



Chapter 8

The Stone Left Unturned: An Assessment of the Impact of Marketisation on the Higher Education Experience of Students with Disabilities

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Abstract

The marginalisation of persons with disabilities (PWDs) in South Africa and the world over is not a novel concept; this is evidenced by such persons experiencing poorer health outcomes, higher rates of poverty, economic exclusion, and lower educational achievements. Although general inroads have been made in the realisation of equality in South Africa, the Commission for Employment Equity's Annual Report for 2021-2022 notes that PWDs comprise 1.2% of the total workforce. Disability is viewed as both the proverbial seed and fruit of poverty and is regarded as a contributory factor to societal exclusion. Higher education institutions (HEIs) play a pivotal role in promoting lifelong learning in addition to the provision of skills, competencies, and expertise to the labour market. In conjunction with various societal stakeholders, HEIs are instrumental in eliminating barriers to entry experienced by students with disabilities (SWDs). In 2018, the Department of Higher Education and Training

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(DHET) published the Strategic Policy Framework on Disability for the Post-School Education and Training System. The Strategic Policy Framework is the first of its kind in the higher education sector and aims to advance the access of SWDs to HEIs. Access to the higher education sector does not only refer to the provision of assistive or technological devices, but is also intrinsically linked to prospects of success in the labour market as well as in the broader community. HEIs are placed at the epicentre of implementing the Strategic Policy Framework in addition to various other policies, legislation, and regulations that are generally applicable within the higher education sector. Moreover, HEIs play an indispensable role in establishing and transforming a co-ordinated higher education sector, as envisaged by the Higher Education Act 101 of 1997. The aforementioned role cannot be interpreted in isolation and must be observed through the lens of constitutional, legislative, policy, and societal obligations on the one hand, and commercial obligations on the other hand. In recent years, it has become apparent that the “traditional” perceptions of the role of higher education in South Africa have been imbued with commercial objectives, with specific emphasis on the principle of marketisation. Marketisation is a global occurrence that positions education as a commodity, utilised by students regarded as consumers. With the aforementioned in mind, this chapter assesses the impact of marketisation on SWDs as consumers in HEIs. As a point of departure, the chapter investigates the precarious position of SWDs generally in society as well as in HEIs. A two-fold legal framework is then introduced regarding SWDs and HEIs respectively. The principle of marketisation is discussed by taking into account its global origins and, specifically, in South Africa, where cultural, socio-economic, and language aspects play an important role in the consumption of the knowledge created by HEIs. The chapter then concludes by proposing guidelines to advance the higher education experience of SWDs as a result of marketisation, whilst taking into account their distinctly South African realities.

1. Introduction

Every person born (with a disability) holds two citizenships, (the first) in the kingdom of healthy and (the other) in the kingdom of the diseased. There is a third kingdom, and that is the land of the crippled. This is not a democratic land, but rather a dictatorship. Here the ordinary rights of privileged citizens do not apply. The kingdom is surrounded by a large wall, and most everything that takes place between the walls is unfamiliar and unknown to those outside.²

The marginalisation of persons with disabilities (PWDs) in South Africa and the world over is not a novel concept, as is evidenced by such persons experiencing poorer health outcomes, higher rates of poverty, economic exclusion, and lower educational achievements.³ The lives of PWDs are no different to living in Gallagher’s proverbial “land of the cripple”. Although general inroads have been made in realising equality in South Africa, the Commission for Employment Equity’s Annual Report for 2021–2022 notes that PWDs comprise 1.2% of the total workforce. Disability is viewed as both the proverbial seed and fruit of poverty and is regarded as a contributory factor to societal exclusion. Higher education institutions (HEIs) play a pivotal role in promoting lifelong learning in addition to the provision of skills, competencies, and expertise to the labour market.⁴ In conjunction with various societal stakeholders, HEIs are instrumental in eliminating barriers to entry experienced by students with disabilities (SWDs).⁵

2 Reiter *Disability from a Humanistic Perspective: Towards a Better Quality of Life* (2008) 34. This symbolic and literal separation of PWDs and the broader society persists to the current day in South Africa. See Government of the Republic of South Africa “White Paper on Rights of Persons with Disabilities” 2016 8. See also Government of the Republic of South Africa “Integrated National Disability Strategy White Paper” 1997 4.

3 World Health Organisation “WHO Global disability action plan 2014–2021” 2015 1. See also World Health Organisation “World Report on Disability” 2011.

4 Council on Higher Education *Kagisano Number 9: The aims of higher education* (2013) 5.

5 Mutanga “Inclusion of students with disabilities in South African Higher Education” 2018 *International Journal of Disability*,

In 2018, the Department of Higher Education and Training (DHET) published the Strategic Policy Framework on Disability for the Post-School Education and Training System (hereafter “the Strategic Policy Framework”). The Strategic Policy Framework is the first of its kind in the higher education sector and aims to advance the access of SWDs to HEIs.⁶

Access to the higher education sector does not only refer to the provision of assistive or technological devices, but is also intrinsically linked to prospects of success in the labour market as well as in the broader community. HEIs are placed at the epicentre of implementing the Strategic Policy Framework in addition to various other policies, legislation, and regulations that are generally applicable within the higher education sector. HEIs play an indispensable role in establishing and transforming a co-ordinated higher education sector, as envisaged by the Higher Education Act 101 of 1997.⁷ The aforementioned role cannot be interpreted in isolation, and must be observed through the lens of constitutional, legislative, policy, and societal obligations on the one hand, and commercial obligations on the other hand. In recent years, it has become apparent that the “traditional” perceptions of the role of higher education in South Africa have been imbued with commercial objectives, with specific emphasis on the principle of marketisation.⁸

With the aforementioned in mind, this chapter assesses the impact of marketisation on SWDs as consumers in HEIs. As a point of departure, the chapter investigates the precarious position of PWDs and a brief history of disability. Understanding the foundations of disability fosters a greater understanding of the classification of PWDs and their needs. In the interest of brevity, this chapter does not focus on the technicalities surrounding

Development and Education 229–242.

6 Mutanga (n 4) 231.

7 The preamble to the Higher Education Act 101 of 1997 makes reference to the redress that is required insofar as discrimination, equality, and issues of access are concerned.

8 Kruss “Distinct pathways: tracing the origins and history of private higher education in South Africa” 2006 *Globalisation, Societies and Education* 261–273. See also Cloete *et al* *Transformation in higher education: global pressures and local realities in South Africa* (2002) 9.

the definition of disability and it is assumed that SWDs have been adequately diagnosed. A two-fold legal framework is then introduced regarding SWDs and HEIs respectively. The principle of marketisation is discussed by utilising anecdotal evidence of the student experience on campus. The approach to marketisation is also discussed in the context of Covid-19 and socio-economic aspects that play an important role in the consumption of the knowledge created by HEIs. The chapter then concludes by making recommendations to advance the higher education experience of SWDs as a result of marketisation, whilst taking into account their distinctly South African realities.

2. A brief history of disability

2.1 Introductory comments

The etymology of the term “disabled” requires consideration. Prior to the use of this term, the use of the word “handicapped” was commonplace. The origin of the term “handicap” is traced back to betting games played between the 14th and 17th centuries, where two players would place their hands in a cap to pick articles placed in the cap simultaneously and to compare the values of the chosen articles. The players would then add a particular value to the lesser valued item to create equality between the value of both items chosen from the cap.⁹ This principle of creating equality between unequal items was then extended to horseracing and golfing. Various sources erroneously indicate that the word “handicap” has its origins in persons with impairments having to beg with ‘a cap in hand’ due to their being unable to make a living.¹⁰ It was only during the early 1900s that the concept was associated with having an impairment in a poster entitled “The Handicapped Child”.¹¹ The term “handicapped” was utilised in favour of words such as “cripple”, “retard”, “dumb”, “afflicted”, or “invalid”, which were deemed to be offensive at the time.

9 Admundson Handicap in Albrecht *et al* (eds) *Encyclopaedia of disability* (2006) 816.

10 Admundson (n 8) 816. See also Shapiro *Everybody belongs: Changing negative attitudes toward classmates with disabilities* (2003) 64.

11 Shapiro (n 9) 65.

2.2 Meaning of the term “disability”

The term “disabled” was predominantly used before the 19th century to describe how individuals were prevented from participating in various political, economic, or social spheres of the community due to certain laws.¹² Francis and Silvers make use of the example of the management and alienation of property being reserved for men exclusively, as a means to demonstrate how the principle of legal disability was applied in a different context.¹³ By the late 19th century, the use of the term “handicap” was gradually uprooted in favour of the term “disabled”.¹⁴ One of the reasons for the shift was attributed to the progression of medical science that brought with it different ways to classify people according to their ailments or illnesses as well as what was regarded as being “normal”.¹⁵

In the same manner that perceptions regarding disability were centred around the idea of normalcy in the 19th century, PWDs are still faced with various perceptions to date. This apposition of disability and normalcy gave rise to the term “normate” in the context of disability studies. Garland-Thompson coined the term to denote those in society whose bodily configurations and cultural capital allowed them to exert a certain level of power.¹⁶ In simpler terms, the normate is perceived as everything that the PWD is not. While Garland-Thompson’s contribution to disability studies, through the introduction of the concept of the normate, cannot be denied, it is also acknowledged that perceptions regarding normalcy shift depending on a particular type of society.¹⁷ Considering the aforementioned, it then becomes understandable that it may be challenging to define the term “disability” in a universally understood manner that encompasses the actual lived experiences of PWDs, considering

12 Francis and Silvers “Perspectives on the meaning of ‘disability’” 2016 *AMA J Ethics* 1025-1033. See Dolmage *Disability rhetoric* (2014) 9.

13 Francis and Silvers (n 11) 1026.

14 Davis *Beginning with disability: A primer* (2018) 10.

15 Baynton “Disability in history” 2006 *Perspectives* 44 5-7. See Francis and Silvers (n 11) 1027.

16 Dolmage (n 11) 10.

17 *Ibid.*

territorial borders, cultural considerations, socio-economic factors, and language.

2.3 Disability models

The language used in disability studies, as well as the use of various models of disability, are paramount in framing society's understanding of and response to disability. An understanding of the various models of disability creates the foundation for the awareness of the obstacles facing PWDs. Disability models serve as frameworks for interpreting disability in society and can provide awareness as to why certain perceptions exist and are pervasive. While the types of disability models identified in society are vast and range from a focus on economics to diversity, this study focuses on the religious or moral, medical, social, and socio-political models of disability. It is also important to note that in earlier days of civilisation, many stipulated models were widely applied without actually being classified as such. Additionally, it is important to remember that the implementation of models of disability would be dissimilar in developed as compared to developing states, particularly in Africa.¹⁸ The identification of disability models is an important contribution to disability studies. According to Smart, disability models serve numerous important purposes. They:

- provide definitions of disability;
- provide explanations of causal attribution and responsibility attributions;
- are based on (perceived) needs;
- guide the formulation and implementation of policy;
- are not value-neutral;
- determine which academic disciplines study and learn about PWDs;

18 Van Staden "A strategy for the employment of persons with disabilities" 2011 thesis, South Africa 57.

- shape the self-identity of PWDs; and
- can cause prejudice and discrimination.¹⁹

2.3.1 *The religious or moral model*

This model is, arguably, the oldest of all models identified, and is premised on the belief that disability is an act of God or an omnipotent source in response to not complying with societal morals or religious decrees. Disability, in this instance, is then viewed as either punishment, a curse, or a blessing meted out in respect of the PWD or their relative(s).

Disability was perceived in one of two ways: either evil (relating to the devil or from witchcraft) on the one hand, or angelic on the other.²⁰ This dichotomy of approaches to PWDs often resulted in community members either caring for the said persons, seeking cures or treatments for disabilities, or wanting to engage in rituals to remove disabilities.²¹

It is interesting to note that certain definitions differentiate between the religious and moral models as distinct theories; however, this author believes these models are interwoven due to the impact of morality on religion and *vice versa*. Consideration of the religious or moral model of disability sheds light on our current approach to disability as well as the pluralistic nature of disability and religion alike. The relationship between religion and disability is complex and can be viewed from different vantage points, especially against the backdrop of Abrahamic religions.

In Judaism, Leviticus 19:14 provides as follows: “Thou shalt not curse the deaf, nor put a stumbling block before the blind”.²² While this particular verse has been interpreted numerous times to imply that PWDs should be treated like able-bodied persons

19 Smart “Models of disability: The juxtaposition of biology and social construction” in Rigger and Maki (eds) *Handbook of rehabilitation counselling* (2004) 25.

20 Clapton and Fitzgerald “The history of disability: A history of ‘otherness’” 1997 *New Renaissance Magazine* <http://www.ru.org/index.php/human-rights/315-the-history-of-disability-a-history-of-Otherness> (09-11-2022).

21 Clapton and Fitzgerald (n 19).

22 Jewish Publication Society *Tanakh* (1917) 168.

and should be included in society, there are other instances where PWDs are perceived negatively. In Isaiah 56:10, the prophet Isaiah uses disability metaphorically to express his disdain for Israel's leadership at the time. He states: "His watchmen are blind: they are ignorant, they are all mute dogs, they cannot bark".²³ In utilising the above metaphor, Isaiah frames disability in a harmful manner, albeit possibly unintentionally.

In Christianity, the Bible is dotted with references to persons who were blind, deaf, paralysed, mute, or had leprosy through the depiction of Isaac, Eli, Jacob, Ahijah and numerous others. Disability is linked to punishment for disobedience or sin, as is evidenced by God's infliction of paralysis and leprosy upon Jeroboam and Uzziah, respectively. Conversely, we are also introduced to a more inclusive approach to PWDs in the Christian Bible. In Jeremiah 31:8, God assures His remaining Israelite followers that they will return to Jerusalem, and endorses the status of PWDs as equals, as follows: "See, I will bring them from the land of the north, and gather them from the ends of the earth, among them the blind and lame".²⁴

In Islam, the Qur'an does not specifically refer to the term "disability" but does refer to those who are disadvantaged.²⁵ The Qur'an 24:62 states: "There is no harm for the blind and there is no harm for the lame, and there is no harm for the sick".²⁶ This particular verse could be interpreted to display the manner in which PWDs and abled-bodied persons were regarded as being equal. Similarly, as with Christianity and Judaism, the Qur'an includes various references to being blind. The word "blind" (as well as derivatives thereof) is located in 32 places in the Qur'an and, in most instances, is utilised to convey instances

23 Jewish Publication Society (n 21) 646.

24 *King James Bible* (2017) 903 <http://triggs.djvu.org/djvu-editions.com/BIBLES/KJV/Download.pdf> (10-09-2022). The Jewish Bible also contains a similar reference disability in Jeremiah 31:8.

25 Bazna and Hatab "Disability in the Quran: The Islamic alternative to defining, viewing and relating disability" 2005 *Journal of Religion, Disability and Health* 5-12.

26 *The Qur'an* (translated by Maulawi Sher Ali) (2015) Part 18 <https://www.alislam.org/quran/Holy-Quran-English.pdf> (10-09-2022).

that describe persons as being blind in the divine sense, which unintentionally creates a negative connotation relating to PWDs.

While the religious or moral model enjoys very limited application in our current society, the remnants of this model are still found in certain sects of society where disability is viewed as a challenge or obstacle introduced by a higher power to test the faith or spiritual tenacity of the PWD. Over the years, and as a result of an evolution in the concepts of religion and morality, as well as the progressions in medicine and science, the medical model of disability gained global prominence.

2.3.2 *The medical model*

The medical model presupposes that disability is mainly a health and welfare matter, with an individualistic and dependency-based approach at its nucleus. This model regards disability as a medical conundrum that resides or lives solely in the body of the PWD and is sometimes referred to as the individual model. By use of an analogy, if one were to apply the medical model to a person who is wheelchair-bound, it would then mean that their disability would be limited to their medical diagnosis and that the all-encompassing solution to their disability would be a wheelchair or similar assistive device. This model's fissures become apparent when the person who is wheelchair-bound then encounters accessibility and inclusivity challenges that cannot be addressed from a medical perspective or with the use of the wheelchair.

According to Strax: "From the beginning of time, humankind has wrestled with the paradox of what to do with persons with disabilities. In ancient times, they were simply put to death. They were a burden to the tribe".²⁷ In the same vein, the medical model of disability is impairment-centred and ascribes the obstacles encountered by the PWD directly to their problems and not to society's failure to accommodate them. The medical model typifies PWDs as ailing, feeble, and incapable of securing employment.²⁸ It has also been argued that the medical model is

27 Strax "Consumer, advocate, provider: A paradox requiring a new identity paradigm" 2003 *Archives of Physical Medical Rehabilitation* 943-944.

28 Smart (n 18) 29.

the first formal disability model in the field of disability studies. Central to the medical model is the artificial contrast between one's impairment and what is viewed as conventional by society. This contrast is attributed to the notion that PWDs are fragile, debilitated, and unable to work.²⁹ The application of the medical model in HEIs could prove detrimental, as focusing on impairment alone could perpetuate numerous stigmas.

While an array of research and accompanying perspectives exists regarding the models of disability, there is a general consensus regarding the onset of the medical model in society. The eminence of the role of medical doctors and the development of modern medicine during the late 18th and 19th centuries gave rise to the medical model of disability.³⁰ While there has been a wealth of research to support the detrimental effects of a narrow application of the medical model of disability in society over the years, this particular model should perhaps be considered in a greater context.

2.3.3 *The social model*

The social model of disability was developed in direct response to the medical model and regards disability as being the result of the attitudes and perceptions of broader society and rather than a physical impairment. The social model introduced an adjustment of how PWDs were perceived after the medical model. Moreover, the social model has led to numerous advancements in altering perceptions surrounding disability, thus improving the day-to-day existence of PWDs.³¹ In utilising the previously mentioned analogy of a person who is wheelchair-bound to explain the medical model, the social model would focus on the barriers that are prevalent in society that prevent the PWD from participating freely in society and not just the medical diagnosis that has led

29 Sullivan "The prevalence of the medical model of disability" 2011 *AHS Capstone Projects Paper 13*.

30 Council on Higher Education (n 3) 61; Also see Sullivan (n 28) 3; Wiita "What is the medical model? And why do people seem to hate it so much?" 2018 <https://www.byhappenchance.com/blogroll/what-is-the-medical-model> (04-09-2022).

31 Oliver "Defining impairment and disability: Issues at stake" in Barnes and Mercer (eds) *Exploring the divide* (1996) 29.

to the disability. In the context of HEIs, many SWDs are given support away from their able-bodied peers. The construct that could develop in this instance may be very narrow, further supporting the view that greater inclusion is required for SWDs in HEIs.

In stark contrast to the medical model, the social model considers elements such as inclusivity, access, and participation of PWDs in society as central to eliminating disability discrimination. The social model gained prominence as a result of the voices of PWDs who, outside of their medical diagnoses of disability, requested that they be accommodated more in society with regard to access to buildings and facilities at first. PWDs called for changes to the attitudes and ideologies that have, over the years, negatively impacted their treatment and acceptance by society. Such a call to action by PWDs is also one factor that distinguishes the medical and social models. The former was created by professionals to the exclusion of PWDs and to “fix” or cure those who were not regarded as normal, whereas the latter model was a result of the activism of PWDs themselves.

It is contended that the medical model has played an important role in the diagnosis and treatments of certain disabilities. It is argued by Shakespeare that caution should be exercised prior to disregarding the medical model in its entirety and that a balance should be struck when considering each of the disability models.³² Shakespeare further argues that disability should be regarded from both the medical and social models, but that caution should be exercised so as not to place too much emphasis on individual or surrounding factors when considering disability models.³³

While this chapter highlights three particular disability models that, arguably, form the foundation for other models, it is important to acknowledge the vastness of this particular area of disability studies and the concept of “disability”. Various schools of thought have also developed regarding the approach to the various disability models. On one hand, there is a view that

32 Shakespeare *Disability Rights and Wrongs* (2006) 12.

33 Shakespeare (n 32) 12.

increased research in the field of disability studies would lead to greater understanding of PWDs. Several calls for research have been made by numerous parties with the aim of eliminating participation barriers that PWDs encounter in society.³⁴ On the other hand, there is also the view that if one gives too much attention to theorising about the various disability models, it may detract from the actual plight of PWDs insofar as equality, accessibility, inclusivity, and anti-discrimination are concerned.³⁵

3. Applicable frameworks

3.1 Introductory comments

For purposes of this study, it is important to consider the legal frameworks surrounding SWDs as both members of the disability community as well as consumers in the higher education sector. This dichotomous approach allows for the identification of intersections as well as gaps in our approach to SWDs.

3.2 The conceptual framework for SWDs as members of the disability community

The dawn of South Africa's new democratic and constitutional dispensation (specifically driven by section 9 of the Constitution of the Republic of South Africa, 1996) culminated in the introduction of legislation such as the Employment Equity Act (EEA)³⁶ and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)³⁷ to promote substantive equality in relation to PWDs. While formal equality aims to treat everyone equally regardless of context, substantive equality seeks to atone for disadvantage. It is even argued that the current perceptions

34 World Health Organization. "World Disability Report" 2011 13 http://int/disabilities/world_report/2011/report.pdf (16-09-2022). Also see Department of Women, Children and People with Disabilities "Baseline Country Report to the United Nations on Implementation of the CRPD in South Africa 2008-2012" 2013 77.

35 Oliver *The Politics of Disablement* (1990) 10.

36 the Employment Equity Act (EEA) 55 of 1998.

37 the Equality and Prevention of Unfair Discrimination Act (PEPUDA) 4 of 2000. This legislation is applicable to SWD in any context outside of the Employment Equity Act 55 of 1998.

of substantive equality are too linear, as they often do not include issues such as addressing stereotypes, stigma, violence, and inclusivity.³⁸

Section 9 of the Constitution provides that:

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination. (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.³⁹

To this end, the EEA was implemented in 1998 to eliminate unfair discrimination and to implement affirmative action measures in respect of previously disadvantaged groups. The EEA introduced the concept of “designated groups” (comprising black people, women, and PWDS) as the intended beneficiaries of affirmative action measures. Those who are classified as “designated employers” in the Act are mandated to implement affirmative action measures as defined by section 15.⁴⁰ In addition to the

38 See Fredman “Substantive equality revisited” 2016 *IJCL* 712–727.
39 Constitution of the Republic of South Africa, 1996 (hereafter “the Constitution”).

40 The affirmative action measures identified in s 15 of the Employment Equity Act 55 of 1998 must include mechanisms to identify and eliminate barriers experienced by PWDs in the workplace. Additionally, designated employers are required to promote diversity, equitable representation, retention and

affirmative action measures contained in the EEA, SWDs may, as prospective employees, be impacted by the provisions of the EEA that prohibit unfair discrimination.

While it is useful to consider the prospective position of SWDs in the workplace, it is also important to consider the position of SWDs in their daily lives outside of employment. PEPUDA was promulgated in 2000 to also give effect to section 9 of the Constitution.⁴¹ This Act also seeks to promote equality by preventing and prohibiting unfair discrimination as well as preventing and prohibiting hate speech. Insofar as possible intersections between the EEA and PEPUDA are concerned, section 5 of PEPUDA provides that the aforementioned legislation does not apply to persons and matters falling within the ambit of the EEA.⁴²

3.3 The conceptual framework for higher education

The term “higher education” is used to identify the period of education that follows secondary education. Due to the impact of the legacy of apartheid on the South African educational landscape, it is vital to consider a brief history of higher education. In 1916, the Union of South Africa passed the University of South Africa Act.⁴³ This legislation led to the establishment of the University of South Africa. The year of 1916 also gave rise to the Joint Matriculation Board for purposes of curriculum design and regulating examinations and, ultimately, entrance to universities.⁴⁴ These events are to be viewed against the

development of suitably qualified individuals forming part of the designated groups. Designated employers are also required to reasonably accommodate PWDs within the ambit of the EEA and the ancillary Code of Good Practice on Employment of Persons with Disabilities of 2015.

41 the Constitution (n 39).

42 The EEA is applicable to certain employees as well as designated groups and employers, whereas the PEPUDA binds the State and all persons. It is also important to note that legal proceedings in terms of the EEA are, generally, instituted in the High or Labour Court and matters that fall within the ambit of the PEPUDA are instituted in the Equality Court.

43 the University of South Africa Act 12 of 1916.

44 Herman “School-leaving examinations, selection and equity in Higher Education in South Africa” 1995 *Comparative Education*

backdrop an increase of British residents entering South Africa after winning the South African War. The urge of the British to introduce Anglicisation throughout South Africa had numerous effects. An increase in British foreign nationals entering South Africa, with varying qualifications, was observed, which was then countered by Afrikaner nationals who wanted to introduce their own educational programme, focused on Christianity.⁴⁵

Over the next four decades, the number of higher education institutions in South Africa increased by the time the National Party came into power in 1948.⁴⁶ During its tenure, the National Party introduced various segregation-focused policies and legislation – such as the Group Areas Act⁴⁷ and the Bantu Education Act⁴⁸ – that would impact the higher education sector. The Group Areas Act forced physical segregation between races, which meant that persons of colour would not have access to the same HEIs as their white counterparts. The Group Areas Act is often referred to as the keystone of the National Party’s segregation policies.⁴⁹ The Bantu Education Act was promulgated to create a distinct education system for black students, further promoting segregation and white supremacy.⁵⁰ This legislation placed the education of persons of colour under the control of the government and was aimed at limiting their education to unskilled labour. The role that the Bantu Education Act continues to play in HEIs cannot be oversimplified. Many graduates, including SWDs, remain financially responsible for numerous ascendants and descendants due to the lower education levels and incomes pervasive in some black homes across generational lines.⁵¹

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- 45 Raju “The historical evolution of university and technikon education and training in South Africa: implications for articulation of LIS programmes” 2004 *Innovation* 1-12.
- 46 MacMillan “Christian National Education” 1967 *Theoria* 43-45.
- 47 the Group Areas Act 41 of 1950.
- 48 the Bantu Education Act 47 of 1953.
- 49 See Schoombee “An evaluation of aspects of group areas legislation in South Africa” 1987 thesis, South Africa 1.
- 50 See Anderson “To save a soul: Catholic mission schools, apartheid, and the 1953 Bantu Education Act” 2020 *JRH* 149-155.
- 51 Whitelaw and Branson “Black tax: Do graduates face higher remittance responsibilities?” 2020 *SALDRU* 1-5. <https://www.opensaldru.uct.ac.za/bitstream/handle/11090/1000/2020-black->

After democracy prevailed in South African in 1994, the Higher Education Act⁵² was promulgated to regulate higher education, create the Council on Higher Education, elect various office bearers, provide for the creation of private education institutions and to deal with matters incidental to establishing and funding public universities. In its preamble, the Act states as follows:

Whereas it is desirable to: ...

Redress past discrimination and ensure representivity and equal access;

Provide optimal opportunities for learning and creation of knowledge;

Promote the values which underlie an open and democratic society based on human dignity, equality and freedom;

Pursue excellence, promote the full realization of the potential of every student and employee, tolerance of ideas and appreciation of diversity...⁵³

Taking the above into consideration, various intersections can be observed between the preamble of the Higher Education Act of 1997 and section 9 of the Constitution.⁵⁴ In 2018, the Department of Higher Education and Training (DHET) published the Strategic Policy Framework on Disability for the Post-school Education System. This policy framework is lauded as being the first policy document to indicate the government's stance insofar as SWDs in HEIs are concerned.⁵⁵ The Strategic Policy Framework was created as a result of the White Paper for Post-School Education and Training that was launched in 2014. At the launch of this White

tax-siyaphambili.pdf?sequence=1 (27-09-2022). The term "black tax" ordinarily refers to the financial contributions made by black professionals to family members who are in need of financial assistance.

52 the Higher Education Act 101 of 1997.

53 *Ibid.*

54 The themes created in the preamble of the Higher Education Act are congruent with s 9 of the Constitution and the legislation that has been enacted to give effect to the principle of equality.

55 Government of the Republic of South Africa "Strategic Policy Framework on Disability for the Post-school Education and Training System" 2018 2.

Paper, Minister of Higher Education, Science and Technology Blade Nzimande acknowledged that, despite the existence of international conventions, legislation, policies, and guidelines, the management of disability in HEIs was disjointed.⁵⁶ The scattered approach to disability by HEIs necessitated the creation of the strategic framework. Nzimande also noted that current programmes for SWDs operate in isolation from “mainstream” programmes to bring about diversity and transformation.⁵⁷ This particular approach by HEIs can again be understood by way of Gallagher’s analogy of the “land of the cripple”, discussed earlier. In operating separately from other programmes, the structures within HEIs place more reliance on the medical model of disability without consideration of the social context of disability in HEIs and communities surrounding SWDs. The Strategic Policy Framework is divided into four parts that provide context regarding the document’s purpose, approaches to disability, and the strategic intent implementation of the policy. At its core, the framework identifies various ways that HEIs can standardise their approaches to SWDs. The framework suggests the standardisation of models and approaches⁵⁸ to a disability, support services, data reporting, and institutional policies. Regarding teaching and learning, the framework calls for pedagogical practices that consider inclusivity and the social context.⁵⁹

Physical access to HEIs plays an important role in the day-to-day lived experiences of SWDs. To this end, the framework suggests audits to assess accessibility. The way institutions address their budgeting process should also be considered, as there is a misconception that all assistive devices are expensive.⁶⁰ While the framework’s intent is understood, this document has not escaped criticism. Mutanga questions why the policy framework places the responsibility for SWDs solely on the

56 Government of the Republic of South Africa (n 56) 13.

57 *Ibid.*

58 The models of disability influence how disability is classified and approached. Standardisation could be helpful in the case of psycho-social disabilities that cannot be seen with the naked eye.

59 Government of the Republic of South Africa (n 56) 57.

60 *Ibid.*

shoulders of the DHET and⁶¹ ultimately HEIs, with no mention of other government departments, the private sector, or the SWDs themselves. Creating an inclusive and diverse HEI for SWDs necessitates support and input from various stakeholders to ensure that proposed solutions are robust, useful, and cost-effective. Another crucial oversight noted by Mutanga is that all SWDs were regarded as the same, as if with similar needs. To illustrate, the level and frequency of support required by a student who is wheelchair-bound and another student who has a mental disability are distinct. A failure to recognise this aspect would edge SWDs away from substantive equality.

4. Marketisation and SWDs

“Marketisation” refers to a global phenomenon that regards the HEI as a business that offers education as a commodity to students, who are identified as consumers.⁶² Marketisation implies that HEIs are constantly evolving to meet the needs of the market. Marketisation has several advantages, such as improving HEIs through competition, being responsive to the labour market’s needs, and creating “non-traditional” mechanisms to generate revenue.

The impact of marketisation in South Africa was, perhaps, more evident during the Coronavirus-induced lockdown that commenced on 30 March 2020. Students and academics had to augment their teaching, learning, and assessment approaches which, for many, meant that lectures and assessments migrated to a virtual campus. Marketisation has additional benefits, such as increased private investment in education and greater university access.⁶³ Conversely, it is argued that, in certain instances, marketised HEIs may yield to students’ demands on account of the

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- 61 Mutanga *et al* “South Africa’s new higher education disability policy is important, but flawed” *The Conversation* 2022 <https://theconversation.com/south-africas-new-higher-education-disability-policy-is-important-but-flawed-99703> (20-09-2022).
- 62 Bolsmann and Uys “Pre-empting the challenges of transformation and marketisation of higher education: A case study of the Rand Afrikaans University” 2012 *Society in Transition* 173-179.
- 63 Brown “The marketisation of higher education: issues and ironies” 2015 *New Vistas* 1-6.

adage that “the customer is always right”. During the COVID-19 pandemic, HEIs were impacted by governmental regulations, cost constraints, and revising their pedagogical approaches, all while remaining competitive within the South African higher education sector. Students – particularly those who resided on campus prior to the COVID-19-induced lockdown and who subsequently were forced to leave campus – were faced with various socio-economic realities at home, such as lack of electricity and running water, hunger, the cost of data, no access to laptops or devices, and managing their mental health while attending classes remotely.⁶⁴ During a student housing conference hosted by the University of Cape Town, the importance of cultivating a safe space for students to address their mental health issues was highlighted.⁶⁵ HEIs throughout South Africa were now faced with marketisation viewed through the lens of various socio-economic factors faced by students and lecturers.

The position of SWDs in the context of marketisation is even more ominous. SWDs are faced with a double-edged sword. SWDs experience conventional issues faced by students daily (such as those highlighted above), and then these are then compounded by challenges experienced at HEIs that are specifically linked to their particular disability. These issues include, but are not limited to, approaches to disability, access, discrimination, stigma, violence, and their particular mode of learning in certain instances. In some instances, SWDs deal with accessibility issues in their respective lecture halls and then again at their campus residence. In a study conducted in 2021 that interviewed ten University of South Africa SWDs,⁶⁶ various themes were identified. Digital literacy, loss of human dignity, duration of online assessments,

64 Whitelaw *et al* “Learning in lockdown: University students’ academic performance during COVID-19 closures” 2022 *SALDRU Working Paper Series* 1-3.

65 UCT News “Emphasis on mental health at student housing conference” 2021 <https://www.news.uct.ac.za/article/-2021-11-18-emphasis-on-mental-health-at-student-housing-conference> (23-10-2022).

66 Ngubane “Online learning can be hard for students with disabilities: how to help” 2021 *UNISA News* <https://theconversation.com/online-learning-can-be-hard-for-students-with-disabilities-how-to-help-158650> (23-10-2022).

assistive devices, and logistical problems were highlighted. Issues pertaining to lecturers that were ill-prepared to work with SWDs and difficulties pursuing qualifications in fields of science, technology, engineering, and mathematics also came to the fore.⁶⁷ According to Ntombela:

When all HEI operations were moved online due to lockdown protocols, it exposed how under-prepared we were in supporting students with disabilities. The transfer of academic programs to online spaces brought various challenges to the teaching and learning process, and all students suffered in one way or the other.⁶⁸

5. Conclusion

Taking the above into consideration, it is apparent that marketisation affects students in HEIs throughout South Africa and globally. This chapter highlights a fragmented approach to SWDs, and PWDs in general. Firstly, SWDs are sometimes given support in HEIs through structures that are removed from “mainstream” services used by able-bodied students. This approach infers a greater focus on the medical model of disability and not the social context surrounding each SWD. At a governmental level, South Africa has promulgated various pieces of legislation, in addition to policy frameworks and white papers, to address the needs of PWDs. The absence of a single document to address the gamut of issues faced by PWDs further obscures their attainment of substantive equality.

While marketisation has brought about many positive results, it seems counterproductive that HEIs have improved their global footprints, revenue, technological approaches and infrastructure, without vigorously addressing the unturned stone – SWDs. Greater awareness is required amongst lecturers about disabilities to allow SWDs a fair opportunity at success.

67 Ngubane (n 68).

68 Ntombela “Reimagining South African higher education in response to COVID-19 and ongoing exclusion of SWDs” 2020 *Disability & Society* 534-536.

Support structures for SWDs often operate in the periphery of higher education activities. It is suggested that HEIs augment their marketisation approaches to introduce uniform rules for the treatment of SWDs in the higher education sector, broadly.

A co-ordinated approach to SWDs is aligned to the co-ordinated approach envisaged by the Higher Education Act.⁶⁹ Such uniformity may assist in identifying and entwining disability issues throughout HEIs. Once issues are identified, HEIs would then be tasked with highlighting the role that each member of the HEI community plays in their particular interaction with SWDs. An identification of each stakeholder's role deviates from the approach in Strategic Policy Framework on Disability for the Post-School Education and Training System⁷⁰ and considers disability within its particular social context. Regardless of the fragmented approach to disability in South Africa, it remains crucial to observe disability as an "us" and not a "them" matter as this perspective assists in, arduously, removing the bricks surrounding disregarded inhabitants of Gallagher's "land of the cripple".

69 See Government of the Republic of South Africa (n 56).

70 *Ibid.*