

## FEASIBILITY OF MAKING HIGHER EDUCATION FEE FREE

BY Mr S.G Nzuza

The chairperson of the commission and his panel, associates of diverse media houses present here today, renowned delegates from both the public and private sector and most importantly the South African community (especially the third class of the people of the country and the students of higher learning country wide), I greet you all in this gathering which reinforces our democracy as this is one of the best podiums for the voice of us the people to be perceived. This platform is marked and marked again to our democracy by the constitution of the republic on different sections, but notable in the preamble of the constitution where it is plainly specified that the Republic of South Africa must be governed as per the will of the people.

Chairperson and the panel allow me to firstly start by showing gratitude the commission for permitting me to make this submission, on the **FEASIBILITY OF MAKING THE HIGHER EDUCATION FEE FREE**. I have categorised this submission into two folds, firstly, I will consider the historic inequality and the consequences of the fees in the institutions of higher learning to the majority of the people of this country. The second, which is the last part will be my recommended resolution to the issue at hand.

### FOLD ONE

Our today new and a multi-coloured nation, South Africa, is convalescing from the history of life-threatening inequalities and discrimination. In both areas of public and private life, the majority of the people of this country had to live on the regular basis with this marked diverse kinds of inequalities and discrimination. For the purposes of this submission I will exclusively be centred on the inequalities in the institutions of higher learning within the country, during apartheid times. The area of education (more in particular, the higher education) which is of paramount needed in every society as it where individuals, particularly the youth are educated and equipped to enhance themselves, their society and the world at large. However in our history this vivacious area was triumph with the extremist of inequality at the advantage of the minority groups only.

I say this inequalities were at the advantage of the minority groups because the majority of the people of this country, particularly blacks, were not allowed to advance their education to a certain level. This view was demonstrated by the former President of this country who is known as being the architecture of apartheid, Hendrik Verwoerd, who is on record stating the above, avowing that: *“there is no place for (Bantu) in the European community above the level of certain forms of labour...what is the use of teaching a black child mathematics when it cannot use it in practice”*. The consequence of the latter was obnoxious to the majority of the people of the country as they ended up working on the jobs which were not of their choice but envisioned by the apartheid government, jobs with reduced paycheques which resulted in them then dwindling to pay for the fees of their children in the institutions of higher learning and those few who were fortunate to pay them they also ended up on the careers which were not of their choice. While on the other hand the minority of the people of

this country enjoyed all the benefits from their apartheid government, all things were approving them in all respects. They were at the careers of their choice, earning more than double the amount of the black worker. Thus managing and affording to pay for the fees of their children and families.

The above consequence is still with us even today, despite the arrival of our constitutional democracy, notwithstanding the progress we have made as a country in this twenty two years of democracy. In evidencing the latter, I will recall on the view and analysis of the court which was used in *Prinsloo v Van der Linder*, where the court held that:

*“until recently, very many areas of public and private life were invaded by systematical legal separateness coupled with legally enforced advantage and disadvantage. The impact of structured and vast inequalities is still with us despite the arrival of the new constitutional order. It is the majority, and not the minority, which has suffered from this legal separateness and disadvantage”.* (at para. 20)

The above is a prima facie evidence that the majority of the people of this country indeed have ached from the inequalities of apartheid, more chiefly in the field of education. The fees (higher fees) on higher learning institutions in this new constitutional order are the extension and an impact of the past designed and vast inequalities of which a number of the majority of the people of this country are still anguish and disadvantaged by it. The government have tried on conquering this inequality, but it keep on displaying it unpleasant head now and then. The underprivileged are heavily contingent on the two forms of funding in order to further their studies, firstly, the bursaries and secondly the National Students Financial Aid Scheme. Thus if one did not obtain either of the above it means the fading of the dreams and goals which could have taken this country very far, even the world.

The continuation with this system where the higher education is not fee free will have very ruthless and unjust consequences especially in this modern time, the fissure between those who are thriving financially and those who have nought will endure to manifest itself, the progression of our economy will always be at middling or far lower than that, the level of crime and corruption will be at topmost year in and out, our standing as the country to the world will be very poor and most notably it will mean the futile and miscarriage of our Constitution of 1996, because the right to equality is a right and a value that strengthened and acts as a foundation to our constitution.

## **FOLD TWO**

The preamble of our constitution orders that in this new indulgence of democracy *“...Government is based on the will of the people..., improve the quality of life of all citizens and free the potential of each person”*. This command direct and gives the government obligation, the obligation of improving the quality of life of **all** citizens of the country. The question I ask than is that, if the constitution commands the latter who can say no to that because **s2 of the constitution**, noticeably states that the constitution is the supreme law of the land, any law or conduct inconsistent with is invalid. The miscarriage of the government to allow access on higher education is in clash with the above mentioned part

of the constitution. The NSFAS, is not sufficient in improving the quality of life of all students and prospective students of higher learning. Thus that lead to the failure on the side of the government to free the potential of every student, which is also in conflict with the constitutional preamble.

In addition to the preamble of the constitution of the country, s1(a) of the constitution commands that the country is founded on the following values, **human dignity, the achievement of equality and the advancement of human rights and freedoms**. The failure of the government to accommodate all poor the students in its budget for the NSFAS is in itself to those poor students who by limited funds did not qualify to be funded a disgrace, it is directly against the human dignity value as they in a way feel not being considered as humans no dignity exists. As the funds from the government year by year have proven to be very limited compared to the number of students who are in need for it and on the other side institutions of higher learning year to year they increase the tuition fees, this on it own is the indication that the achievement of equality is something of which is very out of question. Thus the advancement of human rights and freedoms is also something in this regard which can only be taken as a goal which seems difficult to achieve if there is no change in the system in use.

There is a very important case to our democracy with regards to the above values which acts as the foundation to our constitution. The case of *The Economic Freedom Fighters v The Speaker of the National Assembly*, here the court gave effects and affirmation to section 1 of the constitution when it held, *“section 1 is the majestic proclamation of that which we hold to be best in our society...these are not values upon which we should give up lightly. These are values for which generations of South Africans fought and died for. As a nation they are our autobiography. They must be taken with utmost seriousness by all South Africans, no matter their political persuasions. They call on all who live in this country to see these values as trumps over any and all political affiliations”*. (at para.27)

As from 1955 in the famous **Freedom Charter**, which was presented by **ZK Matthews** at the **People’s Congress in Kliptown** until now the majority of the people believe that in achieving the equality in our society the doors of learning shall be open to everyone. I am also making this call to our government, thousands of people have struggled and died for this dream to be shamelessly ignored today. We as the community of this country mainly, the students, we do believe that time for free education has come. After so many years it would be much unanticipated that the Treasurer of this country cannot find reserves to fund the education of the poor students.

The above have hint me to the resolution of the question at hand, I stalwartly believe that the appropriate and a spot-on solution to this issue can be found within the constitution as it is the pillar in our country, nothing can be done without consulting it, if by mistake or ignorance that happens it would be null and void.

**Section 9(2) of the constitution for me is the correct, just and fair solution to the issue at hand. Before showing it application to the present issue I will provide what its says in plain. “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**

**and advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken”.**

I therefore propose this section as the solution to this issue, in outer layer, free education should only be provided to those who are recognised as the third class of the people. Persons who do not have much, whom even in their periodic earning do not afford much less than elementary food and services like the bus fare to work and sometimes a pocket money of no more than R10 to school per day. While I submits that those who are recognised as the second and first class who can afford paying the fees of their children or themselves should continue paying.

The above can be of greater help to the country, the level of well-educated labourers in the country will equally increase, the degree of crimes will also decrease as some even compels themselves to crime in order to find money for tuition, the growth in the GDP and our economy at large will rise, the level of affordability will also be at best thus cutting the spending on the side of the government on social services as the majority of the people in South Africa will obtain the standard of affordability and above all the achievement of equality will then here be achieved. Most importantly the government can afford at least to pay for the education of only those individuals in dare need (the third class).

**Ngcobo J, in the Bato star case**, he was of the view that **section 9(2) of the constitution**, is the clause which will help the country in advancing with regards to equality. He held that, *“our constitutional order is committed to the transformation of our society from a grossly unequal society to one in which there is equality between men and women and people of all races...the effects of inequality may continue unless there is a commitment to end it.”* (at para.74). The said proposal is the clear commitment of which the government must espouses in termination of the inequality in the higher education field.

I foretell demurrals with my proposed view, some may contend that the proposed solution is not with spirit and objective of equality. However, I can castoff that demurral by saying that **section 9(2) of the constitution** as long been said by our courts has a transformative task, the establishment of equal society is without a disgrace founded on it. This view was fittingly barbed by the court in the **Bato star** case,

*“...we must not underestimate them. The measures that bring about transformation will inevitably affects some members of the society adversely, particularly those coming from the previously advantaged communities. It may well be that considerations may have to yield in favour of achieving the goal we fashioned for ourselves in the constitution. What is required, though, is that the process of transformation must be carried out in accordance with the constitution”.* (at para. 78)

The above view from the constitutional court is purely and without uncertainties in backing of my proposed view. Thus the duty imposed by the constitution with regards to the higher education, of particular **section 29(1)(b)** of the constitution must be fulfilled by the government.

As it was presented by ZK Matthews, the doors of learning shall indeed be open to everyone.

**FREE EDUCATION IS THE TRANSFORMATIVE ACTION, FREE EDUCATION IS THE SOLUTION TO EQUALITY.**

Mr SGNZUZA