighting that the M² institution falls within the circle of those concerned, but whose voice has been arbitrarily neglected by the majority, yet it has the right to participate in the process as a moral obligation through cascading rights. In democratic theory (and particularly during this study), we were concerned with the public justification of the coercive use of power (Benhabib, 2011, p. 160).

Finally, the need for the M² institution to challenge official structures by demanding that the relevant parties hear the voice and perspective of the M² institution. Through the process of active participation and deliberative engagement, to broaden the understanding of the concept of rights. To ensure that all are considered equal before the law, in all activities pertaining to the provision of public services, whether the provider or recipient of that service. In this thesis the provider of that services refers to the provisioning of Mathematics and Physical Science by the M² institution.

In chapter 2, I focused my attention on the legislative changes that have situated the M² institution at this impasse. I explored the influence of policies, regulations and Acts that have resulted in the barring of the M² institution from membership (accreditation and registration). The next chapter provides an overview of the steps taken by the M² institution to identify opportunities for inclusion, albeit unsuccessfully.

Chapter 5: Deliberative democracy, policy formation and private tuition providers

5.1 Introduction

This study arose out of set of circumstances surrounding a private tuition provider (M² institution) offering support services to learners studying toward the NSC, registered as a qualification on the NQF. As indicated in Chapter 1, this provider has been in operation since 1976 (see section 1.1) and has as its core focus the provision of extra tuition to school-going learners. Learners have been enrolling and receiving this extra tuition from this provider for over 40 years. Learners attend lessons with the intention of improving either their mathematical, mathematical literacy and/or physical science performance in order to gain their NSC certification as well as to gain entrance into tertiary institutions. Increasingly over the years, the institution began to receive requests from post-school learners, seeking the opportunity to improve their NSC, add to their NSC or simply improve their skills for promotion opportunities in their workplace. The increased requests received over the years, highlight the plight of the general South African citizen seeking opportunities for development. In addition, these request stem from an individual's right to receive recognition for education received for the improvement of his or her own skill. Whilst learners can receive tuition through private one-on-one tuition, distance learning, home schooling, extra tuition centres, etc. who specialise in single subjects, current legislation poses a barrier to the formal recognition of both the provider and the learner.

The NDP states that the intended target of the DoE is to increase the number of learners eligible for entry into bachelor's degree programmes with Mathematics and Physical Science to 450 000 by 2030 (South Africa & National Planning Commission, 2012, p. 305). Considering the NDP targets together with the increasing number of requests this institution receives from learners hoping to improve their Mathematics and/or Physical Science marks, it is my opinion that the national DBE and Umalusi should be considering all reasonable options available to meet the ever-growing demand for specialised Mathematics and Science provisioning in South Africa.

To illustrate the point further, a review of the 2016a NSC Subject Report shows that the number of learners who sat for Mathematics in 2013 increased from 241 509 in

2013 to 265 810 in 2016 while the average percentage achieved by learners has decreased from 59.1% to 51.1% (DBE, 2016a, p. 5). In addition, the learners who wrote the final Physical Science examination in 2013 have increased from 184 383 to 192 618 in 2016 (DBE, 2016a, p. 5). However, according to figures shown in the DBE Schools Subject report (DBE, 2016a, p. 5), the percentage achieved by learners has again decreased from 67.4% in 2013 to 62% in 2016. Of the 142 666 learners from 2013 and 135 958 from 2016 achieved at 30% and above for the subject during their final NSC examinations and this only includes learners from public schools registered with the Department of Basic Education.

The challenge, however, is that learners applying to study in the fields of mathematics, science or technology at any South African university need to achieve a minimum of 60% for Mathematics, at least 50% for science and an overall average of 60% for their NSC certificate. What the national results report does not indicate is how many of these learners did not achieve the minimum requirements to enter tertiary institutions in the fields of Mathematics and Science.

Whilst the Minister of Basic Education indicated in the general findings of the 2016 diagnostic report, 'it was encouraging to see an increase in the number of learners who sat for the Mathematics and Physical Science examinations and that in both examinations the pass rate had improved' (DBE, 2017, p. 11). There were still 129 852 learners who sat for their 2016 final examinations who did not meet the requirements for a bachelor's degree. The question remains: what does the South African post-school system offer these learners in the form of reasonable, viable second chances that will facilitate access, mobility and progression within education, training and employment?

This chapter will provide an analysis and discussion of the case study and legislation presented in this thesis, in the light of the principles of deliberative democracy. In addition, it will highlight the problematic nature of the lack of engagement between policymakers, government officials and private GET providers in an attempt to create the possibility for sound and reasonable options to address the issues raised above.

5.2 Analysis and discussion of the case study from a deliberative democratic perspective

The post-school education arena has continued to evolve over the last few years. Since 2011, when the M² institution began researching and enquiring into the options for the renewal of its formal recognition status with both the DBE as well as Umalusi, there have been numerous developments, both in the emerging number of private providers at GET and FET level, as well as changes to legislation, policy and regulations governing education in South Africa.

The year 2011 signified the beginning of a process that seemed to include all the right phrases and stated intentions and which led the institution to believe that the move to include private providers into the formal quality assurance framework was a topic of discussion between governmental institutions and the direction into which the framework was moving. Based on this information and the feedback received regarding the suspension of the institution's provisional accreditation status at the time, the institution invested time, money and effort into following the directions and advice from various officials both at the Department of Basic Education, Umalusi and SAQA. In addition, the instruction by the Minister of Basic Education to her department to identify an administrative solution that would see the institution receive formal recognition, seemed extremely promising at the time; however, on reflection, what transpired over the years that followed, revealed the absence of recruitability and respect by participants to the process.

Having had the opportunity to gain further knowledge on educational processes, legislation and policies as well as reflecting on the journey of this institution, it is my opinion that at times, the institution was misled, ill-advised and possibly initially excluded from formal recognition through the possible misinterpretation of legislation.

In 2007, the institution was advised by the COO of Umalusi to continue with the accreditation process since the registration of 'short course' providers by the DoE was due to take place soon. In a later discussion, Umalusi informed the institution that they should not have been granted provisional accreditation as it was not a school or private college; however, Umalusi were of the opinion that provision should be made for institutions such as ours and on the basis of this possibility, they would

not withdraw the institution's provisional accreditation as long as the institution continued to comply with Umalusi's requirements.

The common reasons provided to the M² institution for not receiving full accreditation and later provisional/conditional accreditation indicated that the institution does not offer the full qualification. Had this been a requirement from the implementation of the quality assurance framework it seems questionable why Umalusi extended the invitation to the institution to apply for accreditation at all. The institution has been in operation for over 30 years. When the invitation to apply for accreditation was received from Umalusi, the institution made every effort to implement policies and procedures in order to meet the quality assurance requirements. Any provider who has been through this exercise will attest to the timely and costly nature of such process. Nevertheless, the institution welcomed the invitation and set out to fulfil the necessary requirements. Being an established, reputable institution, it is unlikely that Umalusi did not understand the core function of the institution; yet, the invitation to be included in the quality assurance framework was extended to this institution, although it is a well-known institution of private extra tuition of single subjects to school-going learners. This invitation to apply for accreditation created the expectation of been receiving accreditation and registration status by Umalusi and the DEB respectively, which on reflection was extremely misleading as there never was any intention to offer full accreditation on the basis of the lack of a full qualification offering. In addition, the institution is well known among the various officials of both Umalusi and DBE for its product offering, as many of them indicated during the various meetings that their children had benefitted from the provisioning of this institution over the years.

As mentioned in Chapter 1 (see subsection 1.2.2), in the White Paper for Post-School Education and Training (2013), the Department of Higher Education and Training clearly (DHET, 2013, p. 13) states:

[T]he need for suitable institutions to offer programmes to post-school learners that may not be in TVET colleges, and that the programmes will be for matriculants who need additional instruction in Mathematics and Science, before going into college or university.

This White Paper demonstrates the need for post-school opportunities. It also clearly stipulates that the programmes must be offered as second-chance opportunities to

learners who have not met the entry requirements for further study, and it clearly stipulates that these need not be offered through a college. When considering the options available at the time and the speciality programme required, this institution, given its track record and standing as a specialist in the required subjects, was perfectly placed to provide the service required as stipulated in the White Paper. In addition, the institution had national standing in South Africa with over 30 years of service and more than 150 centres around the country. It remains questionable why the DBE would not implement the administrative solution as instructed by the Minister of Basic Education. Furthermore, why was the department prepared to invest and partner with other options of provision still requiring development (for example, Teach SA, Vodacom and the British Council, to mention a few) when the M² institution had already demonstrated the ability to meet quality assurance requirements, with a product offering that was already functional and aligned to meet the outcomes of the NSC curriculum. In addition, the institution continues to update the product offering according to changes in the subject assessment guidelines, in order to continue offering an up-to-date product and quality service to learners in the system.

Gutmann & Thomson, state, “the promise of deliberative democracy lies in the concern for “finding terms of cooperation that each citizen can accept” (Gutmann & Thompson, 1996, p. 26). Reflecting on the meetings attended over the years, there is little evidence to show that the DBE, Umalusi or SAQA demonstrated their willingness to find any terms of cooperation. Instead, the institution continually received instruction about ‘other’ avenues to follow and reasons why formal recognition should not have been provided and could not continue. When presented with potential solutions by the institution, the DBE remained quiet. This could be interpreted as a lack of willingness by officials to find any terms of cooperation.

In addition, Benhabib (1996) and Cohen (1989) distinguish deliberative democracy from other methods of democracy, by stating, “deliberative democracy depends on the right, opportunity, and capacity of those subject to a collective decision to participate in consequential deliberation about the content of the decision in question” (Dryzek & Dunleavy, 2009, p. 217, also see Benhabib, 1996; Cohen, 1989). On reflection, there is no evidence that the respective officials created an environment where the institution was afforded an opportunity to participate in the

decision that ultimately saw the institution barred from membership. The institution may well have been represented in the meetings; however, participation was clearly lacking in the decision-making process. Przeworski (1998, p. 141) suggests, “in a democracy, we should be convincing enough in our deliberations, that we are able to convince all participating parties through sound reason to come to a rationally motivated consensus”. He also suggests, “it is entirely possible during deliberations that the argument presented is not persuasive enough” (Przeworski, 1998, p. 141). The institution was afforded the opportunity to ‘tell its story’ at each meeting. There was no opportunity provided for the institution to challenge the officials or to provide any form of an argument that would create the opportunity where all involved could come to a rationally motivated consequence. The institution would provide an overview of the situation, after which the relevant officials would immediately respond by informing the institution which internal discussions were in progress in the department, or how current legislation could not allow for the provisioning to include institutions such as ours. When reviewing the minutes of meetings, there would be no record of a time when the institution was afforded the opportunity to engage actively with either the national DBE, provincial DBE or Umalusi about options which could realistically be challenged in terms of identifying the administrative solution. At most, I would say that the institution had convinced the minister of Basic Education sufficiently enough that she instructed her team to identify a solution. Unfortunately, this process did not include deliberate engagements with the institution; in fact, other than providing possible scenarios in a letter to the national DBE, the institution was not presented with the opportunity to discuss these possible solutions, policy or regulations. Rather, the institution was informed why policy presented a barrier, and that, should legislation change in our favour, the institution would be informed. Policy has changed numerous times since our meetings, yet the institution has not been informed or invited to provide comment. Unfortunately, as indicated throughout the discussions in Chapter 2 policy has changed to be less inclusive of private providers in this arena. In my opinion, participation by the national DBE was also absent from the meetings, as the officials in attendance were viewed as being representative of the Minister; however, they may not have had the agency to engage deliberately with the institution in seeking a solution.

Dryzek and Dunleavy (2009, p. 215) indicate, “what makes deliberative democracy more important than other forms of democracy, is that it affords participants the opportunity to reflect on their own views in light of what others have to say”. In my opinion, the capacity to reflect is a quality that was absent from the various meetings. Each meeting was held with a new set of participants, which did not provide the opportunity for reflection. How were they to reflect, if they only ever attended one meeting and were not party to the meetings leading up to their instruction to meet with the institution. Each meeting began with a request to restate the intention, which would indicate that the constant update on progress rested with the institution. Whilst the officials had an idea of the purpose of the meeting, it was not clear that they completely understood the instruction from the minister to identify a solution. No official from the department seemed to understand what the minister meant by ‘administrative solution’.

An important element of deliberative democracy that was absent from the process was that of inclusivity. The national DBE did well to include the various departments in the discussions; however, each meeting took place in silos. It was as if each meeting was the first meeting between the national DBE and the institution. Considering the various meetings that took place, the first element to show inclusivity would have been for the department to arrange a meeting with all the main stakeholders at one sitting. It almost gives the impression that the national DBE operates in silos independently of each other, which further complicates the facilitation of a request such as ours. In addition, the mere fact that the institution finds itself still sitting on the outskirts of the quality assurance frameworks after four years of meetings is a strong indicator of just how exclusive the process is.

I have already discussed in Chapter 4 (see 4.3), Cohen’s suggestion, namely that “parties to the discussion are and should be treated as equals, who have the ability to participate in a manner that permits the equitable exercise of power” (Cohen, 1989, p. 186). His intention was to highlight how the exercise of public power can be tied to public reasoning, and the ability to generate what he referred to as ‘communicative power’, which is the influence of will and opinion on the exercise of political power (Cohen, 1998, p. 186). It is very clear that the balance of power lies with the national DBE and the quality assurance authorities, as it should be. The concern however, is when that balance of power works to the detriment of the

citizens of the country. Nationally around 57 000 children aged 7 to 14, all of whom should by law be attending school, are out of school at any point in time (DBE, 2016b, p. 2), My question is then, how with this information, researched and published by the DBE, is not a sound enough reason to convince the officials of the need for a specialised institution such as ours. The exercise of power lies with the national DBE. It is in their hands to make this possible. At an early stage, the minister of Basic Education seemed sufficiently convinced of the need for the inclusion of an institution such as ours; yet, it would appear that the notion of free and equal citizens does not apply in this scenario. The balance of power has not shifted to show equitable power – to the detriment of the learner who deserves a second opportunity.

5.3 Absence of characteristics of deliberative democracy

Cohen (1998, p. 185-231) provides four characteristics of deliberative democracy, namely reason-giving, accessibility, binding, and dynamic.

5.3.1 Reason-giving

In terms of reason-giving for why the institution should be included in the quality assurance framework, the sound reasons that the institution can offer are the following:

- the increased demand for second-chance opportunities, supported by the department's own research presented in their report on progress in the schooling sector and the implementation of their own second-chance programme in 2017;
- the growing industry of private tuition providers and the need to protect learners and parents from unscrupulous providers;
- evidence of the institution's willingness to meet the quality assurance requirements following the initial provisional accreditation status awarded by Umalusi in 2006 and their ability to maintain provisional accreditation status, until Umalusi suspended the status without any official written notice;
- the increased number of enquiries received by the institution (about 900 in 2010 against over 2000 in 2017); and

- since the IEB examination centre status, the increase in enrolments each year by learners seeking alternate and second-chance opportunities from a reputable institution to gain entrance into tertiary institutions.

To date, the only reason provided to the institution by the DBE officials for the inability to include the institution in the quality assurance frameworks is that the institution is a single-subject provider of the curriculum registered as part of the full NSC qualification.

5.3.2 Accessibility

Deliberative democracy requires that, “the reasons given should be accessible to all citizens to whom they are addressed, and in a manner that all participants are able to understand the content” (Gutmann & Thompson, 2004, p. 5). The DBE and Umalusi officials have provided a reason in writing why the institution could not be included in the quality assurance frameworks, namely that the institution does not offer the full NSC qualification; however, in 2011 when the initial conversations began, legislation did not specify that the full qualification offering was a requirement. This subtle change in definitions and the omission of phrases over the years have resulted in the definite exclusion of single-subject providers. In light of earlier discussions with the various officials, these changes are in complete opposition to the inference that internal discussions between the authorities were focusing the framework towards the inclusion of short course providers. This could be interpreted as an intentional misleading of providers due to limited understanding of relevant policies and regulations at the time.

5.3.3 Binding

This characteristic focuses on producing decisions that “are binding for a set timeframe, and whether the original decision was just and fair within the framework of deliberative democracy” (Przeworski, 1998, p. 141). This characteristic stands out as being least applied by the DBE and Umalusi officials in terms of this study. It would appear that decisions regarding basic education are made with little or no regard about whom they affect or the effect the decisions have on those who are affected by the outcome of decisions. The frustration of having to sit in meetings for a period of four years, discussing the accreditation and registration dilemma with officials over and over again only to result in a decision that excludes not only this

institution, but all other like it from participating in the quality assurance framework. In addition the added frustration observing the national DBE and Umalusi effect a decision that affects the private provisioning of tuition at GET level. The outcome of which, this decision excludes a sector that contributes positively towards education for school-going learners and which would ultimately assist the national DBE in meeting the Action Plan 2019 goals (see DBE, 2015). It is my opinion that this decision in no way demonstrates a just or fair decision on behalf of the national DBE.

The suggestion that participants intend their discussions to influence decisions government will make, or a process that will affect how future decisions are made seems idealistic in the basic education arena. I am of the opinion that it is not possible to enter into deliberations with representative officials at the quality assurance authorities, as evident from the period 2011–2014. After four years of meetings, the M² institution was still (and in 2017, is still) excluded from the formal structures without any sign of the official structures being influenced by the institution during this time frame. The structures have made a decision that is binding on the community, and the decision is to the advantage of some while to the disadvantage of the minority. This is not a decision that seems just.

5.3.4 Dynamic

Gutmann and Thompson (2004, p. 7) introduce the notion that, “in politics decisions are not consensual, but that the important implications for the dynamic aspect of deliberative democracy is that the conversation should continue despite reaching a ‘moral disagreement’”. The aim of this study is to seek some common ground, if not on the particular policy creating the problem, then potentially on another one that may provide a better opportunity to reach an agreed outcome.

I would like to suggest that providing citizens of South Africa with the opportunity to complete or improve their matric results, as well as providing others with the opportunity to improve their chances to enter into tertiary institutions be considered common ground. I have already established that there is a need for specialised single-subject post-school opportunities for learners focusing specifically on Mathematics and Physical Science as highlighted in the White Paper for Post-School Education and Training (DHET, 2013). It would therefore make reasonable sense that the education authorities would embrace opportunities that are ready and

available to assist in meeting this need. This leads me to question about why the authorities would affect changes to legislation that specifically exclude providers who could assist the national DBE in meeting its goals. The process entered into with the authorities over at the time of this study (November 2017) has not been a dynamic one. The promise of revisiting decisions via this avenue has not yet materialised.

Rather, the IEB has recognised the need for deliberative engagement that is dynamic in nature and for an institution specialising in Mathematics and Physical Science, which is able to provide quality alternate opportunities for learners seeking to improve their skills. The institution has identified common ground with the IEB who has recognised the imperfection that exists in the decision-making process by the authorities, and has identified a reasonable alternate interim solution to assist these learners until such time that the institution is able to convince the authorities of the same.

It is evident that the process of deliberative democracy has been completely absent from the process entered into by the education authorities and the institution. Meetings at national level did not seem to focus on the identification of common ground, but rather on how national education could benefit from obtaining the product without recognition of the institution. At no stage did the process reflect the principles or aims of deliberative democracy. The acknowledgement of the need to improve instruction of Mathematics and Physical Science in schools was noted. The unwillingness, however, to engage in deliberations that could provide alternate options of provisioning and the recognition thereof seems futile and an infringement on learners' right to basic education. If the national DBE is unable to provide quality instruction in all subjects at all schools, they are obliged to identify reasonable alternate options that are not inferior to that offered in public schools (RSA, 1996c, p. 28).

5.4 Deliberative democracy, legislation and the barring from membership

Deliberative democracy, as I have come to understand, is based on the premise of entering discussions with the minority with the intention to reach a mutually cooperative outcome for the common good. In Chapter 4, I indicated that this resonated with me (see 4.3, as it links strongly to the concept of social justice for the common good (see Cohen, 1998). In addition, deliberative democracy suggests that

one should guard against excluding the minority voices and perspectives from the democratic process (Gutmann & Thompson, 2004, p. 9). The present study provides sufficient evidence to indicate that in this instance, the voice of the minority has deliberately been excluded and the perspective of the M² institution has not been heard. The decision to amend legislation to exclude private single-subject providers at GET level from the quality assurance frameworks, is short-sighted and unjust – any system that excludes other is unjust.

During the thesis, I have often referred to the institution being the voice of the minority, in terms of private providers seeking opportunities for formal recognition status; however, as this impasse has presented itself over the years, it goes further than that. It is about as Benhabib states, “the right to have rights” (Benhabib, 2011, p. 9). At the core of the argument is the South African Constitution. The Constitution raises two critical issues in this study. Firstly, section 1(a) states, “the Constitution is founded on values that include human dignity, the achievement of equality and the advancement of human rights and freedoms. Secondly, section 3(2)(a) says all citizens are equally entitled to all rights, privileges and benefits (RSA, 1996b). In light of the Constitution, this study has become a study about the rights of others – learners who are failed by the system, and who seek alternate options to reach their goals. The current reality, however, is that these learners and their future still are at the mercy of the decision-making structures that have already failed to provide for their basic needs to quality education. By limiting the options for alternate education opportunities for learners who have fallen outside of the formal school structures, the authorities have essentially infringed on their constitutional right by limiting their ability to achieve equality through the advancement of their rights and privileges as citizens of South Africa.

Benhabib (2011, p. 66) introduces the notion of ‘liberty rights’, which argues:

[T]he ‘rights of others’ are about entitlement rights. Entitlement rights include rights, which amongst others includes the right to an elementary school education which entail obligations on the part of others, whether they be individuals or institutions, to act in certain ways as to provide for these rights.

These obligations are seen as what Benhabib terms “cascading obligations”. She goes on to state, “rights are not only about what is, but also about the kind of world we reasonable out to want to live in” (Benhabib, 2011, p. 66). In the South African

context, the provisioning of quality schooling means something different depending on the audience. It should however, mean the same for all learners, in that all learners in South Africa should be able to attend and receive instruction at any institution in the country. In addition, the instruction they receive should be the same quality instruction in a safe environment irrespective of where they live. The reality however, is that this is not a true reflection of how things are. Currently, Equal Education are in discussions with the KwaZulu-Natal provincial department of education regarding Engangala High where learners are learning in dangerous conditions due to structurally unsafe buildings, and as a result, these learners are sitting outside under trees (Equal Education, 2017a). Many learners across South Africa are embarked in struggles to secure a safe and dignified school, absent of sexual assault and corporal punishment by teachers. In the Western Cape alone, 244 schools proved that sexual assault and corporal punishment remain serious issues in the province (Equal Education, 2017b). The relevance of including these examples is to challenge the authority's regulation on the provision of instruction that is not inferior to that of the state. Whilst the state is expecting South African schoolchildren to receive instruction in structurally unsafe buildings and with educators who infringe on their personal safety, the exclusion of other reasonable educational alternatives contributes to the infringement of learners' rights to equal, quality education. If the current environment is not safe and as a result provides a challenging environment for instruction, surely a reasonable alternate education institution should be a consideration for these learners. These examples support the need to recognise every reasonable alternative in order to create every opportunity for learners to continue instruction in order to access further education. By limiting options, the system is hindering the full personal development of each learner and the social and economic development of the nation at large.

In terms of section 29(a) of the Constitution:

[E]veryone has the right to basic education, including adult basic education and (b) to further education, which the State, through reasonable measures, must make progressively available and accessible. In addition subsection 3 of the constitution states that everyone has the right to establish and maintain, at their own expense, independent education institutions that do not discriminate on the basis of race, are registered with the state; and maintain standards that are not

inferior to the standards at comparable public education institutions (RSA, 1996b)

The M² institution is full within its rights as per the Constitution to establish an education institution. Over 40 years of provisioning with over 150 centres around the country, should be evidence enough that the standard of provisioning is not inferior to that of comparable public education institutions. The barrier in the ability of the institution to fulfil its cascading obligations (see Benhabib, 2011, p. 66) is its registration status with the state. When considering the rights of others, this includes the human right to membership. Benhabib (2011, p. 15) argues, “this right entails that no democratic polity ought to stipulate conditions of naturalisation such that the other(s) would be permanently barred from membership”. As indicated in Chapter 4, the reasons that “barred the institution from membership because of the kind of institution we are, would not be acceptable from a discourse-ethical point of view” (Benhabib, 2011, p. 139). In other words, barring of the institution from membership as a result of its specialised subject provisioning is unethical.

In Chapter 2, I drew attention to two definitions included in the SAQA Act, No. 58 of 1995. These were that of a ‘company’ (see 2.5), and ‘qualification’ (see 2.5). The definition for a company *inter alia* claims, “the provision for companies registered under the law who provided education and training for its employees or its clients” (RSA, 1995). The institution is a registered company under the law and provides education to its ‘clients’. In terms of this definition, the institution falls within the definition of a company as defined by the SAQA Act, No. 58 of 1995. Qualification was defined to mean “the formal recognition of the required number and range of credits” (RSA, 1995). The institution provides a tuition system that is designed and implemented according to the subject outcomes as listed in the NSC, the ASC and the NASCA. Each qualification assigns the value of 20 credits to both Mathematics and Physical Science. Taking this into consideration, the institution and its product offering fall within the definitions of the SAQA Act. This provides evidence to support the intended purpose of creating an integrated national framework that would provide for the recognition, mobility and progression of learners within the system.

The replacement of the SAQA Act with the NQF Act, No. 67 of 2008 saw the subsequent omission of the definition of a company, which has been replaced by the inclusion of the definition of an education institution, which was defined as being

established and declared under law (see RSA, 2009b, p. 2). The NQF Act resulted in companies having to secure accreditation status with the relevant quality assurance system in order to be declared an education institution by law. Failure to receive accreditation with the quality assurance system, results in the inability of a provider to be recognised as an education institution.

The establishment of SAQA and the NQF sought to ensure that the various elements of the education and training system were brought together effectively in order to respond to the needs of the country. One of the main objectives of the NQF according to the SAQA Act 58 of 1995, is to “facilitate access to, and mobility and progression within education, training and career paths” (RSA, 2009). My understanding of this is that the introduction of this system and the implementation of the new education landscape were meant to create a space for all entities involved in the training and development of all citizens of South Africa which ultimately would result in recognition of the learners’ achievements. The purpose of the National Learners Record Database (NLRD) (see SAQA, 2014) is to record learner achievement to encourage lifelong learning and effect the principle of accessibility, mobility and progression in the education environment. In Chapter 4, I indicate how Benhabib links the right to have rights with that of political membership: “the principle and practice of incorporating strangers into existing politics” (Benhabib, 2011, p. 138). The establishment and subsequent activities of the quality assurance frameworks were intended to do just that, namely to create a system that included both public and private providers in order to create an integrated framework. The omission of definitions such as ‘company’ by policy developers was a step away from the intended integration of education. All this had done was to create the current landscape that still excludes home school centres, private single-subject tuition and distance learning for school learners, and to make it evident how ‘strangers have not been incorporated into existing policies. This again shows how the formation of educational policy is one-sided and negates the responsibility to provide reasonable alternatives for all learners, including adult learners.

It is important to note here too that the Acts in no way stipulate that the NQF would only focus on whole qualifications or that the framework would only focus on institutions who provide tuition towards whole qualifications. The objective of the NQF clearly states that the intention is to contribute to the full personal development

of each learner and the social and economic development of the nation at large, and that a system had been implemented that would create an integrated national framework for learning achievement. The question is then why legislation has changed to such an extent since the implementation of the NQF Act in 1995 that it has formed barriers for learners to gain access and mobility within the structures, through the inability to have their learning achievements recognised as a result of the exclusion of specialist providers, such as this institution and others like it from being included in the quality assurance and recognition framework.

The criteria and guidelines in the SAQA document as referred to in Chapter 4, state clearly, “each GETC will provide access to various learning pathways, both vertical and horizontal, in terms of the purpose of the qualification” (SAQA, 2001, p.3). Having reviewed the purpose and rationale for the NSC, ASC and the NASCA, all three qualifications stipulate that learning programmes will continue to be offered based on subjects and that the Mathematics and/or Physical Science components of the qualification amount to 20 credits each. The qualifications do not stipulate that they must be achieved in whole at a school. The continued reference in all three qualifications (i.e. NSC, ACS and NCV) to the awarding of subject statements is in my opinion a clear indicator that the qualification can be achieved through the gradual accumulation of subject certificates. It is evident that the restrictive policy decisions are therefore not prescriptive at qualification level, but lie at legislation, policy and regulation level. This again points to show how officials engaged in policy formation have affected amendments and changes to legislation without due consideration of various role players who are engaged in the ‘bigger picture’.

Analysis of the GENFETQA Act, No 58 of 2001 (RSA 2001) and its amendments in 2009, reinforces that the original intention to create an inclusive learning environment for all learners and the way the amendments to this Act enlarged the gap between private and public institutions by the subtle removal of a word or phrase, for example, through the replacement of the term ‘private institutions’ by ‘educational institutions’. In terms of this study, the most telling sign of the intention to bar the institute from membership, is that these changes and omissions in terms of legislation took place during the time frame during which the institution was engaged in discussions with the relevant bodies. Legislation amendments seem to have shifted from the original intention that resulted in the establishment of SAQA.

These intentions included the options to make provision for companies to be registered as education providers in order to provide differently learning pathways and recognition of learning achievements. The result of these amendments is that now ‘accredited providers’ does not include any definition of registered companies that provide learning programmes. It does raise questions about how these changes align with the original intention to empower and develop a nation through the intended integrated framework. In addition, one is left to question the relevance of a national integrated framework that is regulated into separate silos operationally. To support this statement, the reader will recall that in Chapter 3, that learning achieved through the SETA structures was not recognised by the tertiary institutions. This again raises questions about the purpose of the NQF-stated objective to redress past inequalities that would promote access and further development.

Considering the discussion and analysis above, I again refer to the speech by the Minister of Basic Education in April 2016, in which she not only highlighted the importance of offering Mathematics in all schools, but also drew attention to the shortage of qualified Mathematics teachers in the system (Mhlanga, 2016). Having analysed and discussed the relevant legislation, my interpretation of these is that with the establishment of the SAQA in 1995, the DoE recognised that there were learners who had for some reason been excluded from the formal schooling environment. The implementation of the NQF had as its mandate the instruction and objectives to create a platform where these learners could enter the system again, have their learning recognised, and be able to move between the various education structures available to learners in South Africa. In order to ensure the implementation of this intention and to ensure the quality of all provisioning, the quality assurance frameworks are necessary. Where provisioning did not meet the required quality standards, the framework would ensure the provision of alternate options available.

The challenge presented through this study is why – when the provision by public institutions is inadequate and the national and provincial DBEs’ does the M² institution find itself unable to provide consistent basic education in terms of section 29(a) of the Constitution – private specialised provision would be discouraged. The speech by the minister supports the notion of the department’s inability to provide quality mathematics and physical science education to learners in South Africa. The question then remains why the education authorities, national and provincial

departments as well as SAQA and Umalusi would not welcome the opportunity to recognise all reasonable educational alternatives as stipulated by subsection 2 of the South African Constitution. Affording opportunities for the recognition of provisioning for these specific educational needs, could be seen as delivering a product viewed as a scarcity of resource (Gutmann & Thompson, 2004, p. 11). Recognising the role of private providers would be viewed by the national DBE department as a move towards allowing others to fulfil their cascading obligations in order to meet the identified need of South African learners. Surely, this would then be considered a necessary step towards the world we reasonable might want to live in, a world where learners are able to exercise their right to receive quality education by another provider, especially in the case of institutions which are recognised by the national structures but who have been unable to meet the quality assurance requirement themselves.

Considering the above discussion, it seems fitting to bring the discussion back to Benhabib (2011, p. 173) arguments regarding the 'Scarf Affair' (see section 4.5) and the analogy of how the voice of young Muslim girls went unheard when challenging authorities with regard to the wearing of head scarves in public spheres. Benhabib describes how the voices of these girls had gone by unheard and how their perspectives were hardly listened to (Benhabib, 2011, p. 173). The lack of interest shown by government officials toward the M² institution during the various discussions reinforces how this 'Scarf Affair' could be used to describe the interactions between the institution and the officials. The perspective of how things look from the other side was hardly listened to and was not considered by the officials. The realisation that the omissions from and subtle changes to legislation taking place concurrently with the various meetings with the institution demonstrates very clearly that the voice and perspective of the institution were not heard. This rather reinforced the deliberate misleading of the institution by officials.

In addition to the importance of iterations and the necessity to talk back, Benhabib's use of the 'Scarf Affair' (2011) demonstrates how Muslim women from various places around the world continually battle to have their identity and rights recognised without any form of discrimination. Benhabib uses this analogy to argue the principle of the right to have rights, and to be recognised according to the principles of equality before the law in all transactions and activities pertaining to the provisioning

of a public services (Benhabib, 2011, p. 179). The relevance of this argument in the South African context is that all South African learners should be considered equal before the law in terms of their transactions pertaining to the provisioning of education. Where the public system, in some instances, offers education of an inferior quality, these learners should be able to look elsewhere for their provisioning. The challenge facing these learners is that the education system refuses to recognise that the provision may in some cases be available outside of the formal schooling system; yet, barriers are created by legislation making this option extremely difficult to access.

Benhabib (2011, p. 183) strongly emphasises the notion of deliberative iterations and the importance of challenging the status quo. Whilst participating in the meetings, the M² institution interacted respectfully with all officials. We were mindful that we were afforded an audience with government officials who had agreed to meet with the institution and, as a result, the institution was extremely restrained and cautious in their interactions with the relevant officials. Benhabib (2011, p. 183) suggests, “when entering into deliberations with the intention to persuade the listener, you should enter into what she calls a ‘strategic bargaining’ arrangement”. The institution did not enter into any ‘strategic bargaining’ or deliberative engagements with the officials, and I would like to state categorically that it was out of respect for the representatives who had offered their time to meet with the institution. As mentioned numerous times in this thesis, reflecting on the meetings and discussions, it is clear that this was not reciprocated and there was no element of recruitability in the meetings. It is my opinion that the institution did not fight hard enough or challenge the structures enough at the time, purely out of respect for the structures. I do however believe that having the support of the IEB as well as knowledge gained through continued research of policies and procedures over the years, together with three years of operation as an examination centre, the institution is currently in a good position to make a clear and sound argument that would be difficult for the department to refute. I strongly believe that the education departments have a moral obligation to allow the institution and others like it to fulfil their cascading obligations to the learners as “no one can be denied their right to attain higher learning on the basis of reasons not clearly formulated in writing by law” (Benhabib, 2011, p. 180).

5.5 Conclusion

This chapter has provided a discussion focusing on the importance of deliberative democratic engagement in the process of policy formation. This study has specifically focused on private tuition providers at GET and FET level. It is with the greatest of respect for the DBE and the relevant quality assurance bodies, that this study has been undertaken. This study in no way meant to undermine the important and challenging work with which these departments are engaged; to the contrary, the study sought to reinforce the importance of maintaining quality with the provision of education to all recipients. The intention of this study was therefore to highlight respectfully how, because of the complexity of our nation and its history, the shortfalls within the educational arena undoubtedly have significant and far-reaching implications on those learners who find themselves outside of the formal schooling structures.

Through deliberative engagement, this study sought to convince the relevant authorities of possible reasonable alternate options available for our learners. These options may be different, but are in no way inferior to that provided by their department. In addition, this study has attempted to reinforce the need for providers to be quality assured in order to ensure that learners entering into these private tuition arrangements are not taken advantage of. The institution understands the need to regulate and quality assure the provisioning of services to learners in the system and has demonstrated its willingness to meet a requirement set before them. However, this study has brought to the fore that, no matter the willingness and ability of the institution and others like it to fulfil its cascading responsibility to provide basic right to citizens of this country, the legislative authorities continue to enforce structures that create barriers to learning and the provision thereof.

In terms of the principles of deliberative democracy, this study has reinforced the need for the private tuition education industry to challenge officials by engaging in deliberative engagements with the intention to “broaden the officials’ understanding of their concepts of rights so as to ensure that all are considered equal before the law in all activities pertaining to the provision of public services, whether the provider or recipient of that service” (Benhabib, 2011, p. 180).

Chapter 6: Conclusion of the study

6.1 Introduction

In this chapter, the study is concluded by summarising the lack of deliberative engagement in the private general education and training arena. The research problem, research methodology, research goals, research questions and the contribution and relevance of the study to assess whether I have achieved what I set out to do at the beginning of this study will also be reviewed.

6.2 A review of the research problem

In Chapter 1 of this thesis, the research problem for this study was stated (see 1.2). The problem was that single-subject private education providers are prejudiced by the possible misinterpretation and later subtle changes to education legislation. The result of this has resulted in a complete sector of education provision in this country being excluded from the quality assurance frameworks, excluding these providers from achieving accreditation and recognition status with the relevant authorities.

6.3 A review of the research questions

Having reviewed the research problem, the research questions reflected at the outset of this thesis are reviewed, and it is determined whether they have been answered.

6.3.1 Primary research question

The primary research question posed at the beginning of this study pertained to the contribution the approach of deliberative democracy could offer towards the accreditation and registration of single-subject education providers of GFET.

Chapter 3 of this thesis provided an overview of the case study, highlighting the challenges facing this institution with regard its exclusion from the formal quality assurance structures established in 1995. Through the presentation of this study and the reflection of the various interactions between the institution and the relevant officials, it is evident that the decision-making processes within the national DBE follows a top-down approach. By this I mean that the representative officials in each meeting made the suggestions and decisions that continued to increase the gap in terms of formal recognition of private providers at GET level. The institution may well have been present at the meetings but the ultimate decisions made were of an

autocratic nature with little evidence to demonstrate that the issues raised by the institution had been considered.

Chapter 4 introduced the notion of deliberative democracy through deliberative engagement. This chapter brought to the fore the importance of “creating a space where citizens can engage with one another under conditions that will manifest mutual respect, with the aim of finding terms of fair cooperation” (Gutmann & Thompson, 2004, p. 14). The overview of the case study (see 3.3) provided glaring evidence of the lack of deliberation during meetings conducted over the 4-year period. The Minister of Basic Education seemed to understand the impasse and recognised the need for institutions such as the one under discussion in this study, however, her instruction to her sub-ordinates to identify an administrative solution failed to produce any results. The overview of the case study presented in Chapter 3 demonstrates the lack of recruitability and respect, which are two important elements for deliberative democracy to flourish.

Considering the above and reflecting on which contribution the approach of deliberative democracy could offer towards the accreditation and registration of single-subject providers at General and Further Education level, I would like to suggest the following. The most significant contribution deliberative democracy could offer would be for the relevant authorities to enter into deliberations (not discussions) with the other providers in such a manner as to treat the other as equals, who are afforded the ability to participate in a manner that permits the equitable exercise of power, which will generate a form of “communicative freedom” (Cohen, 1998, p. 186). I am afraid that we have a culture in South Africa that does not promote the notion of communicative freedom. As far back as I can remember, my parents enforced this ideal in our home, which I now use in my role with our children. We are constantly reminded of the importance of respect for positions of authority but seldom do we create spaces where individuals feel safe to express their ideals. As a result, when the authority imposes a law or stipulates a ‘final decision’, we seldom feel empowered to argue as, firstly, it would seem disrespectful to talk back to persons in a position of authority and, secondly, we are not in the practice of feeling safe enough to express our ideals when we know they are different from what others present. For this reason, when faced with situations such as the one of the M² institution, I do not believe that we felt it right to argue, as the space had not been

created where we (the other) felt we were equals. The first and most significant contribution deliberative democracy could offer is to be viewed as equals so that the voice of the minority could be allowed to change preferences and to contribute constructively towards policy formation.

6.3.2 Secondary research questions

The secondary research questions posed at the beginning of this study are discussed in this section.

6.3.2.1 What is the current legislation on private further education and training?

This section will consider the specific policy that has resulted in the exclusion of private tuition. The document in question is the Policy and Criteria for the Quality Assurance, Accreditation and Monitoring of Independent Schools and Private Assessment Bodies (RSA, 2017), which stipulates the following:

- ‘accreditation’ is now defined to include only accreditation of assessment bodies and independent schools. Whereas, independent schools are determined by their capacity to offer a qualification or programmes leading to a qualification on the G&FET Qualifications sub-framework (Umalusi, 2017);
- ‘certification’ means the formal recognition by Umalusi Council of a qualification or part-qualification awarded to successful learners (Umalusi, 2017);
- ‘part-qualification’ means an assess (examined) unit of learning that is registered on the NQF as part of a qualification (Umalusi, 2017);
- ‘private education institution’ as contemplated in the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001); This act stipulates that a private education institution is an education institution which, in terms of a law referred to in section 2, is an independent school, a private college or a private centre (RSA, 2009).
- ‘registered independent school’ is defined to mean an independent school registered by the PDoE in which the school is located in terms of section 51 of the South African Schools Act, 84 of 1996 (RSA, 1996).

As indicated in Chapter 2, this policy incorrectly refers to section 51 of the Act; it should be section 46 of the Schools Act, which addresses the registration of independent schools

The Act makes provision for the head of department to register an independent school. Only the head of department may allow any person to establish and maintain an independent school if he or she is satisfied that the standards are maintained, admissions do not discriminate and the school complies with the grounds for registration (RSA, 1996b).

The purpose of the policy document is to enable Umalusi to develop policy and criteria for the quality assurance, accreditation and monitoring of private education institutions, including independent schools (Umalusi, 2017).

6.3.2.2 How has legislation been interpreted to exclude such providers?

My interpretation of both the Constitution of the Republic of South Africa as well as the South African Schools Act is that any person has the right to start and maintain an independent school at his or her own cost as long as such person has the permission of the provincial head of department (education department) and that it is not inferior to that (education) offered by the state. This would presuppose that the institution therefore is within the rights of the Constitution and the Schools Act to establish an independent school.

It is important to note that the Schools Act, to which all other relevant Acts (those to do with the legislation of education in South Africa) refer, does not stipulate provision towards a full qualification as being a requirement for the registration of a school. The exclusion of private providers therefore does not stem from the Act itself. The exclusion is introduced by the amendments to the Policy and Criteria document (Umalusi, 2017). In accordance with sections 17A(2)(a)–(c), 23(1), 23(2) and 24(1)(b) of the General and Further Education and Training Quality Assurance Act, 2001 (Act B, 58 of 2001), the aim of the policy is to:

- (1) regulate the process for accreditation of an independent school or private assessment body seeking to offer a qualification registered on the GFET qualifications sub-framework through a quality assurance process that may lead to accreditation.

(3)(1)(1) stipulates that the policy applies to independent schools which are registered in accordance with the South African Schools Act, No. 84 of 1996) and offer a qualification ... (RSA, 2009).

Chapter 2 of this thesis provides an overview of the legislation, and in Chapter 5, examples were provided of how the omission of definitions have subtly changed the regulations and policies to no longer include companies that provide education or programmes that lead to qualifications. The legislation now only refers to the offering of qualifications. This is in contradiction to the purpose and rationale of the qualifications themselves, as discussed in Chapter 2, as well as the original mandate of SAQA as discussed in 5.4. By limiting the offering to qualifications by independent schools, private providers have been excluded from formal recognition at GET level.

6.3.2.3 What is deliberative democracy and which contributions could it make towards engaging this policy impasse in the South African educational legislation?

As discussed in Chapter 4, deliberative democracy is a form of government in which

[F]ree and equal citizens [and their representatives], justify decisions made in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens by open to challenge in the future (Gutmann & Thompson, 2004, p. 7).

The contributions deliberative democracy can make towards engaging this policy impasse in the South African educational legislation is to create a system of government where policy formation does not take place independently of the citizens who are bound to abide by it, and by providing the “most justifiable conception of dealing with moral disagreements in politics” (Benhabib, 2011, p. 138). This would contribute to the understanding that “the ‘generalised other’ requires us to view every individual as being entitled to the same rights and duties we would want to ascribe to ourselves” (Benhabib, 2011, p. 138). In the light of this study, this specifically refers to the right to have the option to receive consistent, quality Mathematics and Science instruction when the formal structures are unable to provide such.

6.4 A review of the research methodology

In Chapter 1, it was stated that the use of an autobiographical methodology would be applied in this study as an interpretive process of research conducted over four years (i.e. 2011–2014). This methodology was applied during the study in order to provide an opportunity to look back and resituate myself into the events in order to reinterpret the events and dialogues that resulted in this study.

By applying the autobiographical approach, I was able to make sense of the data in order to gain a good understanding of the process that took place and the way the decisions ultimately affected the accreditation and recognition of this institution.

In Chapter 3, the autobiographical methodological approach was reflected as applied to the case study using Brian Fay's (1996, p. 184) suggestion that when narrating the story, it should include not only the actions (or lack thereof) that took place, but also the intentions and the results of the actions and intentions.

In addition to the autobiographical approach, a historiographical methodology was applied, as reflected in Chapter 2, in order to identify and highlight the educational policy changes that took place during the period under discussion. Reflecting on this methodology, Chapter 2 provided an overview of the FETC policy and guidelines documents by indicating how the omission of definitions to amendments and removal of certain phrases and wording resulted in the exclusion of private providers from the quality assurance frameworks.

Chapter 4 of this study drew on the works of Cohen (1998), Waghid (2001) and Benhabib (2011) in order to provide a theoretical framework to create an understanding of deliberative democracy. Deliberative democracy was favoured as an alternate strategy to follow in the hope of identifying a sound reason that would convince the majority to hear the perspectives of the minority in order to identify an outcome that would be considered for the common good (see 4.3). In particular, the focus on deliberative democracy as a theoretical framework was discussed and considered in the light of the need for deliberate engagement that would focus on how fully inclusive the process should be.

6.5 Possible areas for further research

Whilst this study engaged with the principles of deliberative engagement in the role of accreditation and registration of private providers, in particular the institution

referred to in this study, there are other institutions affected by the policy changes over the years as well.

Possible areas for future research could be the development of a deliberative democracy framework that would create the environment for mutual and honest deliberations at national and provincial departments that would make provision for all reasonable education alternatives to be able to participate in the conversation.

The Acts, policies and regulations governing education in South Africa are too numerous for the limitations of this study. The possibility of further research could include an in-depth study of the each policy, its amendments and the resulting implications on education practices in South Africa.

Finally, further research could include the development of a quality assurance model of post-school education recognises the complexities of our history and one that creates opportunities for private providers to offer subjects in accordance with the intended mandate of SAQA and the NQF, in order to provide the citizens of this country with real opportunities for access, mobility and recognition of their learning.

6.6 Implications of and for further research

This study points out that private tuition industry falls outside of the quality assurance frameworks. The extra tuition is a growing industry where any person or business is able to provide extra tuition without any form of accountability. Parents are seeking out more opportunity for additional tuition to support their children's learning. With increased demand, the extra tuition industry is open to abuse. Currently, there is no regulatory or professional body regulating this industry. The implications are that there are many learners in South Africa receiving tuition from individuals unqualified to do so. Fly-by-night providers are emerging and the learners are the pawns in this system. Parents are parting with hard earned money without any means to ensure they have enlisted the services of a reputable provider/person. This is an area where further research is required. It is an area where the state has not created a space that will not disadvantage learners or abuse the desire of parents to provide the best opportunities for their children to excel.

6.7 Concluding remarks

Having reviewed the research problem, research questions and research methodology, I now conclude by providing a summary of what was considered in each chapter.

Chapter 1 provided a general introduction to the thesis and reported on the research proposal. A background was provided to the research problem, the statement of the problem presenting the context for the problem. This chapter reflected the research questions as well as the purpose and contribution of the research. In addition, the chapter provided an initial exploration of the problem and literature.

In Chapter 3, an autobiographical account of the case study was provided. The chapter also provided background and insight into the history of the institution at the heart of this study and a timeline of events. In order to demonstrate the willingness and determination of the institution to fall within quality assurance structures, this chapter also provided details of other avenues.

Chapter 4 focused on the notion of deliberative democracy, which comprised a discussion around the possible alternative strategies in order to demonstrate why the approach of deliberative democracy was favoured for the present study. This chapter provided an argument for the use of deliberative democracy and included discussions on the characteristics and purpose of deliberative democracy. The chapter also presented an understanding of the principles and aims of deliberative democracy, and considered the importance of the right to have rights.

In Chapter 2, the focus shifted to legislation governing South African education systems and their influence on the accreditation and registration of private tuition providers operating in the GFET arena. A historical account was provided of the events that led to the implementation of SAQA and how the establishment of the NQF was intended to create equal access, recognition and mobility for learners in the system. The study focused on the relevant Acts, policies and regulations that initially included companies and short course provisioning in their sights, but in 2017, amendments to these policies and procedures secured the exclusion of private providers from the quality assurance frameworks.

In conclusion, it was established that the implementation of SAQA in 1995 had every intention to create a framework that would provide equal access and recognition for

learner achievements. The invitation to the M² institution to apply for accreditation and the subsequent awarding of provisional accreditation to the institution by Umalusi are clear evidence of the intention to recognise all reasonable education alternatives. The instruction by the Minister of Basic Education together with the White Paper for Post-school Education and Training supports the need for specialised education for post-school learners seeking second-chance opportunities to gain entry into tertiary institutions. Section 29(1)(a) of the South African Constitution clearly stipulates that everyone has the right to basic education, including adult basic education, and Section 29(1)(b) adds that everyone has the right to further education, which the state, through reasonable measures, must make available and accessible, leaves me to conclude with the question: why – when there is sufficient evidence to indicate the need for improved Mathematics and Science provisioning for all learners and many teachers in this country – would the authorities instigate amendments to the policy frameworks that would bar private providers from membership?

The provisioning of a full qualification is the single qualifying requirement that has created the barrier for private provisioning, which has excluded providers from the formal quality assurance frameworks. The result of this is the exclusion of thousands of learners from advancing their personal, social and economic development. It is clear that the majority has overruled the voice of the minority.

In a democracy, the barring of this institution from membership must be justified to all those whose interests it affects. If we did not presuppose equal moral respect, we would not care whether the interests of some were simply neglected by the majority or overruled by the majority. At any point in time–

[I]f an agent or group of agents can show that they have been arbitrarily excluded from participating in processes through which norms are formulated, if their point of view have been suppressed, if their rights to symmetrical participating in conversation have been violated, and the like, then the presumptive norm cannot be valid until subject to further deliberation (Benhabib, 2011, p. 159).

I do not want to offer recommendations, as that would be too presumptuous for such an autobiographical study. This study was undertaken with the aim to raise the issue of offering opportunities, and this study therefore provides for further research and

analysis of a theory of deliberative democracy for policy formulation and accreditation.

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