

TRANSCRIPTION

Commission of Inquiry into Higher Education and Training during SET 3

Chairperson : Judge Jonathan Arthur HEHER

Commissioners : Advocate Gregory ALLY

: Ms Leah Thabisile KHUMALO

Evidence Leaders

: Advocate PILLAY

: Advocate LEKOANE

: Advocate ZULU

: Advocate MABUDA

Expert

: Prof T Mosia

: Dr G Simpson

Witnesses:-

(1) Professor Andre du Toit

(2) Mr MBULELE BIKWANI

(3) Professor Ahmed BAWA

Date: 17 October 2016

Venue: City of Tshwane Centurion Council Chambers

CHAIRPERSON: Good morning everybody? It has been in a practice of this stage of proceedings that the witnesses should be sworn. Do you have an objection to taking the oath?

Professor du Toit: No.

CHAIRPERSON: Do you swear that everything that you are about to give will be the truth, the whole truth and nothing but the truth? If you do raise your right hand and say help me GOD.

Professor du Toit: Help me GOD.

CHAIRPERSON: Thank you.

Adv. LEKOANE: Thank you Judge. Morning Professor?

Professor du Toit: Morning.

Adv. LEKOANE: Just to kick off would you just tell us about your background, your full names. Your full names Professor?

Professor du Toit: My full names are Andre du Toit

Adv. LEKOANE: Would you tell us about your qualifications background and areas of expertise please?

Professor du Toit: I am a Professor at University of Cape Town. Before that I taught at University of Stellenbosch and I have been retired so I am actually just on pension now. Do you want to know about my areas of work?

Adv. LEKOANE: Yes.

Professor du Toit: I am trained and qualified as a Philosopher. I taught for many years in the politics department, political studies at the University of Cape Town. My particular areas so far for research and writing includes Intellectual History and Political History. I have written quite bit of work on Academic Freedom. I have been involved in the last numbers of years I have been convenience of the programme (post graduate master) in Transitional Justice.

Adv. LEKOANE: Professor you have given us submissions. They gonna be updated. The version of the submission I believe that the Commission must have it and you can proceed with it in the best way you see it and we will put some questions to you as when and the rest.

Professor du Toit: Thank you. The paper which I am presenting is the response to the request from the Fees Commission from the presentation of on it was specific on to introduce the discussion on the notion of Institutional Autonomy and how that Institutional Autonomy relate to the functioning of various institutions on the context of Public Accountability and the setting of fees.

I should point out that the paper which I am presenting is in large part adapted from a previous presentation I have made a couple of years ago to HESA in 2014. I should also point out the prim nary that the paper deals broadly with general historical comparative and conceptual issues relevant to this topic. That certainly I believe that is implications for the current issues around the setting of fees which is your topic in mandate. But in this paper I do not spell out in more specific terms precisely what those implications are.

CHAIRPERSON: You should bear in mind first that our mandate is not decision on fees is to finding where the money for fees should come from.

Professor du Toit: Good.

Chairperson: Thank you.

Professor du Toit: so it is a broader one. I particular those kinds of issues about funding of universities and so on is not my particular area of expertise. I have work on more generally issues like Academic Freedom, Institutional Autonomy and so on. The paper and presentation deals with relevant issues from an Academic Freedom perspective with a focus on Institutional Autonomy and Public Accountability of Higher Education institutions.

The paper does not have a particular focus on issues of student access or equal students access though this is also a relevant concern for academic freedom in terms of the basic or classical principle of the Academic Freedom that are freedom of learning. The Germans used to call it in 19th Century “Lernfreiheit”. That might be strange word for us now. But in a sense that is what current students movement is about. Is about freedom of learning, equal access to tertiary education but I am not directly dealing with that. That would require a separate paper and presentation but I will be quite willing if the implications of my presentations for those kinds of topics if you want to raise that by questions or comments in the discussion.

Chairperson: I was interested. What happened to “Lernfreiheit” when it notice to coming to power?

Professor du Toit: It was a major struggle. As you know the regime closed down many universities. They fired universities Professors, they did not allowed people of declaration background to participate in universities life and extra. So “Lernfreiheit” ...

Chairperson: -So “Lernfreiheit” has to depend on the government of the day?

Professor du Toit: The government can set certain interfere. The general draft of my presentation will be actually Academic Freedom, Institutional Autonomy. It doesn't depend only on university or the government of the day. It is a matter of what I would call Social Compact. It is a matter of which deals with that presentation as well in our Higher Education Policy. In the Constitution is known as Cooperative Governance.

The first section I will take you through the paper. I am not going to present or to read the whole paper because that will be too long but I will take you through certain sections of the full paper. As it has been distributed. If there are questions dealing with the sections that I do not directly present I am quite open to come back to that and respond to the questions or comments on that.

Chairperson: You may take it that we read it.

Professor du Toit: Thank you. So the first section of my presentations deals with the foundation of governance assumptions of past apartheid Higher Education. This place to begin this discussion is by recalling the authoritarian vision of Apartheid State. In 1974 the report of the Van Wyk de Vries commission declared that “there is no room in any country for more than one conception of the function of the university”.

Is for the State to determine what the role and the function of the universities is. That is the position of the Apartheid State. So the Van Wyk de Vries Commission Report decisively rejected any notion of academic freedom or institutional autonomy. I give you in the paper a quote from the report which I think is recalling the Commission at that stage in 1974 says: -

“In the exercise of its academic freedoms the community of ‘scholars’ cannot claim the right to decide what the interests of the community, society or the State should be, nor can it ignore the realities of those interests.

It is unrealistic and fallacious to argue that such a community of ‘scholars’ has a right or a freedom derived from an international tradition or ideal or for that matter its own tradition, it is equally erroneous to argue that a community of ‘scholars’ (or a university) is at liberty to place itself beyond or above its community, society or State, there to determine its own character and nature, its own ethical and moral norms, and to operate as an imperium in imperio”. That was an approach of the Apartheid State.

CHAIRPERSON: Some correctness on that.

Professor du Toit: We could debate on that if you want.

Chairperson: What is based on is the right to decide. It seems the academic communities can never decide. It doesn't have the power to decide.

Professor du Toit: Well! If I can continue with the paper what it is about is that there are certain essence in which academic communities has the right to decide with its own swearing when a questions in research and teaching it is self-governing.

But the second part of it is in term of the past apartheid approach of the National Commission in Higher Education they set to took the target of Apartheid State and Apartheid Universities. They developed an approach which they called Cooperative Governance. In...

Adv. LEKOANE: -Sorry Professor to interfere! I am over here sorry! In your understanding what is character function of Higher Education because surely then that can determine who can make decisions as to how they functions and the limits of those powers of those institutions?

Professor du Toit: Well! Higher Education universities is a complex business. Complex activities includes teaching, research, right of profession qualifications and so on. Its function is in providing an adequate granting teaching and research in those particular areas. But I think that will come out as I continue.

Chairperson: I take it that it within Cooperative Governance situation has no right to decide either.

Professor du Toit: Sorry?

CHAIRPERSON: In the Cooperative Governance.

Professor du Toit: Cooperative Governance?

CHAIRPERSON: Yes Cooperative Governance situation they cannot have a right to decide in other parties? It must be in Cooperative Governance.

Professor du Toit: It must Cooperative Governance so that is where the notion at the end of the day it is a matter of compact or contract in which on the one hand the universities, the academic communities enters on the other hand the State also Civil Society enters. That is very general but that is the basis on which the functioning of the universities depend in the context of which it has certain level of Autonomy which we can continue to.

CHAIRPERSON: It is possible to place a right to decide where the interest of the community society and the State should lie within the Cooperative Governance structure?

Professor du Toit: Cooperative Governance in the paper I discuss it, in the early days of apartheid the National Commission of Higher Education set up to construct new approach (a revise approach). In that approach they deal with the discussions and concerns of different Models what they called the Model. That is Model in which is in the several position.

It has the right and the duty to control and to command or to interfere but that was rejected by Nation Commission of Higher Education and by Higher Education Policy in favor of an approach which is the cooperative approach which is not particular entity needed the universities not the State. Has the fundamental say to right and they must come to agreement cooperative form of governance. Do you want me to continue with the paper?

CHAIRPERSON: Please!

Professor du Toit: Thank you. On page 3 of the paper I will give you the other quote. Is from 1997 White Paper of Higher Education which one of the earliest authoritative formulation of Higher Education Policy concerning Cooperative Governance and it says: - “a system of cooperative governance would see the state playing a steering and coordinating role, not a controlling or a command role while autonomous Higher Education institutions retained authority over their resources but acquired obligations to be accountable for their use”.

That is the complex balance of the context. The notion of co-operative governance thus allowed room for the Institutional Autonomy of universities as independent institutions within a higher education system overseen by the Department of Education. Now the Department of Higher Education and Training. This assumed that where different interests and objectives existed between the state and independent higher education institutions these would be negotiated in a co-operative manner and not be unilaterally or coercively resolved by state intervention.

The notion of Co-operative Governance’ thus proposed an interactive process involving a range of independent institutions, agencies and stakeholders, of which the state would be only a first among equals, in a Dialogical Approach to concerted change. On this view, Co-operative Governance may best be interpreted in terms of a possible social compact for autonomous involvement in transformation.

CHAIRPERSON: May I just ask you? In this compact where does Autonomous decision making powers alight supposing that there is no luminary between the participants?

Professor du Toit: It is in a sense of a kind of paradox notion that the notion of Cooperative Governance in fact proposes assumes that there is not ultimate authority. What is needed is that there must be a balance engagement process and through that process kinds of workable arrangement must be found. That is the notion of Cooperative Governance which was adopted as a basic principle at Higher Education Policy in the past apartheid era.

CHAIRPERSON: I assume that you can assume everything out when it comes to joint line.

Professor du Toit: It is assumed that in practice and historically as I go on in the paper to discuss it didn't quite work out like that. That was as where ideal the objective that were set as the aim of Higher Education centre. But in practice one it has to be implemented and transform into concrete details. In fact in various ways the State assume a more controlling, a more interfering role. But that in itself it is actually in a position of tension to what it is supposed to be the objectives and the basic principle of the system of Cooperative Governance in Higher Education.

Chairperson: Thank You.

Professor du Toit: Thank you.

Adv. LEKOANE: Sorry Professor! Just briefly. You said that the role of the State is the steering one? Now is to steer the system to what exactly?

Professor du Toit: That is not in terms of... there were a long debates. The National Commission of Higher Education set for three years and out of that there were three or four years in which various Green Papers and White Papers and so on are dealing with that process.

There were a lot of discussions about what is precisely the functions and the objectives of Higher Education and different as where Models were proposed. One of them was this Models of the steering Model which is different from the Command Model. In the Command Model the State has the final and the last say. In the Steering Model there is a space of innovation and enterprise from the various institutions and the State stand back and try to control the steer back and try to control in some ways.

But the Steering Model and the Command Mode was qualified and the notion the ideal of the Cooperative Governance set to committed itself to this notion that in the end of the day they won't be any particular place where the last word, the final word is. But we must always work out of some kind of Cooperative Governance things. In practice they don't quite work out. In practice what happened is that the Department of Higher Education is State actually assume a more sort of Steering role and sometimes an interventions as a role.

But in terms of this the State Policy it has to be set out in the legislation and so on. That is full in short the ideal of Cooperative Governance.

Chairperson: One of the things that we have seen right from the beginning of our experiences this Commission is that there has been a practice of setting up Committee and establishing board is to inquiring the way forward which suggest very much a Steering role rather than the intervention as well or the decision making role. But at some stage when has to come to a point where the decision has to be made after all this steering...

Professor du Tout: -In essence the history...

Chairperson: -They may be a short coming in what we have seen because a lots of plans but not a lots of implementation perhaps.

Professor du Toit: The complex history, this is the founding history of past apartheid of Higher Education from 1994 to be end of the decade which started with the Commission of Inquiry that NCHE (National Commission of Higher Education). That Commission was particularly representative and inclusive Commission. It involves not just academic or people from education or Higher Education.

It involves all stakeholders from all over the societies, from labour, from private sectors, from the State and so on. It spends three years investigating and coming to a Report. The outcome, the recommendations of that report was this notion of the new approach of Higher Education should be this one of Cooperative Governance.

That was taken over that the Commission simple produce the Report which distributed at the line. But in order to become actual Policy that be implemented, that be instrumentalised and so on. That took place through the whole complex series of Green Papers and White Paper and the second White Papers and legislation in the Parliament and it was actually implement in the practice. We still supposed to be in the objectives which then accepted by the whole process that started by the State and the Higher Education accepting the objectives of Cooperative Governance.

But in practice if you give one example, one of the major intervention in Higher Education in the first decade in the early 2000 was so called Merging of universities. We have a very complex equal differential systems of universities or something like 36 different universities.

Some of them or many of them were homeland institutions, bush colleges and so on. There were an attempt to merge them in more rational and more inclusive system. That merging process was primarily intervention by the State. There were limited cases where there were some negotiation and discussion between the various institutions universities that were reflected but when push going to shave the State push through what is notion of it.

So what I am saying is not the history, the actual practice of Higher Education in many ways to be continue to one of the command intervention and so on. But the objectives of the goals and value of Higher education is in terms of system of Cooperative Governance.

Adv. ALLY: Professor if that is the situation taking into account that you have got a legislation dealing with the universities themselves, the universities Act and you have got the Higher Education Act that deals with the roles and responsibilities, why do you think that the institutions have allowed a situation of command an intervention rather than stating as far as we are concern as where your role stops and our beginnings therefore we believe that you should stay out of that particular? Why they did not take that stands?

Professor du Toit: This is a very good question and relevant question! In particular as we spend a lot of research and writing dealing with that because it is very interesting history. What happened during that? One of the problems with this kind of cleaning and implementations is that it takes time. The transition to post-apartheid was supposed to have taken place in April 1994 when an election was held and the Government of Unity came in, Mandela became President and so on. But it took three more years for the National Commission on Higher Education. Just as the Commission of Inquiry worked its way through the problem and came with a Report and Recommendations. It took 3, 4, 5, more years before those Recommendations were then instrumentalised in terms of the Policy through the Green Paper, White Paper, the Higher Education legislation and so on. So in a sense the new Higher Education Policy only became implemented in around 2000/2001. That is a period of six to seven years. During those six to seven years the Higher Education institutions did not just do nothing or carry on in the same way or they had done before. They responded in various ways. Some of them were responding out of fear, they saw that there was a threat to particular White Universities that are White Afrikaner universities (Pretoria University, Stellenbosch University and so on). They were threatened by the prospect of substantial intervention by the new State. Others particularly the so-called Black Universities seem to say they didn't do anything about... -let me just before I go into that.

The Afrikaans Universities then engaged in sort of enterprises and innovations in order to prepare themselves. For example, they set up a whole lot of new Satellite Campuses and Correspondence Colleges and so on. So by five or six years the profile of the students' body changed comprehensively.

They would now have significant numbers of students on the row although this new steers is very large in Correspondent Colleges of Satellite Campuses and so on. But I did something. They tried to anticipate what would happen. Many of the historic Black Universities set to say did very little. They assumed that the new Higher Education Policy when it comes, when it finally been implemented will be in their favour in their interest.

In particular they assumed that they will be quite substantial major of proportion so that the funding proportion and so on at the universities will be previously disadvantage and now they will be very much advantage. So that they did very little. In the meantime is that large numbers of Black Students who previously have gone to the homelands universities, to the Bush Colleges and so on they are now had an opportunity to enrol at UCT, WITS, Bloemfontein or wherever and they voted where they fit. When the new Policy were beginning to be implemented actually on the ground the situation was completely changed.

So is not a question of formally who has the last say or how do you negotiated. Is how the things placed out in practice that the fact what happened on the ground. Do you want me to continue with the presentation?

CHAIRPERSON: Please!

Professor du Toit: The next section is concern with the notion of Institutional Autonomy particularly whether the Institutional Autonomy set as principle. There should be understood against the background that during the apartheid the Apartheid State rejected the interference and neglected the Autonomy of the institutions.

So particularly in 1957 when they separated the universities Act was introduced. The so called open universities (it is important to note that these open universities were included). English speaking universities included WITS, UCT but they didn't even includes all the English speaking universities. So it was certain sector of the universities. They responded to them and they took the principle of Academic Freedom as they stands it. They did discussion on the kind of issue. Is one of the landmark that people always to invoke to which they appeal to so called T.B Davie formulation in 1957 of the four essential Freedoms. It is very elegant formulation. I quote it in the beginning of the section. The four essential Freedoms. Our freedom from External interference in:-

- (1) who shall teach,
- (2) What we teach,
- (3) How we teach,
- (4) and Whom we teach

So it is started as this is what Institutional Autonomy need. It is for the universities to decide those four things. In some ways it is not obvious why this should be in formulation of Academic Freedom. It was an important ways. It was inadequate and particular limited. I know particular aspects in which it was limited. The T.B. Davie four essential Freedoms (who shall teach, what we teach, how we teach, and whom we teach did not include the basic classification Academic Freedom or principle of Academic Freedom namely Freedom of Learning ("Lernfreiheit"). Freedom of Learning is the principle that is the right of students to enter into Higher Education to Tertiary Education and they should not be restricted in anyway.

In a sense it is not when the present well known as the fallen movement when they talk about equal education, freedom of education for everyone that is not a new notion of Academic Freedom. That is part of the 19th Century principle of Academic Freedom, Freedom of Learning but that was not included in the...

-In fact the open universities at the time they said it was for the universities to determine who shall teach. Is not for everybody to decide to go to the university. The university will decide whether you gonna accept or not accept. The other main thing that was the institutions of the classical T.B Davie Formulation is that it was not clear, it said it is for the universities to decide who shall teach, what should be taught, how it would be taught, and who would be taught.

But it was not clear who represented the university, who can speak on behalf of the university. Is the University Management, the Director, the Executive of the university to speak these things, is the Council of the university, is the academic Seniors, is the Professors, is the academic community that will left open.

So this is a classical formulation and is the reason why it becomes celebrated as a formulation of Academic Freedom. Is actually misconceive important ways. In particular in the way in which it emphasize Institutional Autonomy as be all in Academic Freedom. If you have questions please let me know.

The next part of the presentation put this that was South African little history that we have. That is the T.B Davie the 1950s onwards. But more generally, in comparative academic freedom perspective, this single-minded focus on Institutional Autonomy also reflects the limiting outlook of our colonial heritage.

Here we come to maybe what some of the students movement are talking about when we are talking the decolonise higher Education. In what ways are the Universities traditions are colonial heritage? One of them is this focus on the Institutional Autonomy.

The Institutional Autonomy of universities is a notable feature of academic culture specifically in the Anglo-Saxon world, so much so that it even tends to be conflated with academic freedom itself. But this was not true of the continental-European tradition where academic freedom does not depend on the Institutional Autonomy of universities.

Consider the following account of how state functionaries long served as guarantors of academic freedom in the higher education systems of some major European Higher Education Systems. I have quoted that “On the Continent in terms of administrative control, the ties between Nation and university took a very specific form of a descending hierarchy from Ministry to university in the person of a permanent civil servant delegated to exercise an auditing function within the individual establishment.

His formal responsibilities were – and in many cases still are today – to act in the government’s name, to verify expenditure and to ensure that both procedures and structure within the university were in keeping with the conditions set out in current legislation.

The German Kanzler, the French Secrétaire Général, the University Director in Scandinavian lands, or the Regerings commissaris in Belgium incarnated the direct presence of central administration within the individual university, the very personification of public accountability.”

From an Anglo-Saxon perspective it is almost impossible to see how such a direct presence of state functionaries within the university can be anything but interference with its internal affairs and institutional Autonomy, or how this could be compatible with academic freedom in any serious sense.

The fact that these European universities nevertheless are marked by longstanding practices of scholarly freedom and even academic rule (for example in the notable form of the German and French professorial chair system) thus must appear inexplicable.

On the other hand, the fact that in the Anglo-Saxon tradition itself the historic social compact underpinning the relations of universities with state and society has in recent decades been challenged, and that in important respects the former trust and consensus has broken down, must appear as nothing less than a crisis for academic freedom itself.

Consider the following account of developments in Britain during the closing decades of the 20th century. This is so called Century Revolution. The former relationship of trust between the universities and the government has now ended. It would be no exaggeration to say that an outright hostility existed between British universities and the government, especially under the Conservatives.

Older concepts of Institutional Autonomy have become subordinate to arguments about accountability and the right of the government to determine policy when substantial government expenditure is involved. There you have the command by the Government. What the comparison with the different European academic culture shows, at the very least, is that Institutional Autonomy in the university's external relations is not a necessary condition for scholarly freedom and academic self-governance within the university.

So that is the Section that deals specifically with the notion Institutional Autonomy.

The next Section deals with what we called the Constitutive of dimensions of Academic Freedom. I have discussed three of them. I am not going into details here, I will just mentioned them to you. The three is: -

1. Scholarly Freedom.
2. Academic Self Governance.
3. Institutional Autonomy.

These were the classification formulation of Autonomy in 19th Century when the Morden research Universities were constituted. German took the lead at that time in the 19th Century. That was the two notion of Lernfreiheit freedom of teaching and Lernfreiheit freedom of learning. They were further elaborated particularly in the State. In 1940's you get the statement of principle of the Academic Freedom of the AAUP.

Unlike universities in continental Europe, British universities have historically enjoyed a substantial measure of self-government or Institutional Autonomy from the state, and in consequence academic freedom tended to become conflated with institutional Autonomy.

The dangers of narrowing academic freedom too much to the issue of Institutional Autonomy were starkly revealed from the 1980s when the Thatcher government in Britain made a point of challenging just these assumptions. Alarming as the Thatcherite assaults on the conventional institutional prerogatives of British universities certainly were, they did not ipso facto bring about the demise of academic freedom.

As shown by the different continental European tradition – where universities typically function as part of the state apparatus with little or no Institutional Autonomy in the Anglo-American sense. Institutional Autonomy is not a necessary condition for academic freedom in the university. Indeed, in the continental European tradition tenured appointment as part of the civil service by the minister is taken to protect the academic freedom of professors from interference by university administrations as well as by outside forces, while in some cases students and faculty have protested government proposals to grant universities more Institutional Autonomy since that was perceived as holding threats to their academic freedom!

In the South African context, too, University Statutes formerly used to provide for the possibility of appeal to the Minister, a potential protection against abuse of the University's Institutional Autonomy directed against its own academic employees. Still, by and large the Institutional Autonomy of the university tend to be regarded and valued as the ultimate protection of academic freedom even if, strictly speaking, it is just one component of the more complex ideal.

Then I gave you a little summary expectation of the three main dimensions. I went into that. The first is the Scholarly Freedom. Scholarly Freedom is the self-imposed disciplinary constraints on the scholarly enterprise. Maybe in bracket I can say one of the most common confusions about Academic Freedom is the people think Academic Freedom is just a particular form of Freedom of Speech.

Academic Freedom amongst the Freedom of Speech in the context of the University. Without going to the details of that that will be the long story is the other way out. Academic Freedom, Scholarly Freedom means there as Students, Lecturers, Teaches as Researchers. You can't just say what you want. You are subject to the disciplinary rules, disciplinary constrains of the particularly whether is history or law or medicine or extra. Scholarly Freedom the freedom has determine by your peers. That is what it is.

The second Academic Freedom that is Academic Self-Governance. Academic self-governance refers to the various internal governance structures developed over time in modern universities - the professorial chair, the (collegial) department, academic faculty boards, the academic Senate so as to ensure that in the university's academic affairs academics themselves shall rule.

Academic Self-governance does not require that academics themselves should be in charge of all these non-academic aspects of the institution, it customarily meant, though, that academic affairs should be recognised as the core business of the university and that the overall leadership of the institution (the President / Rector / Principal / Vice-Chancellor) be in the hands of (former) academics rather than professional managers and that Senate rather than Council retain the final say in

academic affairs. In that sense the collegial tradition of 'academic rule' has lost much of its former hegemony.

Finally the last main pillar that is the Institutional Autonomy. Particularly one can distinguish between Institutional Autonomy internally and externally. Internally Institutional Autonomy is the Academic Self-governance. Externally it has to do with relations to the Society, to the State, to Civil Society and extra to the economy.

Ms KHUMALO: Professor on the Institutional Autonomy, does this enjoy or is an option of an institutions? Maybe some enterprise role component. Can you be classified maybe under companies Act in its interaction that there is account or like that?

Professor du Toit: Well I will go on to discuss that and this is connected with the changes on happened in British, the century and the evolution and so on. In recent decade thee has been what they called Managerial Revolution in the Universities and that is broadly speaking that the Business Model, the Model of the enterprise, the Business company has been introduced in Universities that is happened to greater extend or little extend but to the extend on what has happened.

You looked at certain Universities who see themselves now as Academic Enterprises in a business sense but that is very contraventional. From traditional academic perspectives like myself we see that a major threat as what we called the trends of the Universities. The Universities is not a profit making institutions. Universities is not a business firms. Universities is not but that is the traditional approach. This is become very contraventional kind of the area.

Ms KHUMALO: On that Professor, what will be the opinion in that streams in comes of varsities, it is still important and the business sense of it. How far can the institution go with this seeing that also the third stream is necessary?

Professor du Toit: Well! If I say is contraventional then I mean that there is no agreement on how far can go. There is all time like myself we talked about Academic Self-governance and the core business in the Universities, teaching in research. There are other who already the Universities marked as opportunities and enterprise and so on.

I think the more interesting question which one can try to understand to answer is how far the Universities changed in this way. The answer is quite mix. There are some Universities worldwide particularly in places like Australia, some British Universities, some American Universities who have generally into marketing themselves in the general academic market.

There are others who still very much manage to call the traditional roles of the Universities in teaching research in Self-governance .in South Africa too is a range, there are some Universities which is much more affected by the Managerial Revolution which are more much the way of marketing and enterprise like so many of the business schools. For example the University of Kwazulu Natal which early on when on that way there are other Universities which will be relevantly little affected by this.

Ms KHUMALO: Just to take you back as well Professor. The Scholarly Freedom, you are saying is usually amended by the pears saw it overtime. So I am thinking is the Scholarly Freedom which you all timeous and the current academic now is the same or how is it differed? How does this talks to the culture?

Professor du Toit: I would think that the principle of... here we talks of...

-let me just step back for a moment. Traditionally the distinctions was made between purely academic or theoretical teaching and research. And then what is known as a pride teaching or research. I think that in so far one of the consequences of this Managerial Revolution and so on is that the Universities has become moved away. Many of them have moved away from what sometimes people refers what they called the Blue Sky Research.

That is the research for teaching Mathematics, fundamental Physics and so on which is purely obstruct on the faces of it. You can't say that this the application or is got that application although paradoxically or radically is actually some of the most far reaching implications of research in the modern in a model way has come from those of discipline from Physics and Mathematics and so on. But many Universities has gone much more in the way of integrating themselves into social development, market opportunities, and various kinds of professionals. That is the difference from one University to another.

CHAIRPESON: Would be in this convenience moment to take ten minutes adjournment for tear break Professor.

Professor du Toit: Yes that might be best to do that!

CHAIRPERSON: Okay thank you. Then we will take ten minutes adjournment for tea. Thank you.

Adv. LEKOANE: Thank Judge. Professor you may proceed.

Professor du Toit: Thank you. In terms of the paper that I am moving on to Section 4 which is more historical Section. The South African Trajectory states public Higher Education Institutions and Institutional Autonomy. The South African higher education system broadly derives from the Anglo-Saxon tradition, but from the outset there were significant differences in South African institutional arrangements.

All South African universities are public Universities statutory creations, their constitutions consisting not of royal charters but of Acts of the South African Parliament which do not confer the wide implied powers that accompany general corporate status, but only those powers explicitly conferred. From the outset Universities were legally required to submit annual budgets to government for approval. Members of academic staff could appeal against dismissal by University management and Council to the minister. This is in our old days in public state order.

And universities were legally obliged to seek state approval before establishing new courses, departments, or faculties. There is thus a long tradition of legislative intervention and of legal dependence upon the state in South Africa.

If all these historical features of South African universities aligned them with the state in ways not fundamentally unlike that of continental European universities as part of the state apparatus, then this was even more true of the apartheid universities founded from the 1960s. Given all this, the strong concern of especially the liberal universities like WITS and University of Cape Town in South Africa with regard to their institutional Autonomy, as if they shared the same context of state-university relations as those in the British tradition, appears somewhat anomalous.

Historically the liberal defence of the university's institutional Autonomy against the (apartheid) state amounted to a normative ideal but also to an ideological misrepresentation of the basic state of affairs. Significantly, the conflict between the liberal or 'open universities' and the apartheid state did not translate into any serious changes in their funding by the state; these universities (the liberal Universities) continued to be financed largely from public funds and according to the same formulas which applied to the universities generally.

From the side of the South African state, its relations to the universities were historically characterised by a remarkable degree of respect for their de facto Autonomy. Even if constitutionally the universities did not qualify for institutional Autonomy, the state tended to deal with them as if they did.

Thus state subsidies from 1922 took the form of block grants while the Adamson committee in 1933 proposed the consolidation of a stable and predictable system of formula-based funding. The new funding formula introduced by the Holloway Commission in 1951 continued the practice of block grants leaving considerable discretion for the universities, while the 1955 Universities Act gave statutory recognition to the Committee of University Principals (CUP) and established the University Advisory Committee (UAC) loosely modelled on the British University Grants Committee.

In effect this approximated the British pattern of state-university relations during the halcyon era of respect for university Autonomy to an extent which belied the basic legal and practical dependence of South African universities on the state.

Arguably the South African state fostered an elite consensus allowing a measure of institutional Autonomy to White universities disproportionate to their constitutional position or social clout. This does not detract from the serious violations of academic freedom during the apartheid era, including the banning, detention and exile of leading academics involved in political opposition as well as censorship, prosecution of student leaders and security police incursions on campus.

As far as higher education and the universities were concerned, the apartheid state's record actually was more ambivalent than is usually recognised, and included a certain recognition of academic freedom and respect for the university's institutional Autonomy. MOODIE is one of the great expert in academic notes that the SAPSE formula for state funding introduced in 1985 was both sophisticated and flexible, with both the data and the calculations matters of public knowledge so that universities knew what their 'entitlements' were.

Even more important the state subsidies, though reduced, continued to be paid in the form of Block Grants, allowing universities some measure of discretion in determining their own spending priorities. Compared to the position of British universities by that time that is the 1990's, MOODIE concludes that "when it comes to the spending of government money South African universities are much freer than British ones". Taken together, then, the historical legacy of the institutional relations between the universities and the state in South Africa is decidedly ambivalent.

On the one hand the grounds for the university's claim to institutional Autonomy are less secure than appears from the conventional rhetoric of the liberal universities, on the other hand, the state has in practice been more respectful of the universities Autonomy, especially in terms of the basic funding arrangements, than has commonly been recognised in South African debates.

The next Section deals with the Post-apartheid Trajectory on Section 5: Cooperative governance State intervention and failing Higher Education institution. But earlier in discussions which we had in the question which raised is really covered this ground. I think I will leave that to you and there is any particular questions then we can come back to that in the discussions. The one distinction which is important is the difference is between Internal and External Compact of the institutions.

There are two kinds of Compact that one need to think of it. The one is the Compact within the Universities communities. The Compact according to which the University community and its direct Stakeholders they agree or they don't agree that the Academic Senate the faculty board that they should be academic self-governing.

Then there is an External Social Compact which is in relations between the Universities as a whole of the institutions and the economy, the State, Civil Society. We need to keep that in mind when there are in the discussions. So I will move on unless there are particular questions that you want to raise on.

I will move on Section 6 that is Institutional Autonomy and Accountability:

Comparative Trends. Recent developments in higher education systems, across different academic cultures, are characterised by comparable trends relevant to institutional Autonomy, Accountability and Academic Freedom.

These include a strengthening of the hierarchical elements in university governance, a turn from traditional patterns of academic rule to a more market-oriented approach to executive management, and an increasing insistence that universities should be more 'accountable' both in terms of so called 'quality assurance' of their core functions of research and teaching and in their external relations to state and society.

However, while there are definitely serious threats to scholarly freedom and academic rule, this is a misconception in so far as the university's institutional autonomy has, in some important senses, i.e. that of functional rather than substantive autonomy, actually been strengthened by some of these trends.

What I mean by that within the Universities in the internal governance of the Universities itself the so called Managerial Revolution has made the Executive, the Managing Sector of the University have greatly gains in powers compared to the academic to the professorial academic senate.

To give you just one example of that, it used to be the case South African Universities and also worldwide. Other Universities Systems that Universities heats of Universities the Directors, the Chancellors, the Vice Chancellors and so on were typically form of academic.

If you look at that closely it was a strange because what typically happened is that you could get somebody who is the Chancellor or the Vice Chancellor or the Director are the major University with 20 000 of students and all sort of interests and enterprises going to it but the heart of the University is actually a classic scholar or a Professor of Mathematics he has no particular specialised training in management for complex institutions like Universities.

That is changed more and more Universities now appoint people more and more bringing them from outside of the Universities from the business in the community and other part of civil society, people will have known particular background or interest in academic scholarly research in teaching and expertise but who are professional managers that can bring all Business Model to the Universities.

Okay. If you are interested on that I have got some discussion of the trends in Europe which is very interesting because Universities historically have often played a significant role in national politics. French Universities were very important in French politics and culture and German Universities and so on. The whole structures of the Universities was organised in terms of that. Now within the European community that they called "BALOGNA" process.

I have discussed earlier that there are two BALOGNA process. Those BALOGNA process they are concern with on the one hand. The one major objective is to make it possible that students can move freely from one University System to another.

That means that all the qualifications, the accreditation system and so on must be aligned with each other. So in this days it become common practice in many European countries that the students in Denmark may spend very little bit of time going to Danish Universities and they spend as much as in German or French or other Universities and so on. The Universities has changed its character and that of course is also got the implications for the relations to society and also for the funding mechanisms.

Here we come maybe some of the students movement are talking about when we are talking about decolonize Higher Education. In what way the universities traditions are Colonial Heritage? One of them is this focus on Institutional Autonomy.

The Institutional Autonomy of the universities is the notable feature. I think the more interested question in which one can try to understand to answer is how far did universities change in this way.

The answer is quite mixed. There are some universities worldwide particularly in places like Australia, some British universities, and some American universities who have gone really into marketing themselves in the Academic Enterprise Market.

There are others who is still very much manage to call the traditional roles of the universities in teaching research in Self-governance. In South Africa too there is a range, there are some universities which is much more affected by the Managerial Revolution which are more much the way of marketing an enterprises like so many of the business school.

For example, the University of Kwazulu Natal which is affected early on when that way there are other universities which will be relevantly little affected by this.

Ms KHUMALO: Just to take you as well Professor. The Scholarly Freedom, you are saying that usually is amended by how the pears saw it overtime. I am thinking that is the Scholarly Freedom which we all timeous and the current academic now is the same or how is it differ? How does this talks to the culture?

Professor du Toit: I would think that the principle of... let me just step back for the moment. Traditionally the distinctions was made between purely academic or theoretical teaching and research and then what was known as pride teaching or research.

I think that in so far one consequences of this Managerial Revolution and so on is that the universities has become moved away, many of them have moved away from the Blue Sky Research.

That is research for teaching Mathematics or Fundamental Physics and so on which is spearing obstruct on the faces of it you can't say it got this application although paradoxically at least some of the most far reaching implications of research in the modern world has come from those very obstruct of disciples (from Physic and Mathematics and so on).

Many universities has gone much more in the way of integrating themselves into Social Development, Market Opportunities, and various kind of professionals. That is the different from one university to another.

Chairperson: Would it be a convenience to take a ten minute adjournment break Professor?

Professor du Toit: Yes that might be my best to do that.

Chairperson: Then we would take a ten minutes adjournment for tea. Thank you!

Adv. LEKOANE: Thanks Judge. Professor you may proceed.

Professor du Toit: In terms of the paper I am moving on to Section 4 which is more historical section. The South African trajectory:- the State, Public Higher Education institutions and Institutional Autonomy:- The South African higher education system broadly derives from the Anglo-Saxon tradition, but from the outset there were significant differences in South African institutional arrangements.

All South African universities are public universities, are statutory creations, their constitutions consisting not of royal charters but of Acts of the South African Parliament which do not confer the wide implied powers that accompany general corporate status, but only those powers explicitly conferred.

From the outset Universities were legally required to submit annual budgets to government for approval. Members of academic staff could appeal against dismissal by University management and Council to the Minister. (This is in our old days is an apartheid order). And universities were legally obliged to seek State approval before establishing new courses, new departments, or new faculties. There is thus a long tradition of legislative intervention and of legal dependence upon the state in South Africa.

If all these historical features of South African universities aligned them with the state in ways not fundamentally unlike that of continental European universities as part of the State apparatus, then this was even more true of the apartheid universities founded from the 1960s.

Given all this, the strong concern of especially the liberal universities, universities like WITS, UCT in South Africa with regard to their Institutional Autonomy, as if they shared the same context of state-university relations as those in the British tradition, appears somewhat anomalous. Historically the liberal defence of the university's Institutional Autonomy against the Apartheid State amounted to a normative ideal but also to an ideological misrepresentation of the basic state of affairs.

Significantly, the conflict between the liberal or open universities and the apartheid state did not translate into any serious changes in their funding by the state; these universities continued to be financed largely from public funds and according to the same formulas which applied to the universities generally.

From the side of the South African State, its relations to the universities were historically characterised by a remarkable degree of respect for their de facto Autonomy. Even if constitutionally the universities did not qualify for Institutional Autonomy, the state tended to deal with them as if they did. Thus state subsidies from 1922 took the form of Block Grants while the Adamson committee in 1933 proposed the consolidation of a stable and predictable system of formula-based funding.

The new funding formula introduced by the Holloway Commission in 1951 continued the practice of Block Grants leaving considerable discretion for the universities, while the 1955 Universities Act gave statutory recognition to the Committee of University Principals (CUP) and established the University Advisory Committee (UAC) loosely modelled on the British University Grants Committee.

In effect this approximated the British pattern of state-university relations during the Halcyon Era of respect for university Autonomy to an extent which belied the basic legal and practical dependence of South African universities on the State. Arguably the South African State fostered an elite consensus allowing a measure of institutional autonomy to White universities disproportionate to their constitutional position or social clout.

This does not detract from the serious violations of Academic Freedom during the Apartheid Era, including the banning, detention and exile of leading academics involved in political opposition as well as censorship, prosecution of student leaders and security police incursions on campus.

As far as Higher Education and the universities were concerned, the Apartheid State's record actually was more ambivalent than is usually recognised, and included a certain recognition of academic freedom and respect for the university's Institutional Autonomy. MOODIE he is one on the great expert in these British academic. MOODIE notes that the SAPSE formula for state funding introduced in 1985 was both sophisticated and flexible, with both the data and the calculations matters of public knowledge so that universities knew what their entitlements were.

Even more important the state subsidies, though reduced, continued to be paid in the form of Block Grants, allowing universities some measure of discretion in determining their own spending priorities. Compared to the position of British universities by that time (that is the 1990s), MOODIE concludes paradoxically that when it comes to the spending of government money South African universities are much freer than British ones.

Taken together, then, the historical legacy of the institutional relations between the universities and the state in South Africa is decidedly ambivalent. On the one hand the grounds for the university's claim to institutional autonomy are less secure than appears from the conventional rhetoric of the liberal universities; on the other hand, the state has in practice been more respectful of the universities' autonomy, especially in terms of the basic funding arrangements, than has commonly been recognised in South African debates.

Now the next Section deals with the past Apartheid Trajectory that is Section 5:- The post-apartheid trajectory: Cooperative Governance, State intervention and failing Higher Education institutions. But earlier in our discussions which we had in response to the question raised from the Chairperson has really covered much of this Grant so that I think I will leave that to you and if there is any particular questions then we can come back to that in the discussions.

The one distinction which is important there is the different Internal and External Compact in institutions. There is two kinds of Compact that one need to think of. The one is the Compact within the university community. The Compact according to which the university community and it direct stakeholders agree or don't agree that the Academic Senate, the Faculty Board and so on they should be academic Self-governing.

Then there is external Social Compact which is the relation between the universities as the whole as an institutions and the Economy, the state, Civil Society and we need to keep that in mind when in the discussions.

So I will move on, if there is particular questions that you want to raise I will come back. I will move on to Section 6:- Institutional Autonomy and Accountability Comparative trends. Recent developments in Higher Education systems, across different academic cultures, are characterised by comparable trends relevant to institutional autonomy, accountability and Academic Freedom.

These include a strengthening of the hierarchical elements in university governance, a turn from traditional patterns of academic rule to a more market-oriented approach to executive management, and an increasing insistence that universities should be more accountable both in terms of quality assurance of their core functions of research and teaching and in their external relations to State and Society.

However, while there are definitely serious threats to Scholarly Freedom and Academic rule, this is a misconception in so far as the university's institutional autonomy has, in some important senses. For instance that of functional rather than substantive Autonomy, actually been strengthened by some of these trends.

What I mean by that is that within the university context of Internal Governance of the universities itself the so called Managerial Revolution has made the Executive, the managing sector in the universities have greatly gained in powers compared to Academic Senate. I can give you one example of that, it used to be the case in South African universities and also worldwide.

University hits the university, the Chancellors, the Vice Chancellors and so on were typically form of academics. If you look at that closely it was a strange because what typically happened is that you can get somebody who is now that Chancellor or the Vice Chancellor or Director of major university with 20 000 of students and also enterprises is going into it but that hit of the university is actually a Classic Scholarly.

Or he is a Professor of Mathematics but he has no particular specialised training in management or complex institutions like university that is changed. More and more universities now appointed people and more and more bringing them from the outside of the university. From business community or other part of the community people who have no particular background or interest in academic Scholarly Research or teaching expertise but who are professional managers and they bring business model to the university. Okay!

If you are interested on that I have got discussions of threads in Europe which is very interesting because universities historically the universities have often played an important role in National politics. French universities were plays an important role in politics, in culture and German universities and so on.

The whole structures of the universities was organised in terms of that. Now within the European community there is what they called Bologna process. There are two different Bologna processes. Bologna processes they are concern with on the one hand one major objective is to make it possible that students can move freely form one university to another.

That mean all the qualifications and the accreditation systems and so on must be aligned within each other so that in these days now is become more common practice. In many European countries student in Denmark may spend very little bit of time by going to Danish University. They can spend as much time in German or in French universities and so on. The universities has changed its character and that of course is also got an implications in relation to the society and also to the funding mechanism.

In different ways, then, institutional autonomy is understood as intrinsically compatible with Accountability. This is where we are now. Contemporary universities can no longer invoke their institutional autonomy as a foundational principle absolving them from accountability to state and society. Significantly, though, the different senses of functional and substantive institutional autonomy imply different notions of accountability.

Here you must bear that this is very important distinction and implication (Functional Autonomy and Substantial Autonomy). On a substantive conception of institutional Autonomy, Academic freedom, in the senses of Scholarly Freedom and academic rule, is viewed as an intrinsic feature of institutional autonomy itself.

On the functional conception of institutional Autonomy, though, what matters is only whether the university, taken as an institutional whole, is able to function independently without undue interference by external parties or forces even if it is internally dismantling academic rule and restricting scholarly freedom in various ways.

On the substantive conception of institutional autonomy, accountability is primarily defined inwards with regard to the protection of scholarly freedom and academic rule in various ways. So what is so called the Managerial Revolution is mean that is managing Sector of the Universities has intervene. There is an internal disruption of the Academic Freedom within the Universities itself by one Sector of University. It is less obvious...

-On the substantive conception of institutional autonomy, accountability is primarily defined inwards with regard to the protection of scholarly freedom and academic rule.

It is less obvious to whom the university Leadership and Executive Management are considered accountable in terms of the functional conception of Institutional Autonomy. Apart from general financial accountancy they may in the first instance be accountable to the university Council or Board of Trustees as a stand-in for their basic fiduciary Accountability.

But that Fiduciary Accountability is actually quite vague and open-ended. If business or corporate interests are strongly represented on the Council or Board of Trustees then the actual content of the Fiduciary Accountability could be informed by notions of making the university a more efficient enterprise in market-oriented terms.

This is the so called enterprise University Council. (The oversight body could also be constituted more on stakeholder principles, representing various constituencies in civil society and the local community, but in that case more political and democratic notions of accountability would come into play along with more a more instrumental view of the university on which Institutional Autonomy is subordinate to developmental or political purposes).

It is important to note that historically universities or other institutions of Higher Education and/or scholarly learning were not always expected to be accountable to society and/or the state. Consider the famed (or notorious) 'ivory towers', that is the distinctive communities of scholars and/or teaching colleges which emerged in late medieval times in Europe and reproduced themselves over many generations during the early modern period. It is interesting that people will study history in the institutions over the long time have noted.

If you look at different Universities there are different kinds of the institutions, apart from the Church itself the Universities is the oldest institutions which they specs from 11th or 12th Century. It is over a thousand years. So we are talking here about early period). By and large (this continued in 18th/19th Century).

By and large these were small-scale and localised developments, peripheral to the major centres of political rule, Social Power and Cultural Authority, comparable to the many diverse vocational guilds, sectarian groupings, and mystical in gatherings, cabbalistic traditions or utopian communities of that period.

As effectively self-supporting and self-governing inward-looking communities, the ancient universities and colleges were by no means unique, nor did they have notable wider social and political importance at the time. To the extent that they were perceived neither as posing major threats to the political rulers or social elites of the day, nor as potential resources for important Economic, Social or Military Developments, there was no particular need for external parties or authorities to concern themselves with the Internal Scholarly activities of such institutions.

The Social and Political toleration of these scholarly 'ivory towers' in medieval or early modern Europe by the powers that be may be considered as evidence of a certain benign neglect. As ALTBACH has observed this as one of the authorities in this area.

"In a sense, when universities have been least central and important, their autonomy has been safest. Institutions that are pure ivory towers are of little relevance to the society and external authorities are often content to leave them alone.

But when academic institutions and the professoriate are at the centre of societal development and when the universities require significant social resources, many forces seek to challenge traditional autonomy.”

During the period when universities were still privately-funded institutions, whether under the auspices of the church or established by local benefactors and trustees, and mainly functioned as teaching colleges for limited social elites, it should not be surprising that public authorities and society at large were content to leave them largely to their own devices.

It is a different matter when universities become dependent on substantial amounts of direct and indirect public funding, when Higher Education is no longer an ‘elitist’ preserve but a generally recognised democratic right, and when the contribution of the research university has been identified as a vital component of economic growth and technological development for the emergent ‘knowledge society’. In this kind of context we may speak (this is where we are now).

This kind of compact we must speak of a ‘high stakes’ compact for autonomy. It would be surprising, and require some special explanation, if state and society continued to allow universities the same autonomy in these circumstances. However, (and this is an interesting) in broad terms this is indeed what happened with the rise of the modern research university from the late 19th century to the mid-20th century:- the university developed into a vital institution for modern industry, state and society but for a time managed to preserve a substantial degree of autonomy in the name of Academic Freedom.

In this perspective it is easier to understand the late-20th century demands by various forces in state and society for universities to become more accountable. Such challenges to its traditional autonomy are in effect only to be expected as the price of success for the modern university.

However, reverting to an authoritarian Command Model for the Higher Education sector and doing away with the foundational principles of 'cooperative governance', as suggested by the recent legislative amendments and proposed regulatory changes, would amount to a reactionary development of a different order altogether.

The last Section, Section 7 the conclusion is the last Section which was not part of the initial paper that I am submitted to you so I am not sure if this is be included in the paper that is distributed.

Ms KHUMALO: Professor just to check on the past, are the specifics examples maybe of the varsities that follows this Model?

Professor du Toit: Which Model?

Ms KHUMALO: The one that you just describe where you are saying on the last sentence where it potentially, where you are saying maybe they paid the price of success in their Accountability becomes more on their success.

Professor du Toit: On the threads that I have discussed here, the general threads, they are threads worldwide/ global threads in University System across the world. It is interesting that in South African we were ironically o paradoxically the academic boycott / the anti-apartheid boycott in the 19th 80s when as the part of the protest and session against South African direct interaction Universities worldwide and South Africa as well minimised.

That in affect excluded South African from worldwide threads. So these threads that happened is the Managerial Revolution. These threads is away from the old kind of Academic Research and Universities to the Universities that is more market-oriented and so on. That already happened in the significant way during the late 1970s and 1980s in the European and various part of Australia and so on.

It only makes an impact in South Africa during 1990s where after the academic boycott was lifted. But the general threads, if you just look at the profile, the trajectory of South African Universities. If you read history which University write themselves they always over emphasise write how old they are. So that the Universities they are...

-I have been located the University of Cape Town, they will say the University of Cape Town is now 170 years old. It started in the 1830s and is the present institution. In fact the University of Cape Town is only founded as a tertiary institution in the 1920s. In the 1920s there was nothing more like the little bit of a glorified high school.

Even when it was established as a University for a very long time it was just a teaching University, an undergraduate teaching University. Worldwide the conception of the Universities has been since the 19th Century that the University are unity of research and teaching. Proper Universities are research universities but in South African case is only in the last sense at about 1990s that one or two of South African Universities can be legitimately called Research Universities. Basically most of them they are still teaching Universities.

So these threads are global and they are worked out in different ways in various countries at some stages. My final is if I can conclude, the final section there has tried and bear in mind what I understand and I hope that I have got it right. I understand to be part of you broader mandate and objectives.

There the question is: -what are the determining factors for a sustainable Social Compact regarding the substantive Institutional Autonomy of universities?

- (1) The first has to do with the question of resources, available resources, adequate resources, relative to the need available Higher Institutions or Higher Education.
- (2) A sufficient Social and Political consensus on the value and priority of Higher Education and Research of the important significant of the Universities and other Higher Education institutions.
- (3) The final one and perhaps the most precisely one at our stage today is the question of trust whether there is sufficient level of trust in institutions of higher learning and research communities to manage their own affairs in accountable ways within a context of cooperative governance.

Let me briefly deal with each of these sets of factors in relation to current demand for Free Higher Education.

Available resources and relative need:- Contemporary institutions of Higher Education are resource-intensively. They are very resource-intensively in both absolute and relative terms. A century and more ago small-scale teaching establishments or liberal arts colleges could manage on limited budgets and minimal sources of external funding.

I remember when I started teaching at Stellenbosch University in 1970s and for the first time the department has set a departmental budget we were all thought that this is mad. Whereas we ever heard that a university or the department has a budget.

We live in the world where the university was provided with resources and didn't have to think about it or account. Contemporary universities are complex institutions. They are diversified over a wide range of specialist disciplines, Law, Medicine, Agriculture, Business schools etc. They combine mass undergraduate teaching (when I went to Stellenbosch University as a student in 1950s the total students was about 3000 and University of Cape Town at that stage was also 3000.

Now University of Stellenbosch has going up of the students of 40 000 and also University of Cape Town has 40 000 and some universities have more than 100 000 students).they combine undergraduates mass teaching with critical scholarship, diverse professional accreditations and advanced research. All of these requiring substantial funding.

Depending on the general level of stage of Social and Economic Development they require substantial support from state and society. A century ago the South African State could barely support the introduction of compulsory secondary education and a few small tertiary institutions for the white minority group only.

Currently we have some 23 universities of which maybe five of six have the makings of potential research universities. Student's participation rates remain unacceptable low, (in other societies like the European societies you have student's participation rates of 40 to 50%.

In South African Students I think is somewhere around 15%. So participation remain unacceptable low especially for South African students. But increasing this across the full range of Higher Education institutions will have massive resource implications.

Moreover, any such increases will have to compete with the equally significant demands on available resources and State funding / public funding by for example, Social Welfare, Health Services, Poverty alleviation and so on. So in terms of the resources the universities are massively resource intensive.

They are intricately elitist institutions. Even if you expend inclusive so that the students number increase. Probably they remains in terms of the resource requirement. The question is: - is the social and political consensus about making that available to higher education institutions to universities.

Sufficient Social and Political Consensus on the value and priority of Higher Education and research: - It cannot be assumed that there is a general consensus within society and the state of the value of Higher Education or that public funding for research and scholarship should be special priority.

Obviously there would be consensus that would be some supported whether there should be highly priority. Historically societies differ in the value and esteem they attach to Higher Education, research and scholarship. Some societies, for example CHINA, FRANCE, GEMANY, CUBA and so on have longstanding traditions in which families and communities would go to considerable lengths and even sacrifice to ensure that younger generation get a proper education while scholar and intellectuals are held in higher esteem.

Other societies are characterised by a more general “anti-intellectualism” and there is a lack of social support for the “elitist” pursuit of Higher Education.

In such societies it will be difficult to achieve a sufficient Social and Political Consensus that the funding of Higher Education institutions should be a special priority. In the South African case the social standing of “higher learning” and of “intellectuals” remain precarious, these are readily perceived as “elitist”. In the collection the current demand for Free Higher Education paradoxical.

On the one hand, it may be interpreted as an expression of high regard for the “elitist” values of higher learning, on the other hand it may be taken as a democratic demand that Higher Education too should become fully inclusive, whatever the cost implications might be.

A sufficient level of trust. A sufficient level of trust in institutions of higher learning and research communities to manage their own affairs for the common good. (That is the question that cannot exist in South African context). Public funding of Higher Education institutions is not just a matter of the absolute or comparative proportions of access to the available resources.

Not so long ago the funding of education generally, and a Higher Education in particular, in post-apartheid South Africa actually compared reasonably well with the position in other African and or other developing societies that is no longer the case. More recently South African has fallen behind in comparative and proportional terms. (I am not an expert in this, is not my field and I am sure that the Commission will hear from people who can give the facts about that but I do gather that is a general thread).

We have fallen behind the position broadly speaking the crisis around the fees issue is that on the one hand the state component of the subsidies as a proportion of university income has dropped and on the other hand the State Policy is insistence that student's number must be increased.

So at the same time the university income must drop the student's member, the cost must increase. Over the last decade State subsidy has a proportion of university income has decreased significantly while there was a marked increase in student enrolments during the same period (evidently this is a major reason for the increase in the levels of students' fees as well as cause of the general focus on the issue of fees). But the issue does not simply concern the quantum of State funding to the universities.

It is often assumed that there is a direct correlation between the level of public funding and that of State control or interference. Paradoxically, though, our own history shows a converse pattern.

During the apartheid Era State funding as a proportion of university income approached levels of 80% or even higher per institution. And was provided in the form of Block Grants leaving it to universities to manage in their own discretion. Evidently the Apartheid State has sufficient trust that universities (White universities) would utilise the resources provided according to implicitly agreed and shared purposes.

Currently State funding as a proportion of the university income has in some cases dropped below 40% but with greatly increased demands for the Public Accountability of Higher Education institutions in much more specific terms. One way of understanding this paradox is as a symptom of a general loss of trust in the universities to act for the common good if left to their own devices.

The student movement's quest for Decolonising the Universities and insistence on the need for a wholesale restructuring of the curriculum and the culture of the university communities is a similar expression of this basic loss of trust in the institution.

In these circumstances it is very difficult to see how a sufficient consensus on the values of Scholarly Freedom and academic rule might be achieved, both as the Internal Constituents of Institutional Autonomy and in External relations to the wider society and the State. Maybe the Commission will regard these as a challenge which I hope you will take seriously and find a way of addressing. Thank you.

CHAIRPERSON: Professor is this one of the reasons to increase demand for Public Accountability. The emphasis that the constitution plays in Public Accountability which was something that created problem before.

Professor du Toit: Certainly is more general thread. So the Constitution require it. Also if you look at, for example the private sector, the king of all report and all those kinds of thing that whereas some decade ago private companies they were profit making companies and they had wide spread discretion in terms of how they go about. In all sort of ways there is insistence of Institutional fiduciary and Social Accountability and that apply to Higher Education Sector as well.

Chairperson: Why evidence of trust surely evidence of a greater initiation is the important of response for the country? And greater emphases in public life?

Professor du Toit: Maybe we are talking about the same thing but we are approaching it in different directions. What I am saying is if one look at the long picture, the overall story, the fact that the State now is more concern with the Accountability that is now become a constitutional requirement and so on. Is the part of the thread in which there is longer from the point of view the Politicians is now a list of trust.

If you leave the university you get their own things you can trust them. They know what they are doing and what they do will be in the service of the common good. So it is of course add the pressure on that but it is also a symptom of change in the view of the role of the universities. Is that makes sense?

CHAIRPERSON: I have a little bit difficulties in understanding how to know that exclusion! Unless you say that combine with demand of Public Accountability is an additional attempt to direct what the way the universities run the affairs.

Professor du Toit: Both. Certainly...

CHAIRPERSON: -How is the manifesto in South Africa? I am not talking about the purely Financial Expect but beyond that the so called underline fear they were not act for the public good. How is then the manifesto in South Africa?

Professor du Toit: I think the one simplest example of that is the change from the State subsidy. If one can look at the quantum of the level of proportion and so on how they rises and compare. But the form in which it is allocated it in the universities. That traditional historically took the form of the Block Grants.

So the State calculated according to its own objectives and policy of formulas it comes out with a figure that was grounded to universities in general and particular universities and so on. Then the State lifted that. It was then a question of the university could in its own discretion decide how is going to apply this, what kind of discipline, what kind of enterprises and so on.

Increasingly, is not just the Accountancy Accountability in that the universities must provide State Report in which they spell out the details of how they actually used money but the State also now increasingly find ways in which they direct and target those grants.

So there is no longer discretion of the university. For example within the university in time of State circumstances. I am thinking of CPUT (Cape Peninsula University of Technology) where I spend last numbers of decade. Traditionally in the universities faculties and the department like of Music, Fine Arts and so on has an important place in the life of the university but they are streamly expensive. The model of teaching which they are used are typical one of the teaching and so on.

So in the old approach the universities in terms of Block Grant the university could makes it own mind. If they decided that all that Block Grant it will use a certain part of that for music or performing arts or whatever that situation of the university increasingly the way the funding works at the moment is no longer, it is a various ways in its targets, is directed in a various kind of ways.

CHAIRPERSON: I don't see whether this should be regarded as trust in university but simple an appreciation that certain things are regarded as particular important which the university may not have such things or if it has such things the university has goes to the long. Is that interested to do so?

Professor du Toit: That is precisely in what I have in mind, what I am talking about. I mean one can talk about trust in particular individual department can be trusted. At a basically role there is the issue of whether you can trust if the State and the society provide the university as the whole with huge resources cannot just be trusted to decide by themselves on what are their priorities, how much is this going to this. Traditionally in the old model and where there is more trust that was just was just taken for granted.

Universities were now on business. It will make the right kind of the decision for the common good. The fact there is much more intensive, specific targeted Accountability requires expresses, illustrate that there is a trust in an overall direction of the...

CHAIRPERSON: -Is that the function of increase complexity in the management of the university which the university itself is not necessarily equip to understand.

Professor du Toit: My account is of course evadible implications of the complexity and the complexity itself is part of what is involved here. In the old days when the university were fairly simple operation when it was basically teaching small scale, little college.

It was very simple to see what the cause were and how the use and so on. Now we have the university with the different range of different kinds of faculties like it involves Agriculture, it involves nuclear research and all these things is much more complex. That is one part of the requirement for why is increasingly specific accountable.

Adv. ALLY: Professor, Maybe the problem is the word trust. Perhaps what we should try to do is you're working in the financial class because in the developing society government would like to see certain things happened and where your economy need to get impieties there is very there is various ways of doing that.

So it could be that from government point of view that certain things need to be done. In your earlier exposition in your paper you talked about steering of something and I would think that what is evidence now is a kind of steering so that our economy can grow and we have skilled population at the end of the day.

The word rust does not put in within those confines. This is where perhaps the Chairperson is having a difficulty with the word trust as it comes out. As it is well we don't trust you to do certain things and therefore this shows in the way we find you and so on. These is the difficulties I am facing myself with the word trust in this context.

Professor du Toit: I can follow the point that you are making is always what particular word you used when it comes with baggage's and they have implications and they also have the different meaning for the different people and so on. There is also an issue of what the other way of approaching this is to look at what the different Models of the university are. This is how to get back to the Cooperative Governance. There are universities that put in with the...

-Let me put it in this way, the Model of Cooperative Governance it is being influential and was adopted by NCHE and by the Department of Higher Education in past apartheid governance. May perhaps be more familiar in developed societies.

Do if you have society that are well established a system of Higher Education and differential set of Higher Education systems then to talks about Cooperative Governance and the interaction doing the State and the universities Sectors.

That makes sense but if you are in society which is at different stage of Social Economic Development even if it consider as developing society or developing stage then the notion of the Cooperative Governance is more problematic. As you indicated that might be more closely alike to the notion of steering that principle. Here we are dealing with philosophical problems.

That principle is a particular notion of democracy or not democracy. It is a principle that got a democratic system in which there are some institutions or organ which knows better, which is in a position that it can set a goals for the society as a whole. That is the Sector that is presented by a State or a ruling party in the State. It got the ruling of the developmental State.

It got a notion of political sector which is got inside the expertise to set a goals for a society as a whole. That is two different stories. One respond to that that will be no democracy. A guided democracy, steering democracy is not a proper fully flash democratic society.

CHAIRPERSON: Is there any evidence from the university Council themselves that they regarded Earmarking found as an intrusion of the Autonomy?

Professor du Toit: I am not in a position to respond specifically on that. I think it is very interesting question to ask and I am sure that you can get people who have done comparative research on the functioning of differences because the Council in South African Universities Council have changed significantly over the last two decades.

But I also differs amongst each other's the role which says the UCT (University of Cape Town) is very different to what the role of Council in UP (University of Pretoria) or the Council of Stellenbosch University. I have not made a special study of...

CHAIRPERSON: -The reason why I asked this is because we know that the universities are reasonable in a sensitive about Autonomy. I would expect that the Councils of... let me say of University of Cape Town, WITS University and University of Stellenbosch would have raised a cry if they have filled an access of Earmarking fund was including on their Autonomy.

Professor du Toit: As I said all that I am saying here is qualified by the fact that I have not made proper study of that.

CHAIRPERSON: But you have to be aware of that either.

Professor du Toit: No! I am sure there has been an example. I am sure if you look at particularly at the universities particularly like University of Cape Town and others their cases that are there are well quite significant protest and responses. But the other part of this is the relationship between the Council and the Academic Sector is also not a fixed one.

One of the thing is that traditionally the division of the function or division of responsibility in South African universities is to over simplify that the Academic Senate has got the last word to say about the Academic Affairs about teaching, research and all the things that got to do with the academic business of the university.

Council is supposed to, the functional responsibilities of Council with more general, with building, with fundraising and with sort of Academic Affairs. It was a traditional position. What is happening is some of the universities in South Africa is that Council has become much more important.

Council has in some cases become directly intervention in Academic Affairs and so on. So is a very complicated, the set of the the issue there I think rather than listen to my fairly England views on that I think you should talk to people who make a proper study of that.

Ms KHUMALO: Just Professor maybe in your opinion, how you maintain the sufficient level of trust and still hold the institutions accountable?

Professor du Toit: Well! I can see where the word trust maybe misleading did confusion because if maybe in our own ordinary common sense work one may will try to say if you trust. Someone then you don't have to require Accountability.

So you have got a view or if you give a loan you give some grant to someone and you tell that person "well you know that I trust you, don't worry you don't even to tell me what to do because I trust you. You will do what could do trust in that sense in ordinary everyday affairs may be me"

If you trust someone you don't need Accountability. I think at the level that we are talking here about Public Accountability of institutions like universities. There is no questions that the university for example if they are required to account for their funds they have to provides accounting records to the state which they report how the money has been spendened.

I don't think anybody has had in dream of saying no, no, no, you have to trust us. We will not give you an accounting because we trust that. That kind of accountability is agreed. The question is "when it becomes the more steer directed so when this funding is produced because the State want to make sure". For example, it does not just give a Block Grant, you may use it.

A certain part of it must go to this purpose and the second part of it must go to that process. You do that when you don't trust that the university left on its own to use the funding in a way that the society and the state would regard as an adequate appropriate.

Adv. LEKOANE: Professor, in a country like ours where the Policy recognises that there are certain things that have to be made and Government allocate funding to the universities for those purposes. Is there anything inherently wrong in waiting to ensure that those purposes have been met by institutions?

Professor du Toit: I think in terms of what I will be saying is depend very much of the level of specificity of the goals that you set. If the traditional historically, the Model with the Block Grant that the State give the overall funding and they require very little or minimal it allows the university to act as its discretion. But if you get into the position when in the way that the funding is Earmarked.

Historically the university like University of Cape Town has provided substantial funding to the faculty of Music, to operate school, the faculty of Fine Arts and so on. If the funding will be Earmarked and incentivise in such way that for practical purposes the university is no longer in a position that it can adequately provide for it. That is a different sort of situation but I am over simplifying very complex issues.

Adv. ALLY: Professor, maybe you should clarify the terminology. Our understanding or my understanding of the grants that has been given. You have got a Block Grant to which the universities can do even once in that discretion. We have then Earmarked Grant. With the Government says we don't have enough Doctors and therefore the money that I am giving there is Earmarked for that purpose.

Now what I have been hearing you saying is that presently the Block Grant is used. The Government says you must use the Block Grant in a said manner and I am not sure if that is the case. My understanding is that...

Professor du Toit: -No, no, no! What I am talking is that is part of exactly what you are saying that if you look at the long-term, overall pattern then State funding to the universities of South Africa they are larger. Maybe in some cases the whole of universities is a State Grant would be by a way of Block Grant.

Overtime that is been cut up differently to say now we have still Block Grant. There are still funding that university can decide on its own discretion but other funds are targeted at specified in various ways. And overtime the proportion between those, obviously if you introduce that kind of differentiation and say you move from to a situation where previously or everything was by the way of Block Grant and now by 5% and there are some targeted Block Grant. That is a different situation.

CHAIRPERSON: Does not also apply for the need of the interaction of Cooperative Governance? The universities stated their need in particular funding in particular project and the State has a role to allocate this projects. Has become Earmarked?

Professor du Toit: Here you will need specialist. I am not too clear to what actually the target of the Earmarked. I am sure they apply to the finalisation of the particular annual grant. They are all kind of discussions and negotiations between representative of the universities and the Department of Higher Education. In some cases I think that can actually takes the form of some sort of bargaining of the universities.

They negotiate with each other until they find a level where they agree on that. To the extent that express it would have more element of Cooperative Governance but if it is the case that the State simply issues the directives and the targeting and that is a laydown in a top-down way. That is a different kind of situation.

Again I must confess that I am finding myself in a little bit uncomfortable talking about this because I can talk about as I understand it. The general principles of what it is involved here but if you want to be informed about fine tune of how that actually work in a practice in different situation then you will need somebody who is proper expert on those kind of issues.

Adv. LEKOANE: Professor, when does public intervention become interference? Is it a line that we can draw?

Professor du Toit: That is a very broad general question. Maybe the way to answer that is to say in our experience in South Africa. In my lifetime somebody who was a student and who taught at the university in an apartheid period. We know what interference was when the State interfere and said that students of only certain race may be admitted to the university and when the State in the publication board interfere with binding of books and censoring of books and so on.

When can go on there when certain disciplines where certain areas of teaching were regarded to be personal. For example, I remember when I was a young Lecturer at Stellenbosch University in 1970s I was in a past apartheid a year or two. I was visited by a Security Police and they were explained to me that they come from friendly talk, a friendly discussion because they needed my cooperation.

They said “we as the security point of view we are very concern with what has been taught at university at all. Sort of dander things has been taught here. The revolution things has been taught”. My respond then was “I don’t understand what you are talking about. I am teaching in Political Philosophy Department.

One of the things that we teach philosophy of current mark and the theory of revolution. Is that you have in mind when you said you have been worried about”. Of course they said no, no, no that is not what we are talking about! But to extend those kinds of things happened that would be interference in universities.

Adv. LEKOANE: Let me just know the question, for example where the system is not soft correct. Let me give you an example of Teachers Development. Where the university failed to produce the amount of Teachers as they required for the purpose of Social Development Programme under the White Paper and the NDP. Would be justify for the Government to intervene in a form of Earmarked Grant for purpose of developing those Teachers?

Professor du Toit: It depend on what you are talking. If one is talking, for example making available bursaries, scholarship, Earmarked for students in technology professions and so on.

Marking that funding available for the purpose I don't see how that can be regarded as an interference. One must be very careful here because these things can be complicated and may appear to be just a general funding, may affect a particular political ideological purpose.

Adv. LEKOANE: Recently in the means of the fees discuss the Minister announced that the universities could charge fees as they proactive but they could not charge beyond the certain percentages. Would that be a caution on an Institutional Autonomy in your opinion?

Professor du Toit: If you are a large I hope that we don't misunderstand each other here. There are very large part of my presentation and my argument in this paper is to qualify and even be critical the way in which notion of critical Institutional Autonomy are absolutely trust. I think that is historically misleading and is practically misleading and so on.

If you are curious who believe fully that Institutional Autonomy as in available principle then I think that they will be probably have problems. That is a sort of theoretical argument. The fact of the matter what we have is that in the general mix of university funding, universities funding as you know better than I do there are three main sources of university funding.

There is State funding which would be talking about here in different ways. But funding is coming from different for various ways and for various purposes. There is Third Stream Funding. That is the university must generate through fundraise itself. Some universities are much more efficient.

Successful in doing that might have huge fundraising and it makes also, particularly in you go into market-oriented approach that university have research and other things that they may have money making enterprise. So you have go Ste funding, you have got a Third Stream income and then you have got fees. The mix between this is very overtime in different institutions so in South Africa in the old days.

In 20th Century it was very simple, most universities have huge majority of income, where State funding it was 80 or 90% of the State funding. Fees was minimal at Third Stream that is changed in some universities they have State funding to below 40% and the Third Stream became very substantial and so on.

Now what happened the background as my understanding to simplify background on what is happening recently is that the relative component of the proportion of State funding to the universities has gone down from where they were in five to ten years ago. At some time for various reasons including also because of pressure from the State students numbers have gone up.

Then the universities find themselves in a position where they have increased campuses because of a large increase of a student's number and so on. When the income source are going down they have to get to make a balance budget, they have to get money from somewhere if the ideal or the fundraising and Third Stream may be get some more substantial in that way.

But they are very few South African universities in that portion. So the obvious answer is that all that we are capable of doing is to increase our fees. If you look at the relation between the State and the universities is a little bit of two ways cutting it short because these universities are in this pre-document is large part because there are decrease in proportion of State funding.

That document could be resolved if State funding is increase to the level that they were previously or may be even higher than that. But is it is not increase, if State funding remain low and the state would also say you have got a limit on the extend to increase your fees.

In some cases that is going to mean in some universities this is very much we are not going to become bankrupt because whether you are getting a fund you are not getting from the State. If we haven't got a capacity for this Third Stream, if we may not increase our fees beyond the certain limit. That is the dilemma.

CHAIRPERSON: I have a problem with your question because I have been listening to Minister making a statement. I thought is must be very careful. He didn't say when the university is allowed to increase by 8%. He recommended that 8% should be.

Professor du Toit: That might be my reason why he used that.

Adv. LEKOANE: Professor, if I can take you back to the issue of Academic Freedom, should you place any significant to the place that would be the constitutionally protected right where as an Institutional Autonomy is not? Is there any significant that?

Professor du Toit: Yes and no! From an academic point of view perspective the good news is that Academic Freedom is actually in constitutional in terms of rights in South African Constitution. That is not common practice. There are very few other societies where Academic Freedom is a Constitutional in terms of Rights so it is significant and one can take it seriously in drawing up our new final Constitution that Academic Freedom has been given that prominent as intend Right.

That must mean something. That means that the State in the Constitution or the State is making sure that the Academic Freedom should be secured, should be promoted, should be protected and so on. In that news the problem is what is really meant, what is being put in the Constitution is that a very broad general formulation of Academic Freedom.

That notion had to be given some specific concept. What I had been talking about is the one way, I have been talking about that there are some people who argue that Academic Freedom means Institutional Autonomy. It is very simple to them because Academic Freedom means Institutional Autonomy and Academic Freedom is in the constitution.

Therefore Institutional Autonomy is in the Constitution. But the problem is that, that is not an adequate generally accepted definition of concretisation of Academic Freedom. My own point of view is that much more complex than other dimensions like Scholarly Freedom, Self-governance and so on.

What we need in this context is that the matter should be taken to Court and so far in the best of my knowledge there have been no cases in other ways that the Court has pronounced on the meaning and the implications of the Academic Freedom as to intend to a right in a Constitution.

If myself at certain stages I have a discussion with Constitutional Lawyers and others and to say why can't we have this case on which would allow the Court and the Constitutional Court at the end with the opportunity to give more specific and to determine meaning on what that Constitutional provision of Academic Freedom means. But as far as I know there is not being any case before the Court in which that has been done.

Adv. LEKOANE: To recall your earlier comment that Academic Freedom doesn't mean that you can say, doesn't mean that you can say what you want. Now the right for Academic Freedom is listed under the right of Freedom of Expression in the Constitution?

Professor du Toit: What is listed specially is not just... if you want to compare with the portion with the United States. In the United States there was the second amendment which is Freedom of Speech. It is one of the key elements in United States institutions.

The State Constitution does not have a special provision. It is not mentioned in the Constitution or in the Bill of Rights of Academic Freedom. When Academic Freedom comes out in the American context they dealt with it at the Court, addresses that in terms as a sort of Freedom of Speech.

The difference with the South African case is that Freedom of Expression is in our fundamental rights but so is Academic Freedom. What precisely the difference and relation is that it is another question that is one of the issues that need clarity. With you allow me there is a current case with express this is to illustrate this I thought rather apply. This is important at the intervention of the weekend.

At the University of Cape Town there were submissions of students involved in students' movement for Free Education and so on. They held the discussion on this. At the seminar one of the speakers said this is in terms of the general argument of the Decolonisation of the universities. These students sit and said "actually science should be colonised. Science is just a western invasion".

Newton was sitting was sitting under the tree and he saw an apple fall and he said that is Science but the students said that is not how it works. In town there is a place given a ZULU name in this place and this place is a place in which where lightning strikes. At that place there were people like SANGOMAS or others who can direct the striking of the lightning to particular targets. All of this is been videoed so you can follow the whole argument there.

When she got that point someone in the audios said we don't see it on the picture but he said that is not true. Immediately the Chairperson of this governing said "no, no, no wait now, we agreed on what is going to be allowed to be and what to be said here. When you said that is not true is that you challenge the rule of discussion here".

What is going on there? This is so strange because what is happening there is actually what you get in certain religions culture. There are religious culture where people who participate in discussions and conversation and so on have to agree to certain things that they believe in.

if they don't believe they must go out and they are not part of congregation here.

That is fine so it is not science, is not tertiary education. In terms of Freedom of Speech if there are people, if there are religious culture who have their own view of what they are speaking and what they believe on is a Freedom of Speech in that they have got a right to say this.

If you want to be part of tertiary education Higher Education, if you want to be student, if you want to be a Teacher and so on you must participate according to the discipline of those kind of discussions. In these kinds of discussions you are not just free to say what about Newton or about the lightning and so on.

There is a distinction between Freedom of Speech and Academic Freedom. Academic Freedom is formal discipline. Academic Freedom is that students when you study at University of Pretoria that is why when you study you write an assessment exam, supervision is absolutely interactive to that.

I have actually one case, once I have asked a student and student reported me to the faculty board because I thought that I was giving him a special attention and there is a draft for the fees and is highly problematic. I made also some comments and corrections in the bottom line trying to get him on the right track.

He reported me that I was violating his rights of Freedom of Speech. That is a misunderstanding of what teaching and research and scholarship is about which is in terms of the different between Academic Freedom and Freedom of Speech.

CHAIRPERSON: It might be suitable time to take a lunch adjournment. We may take an half of an hour or such time you need.

Adv. LEKOANE: That is fine Chairperson.

Professor du Toit: And you will require me after lunch?

CHAIRPERSON: Yes. That is why we feed you also, you will be strong after lunch!

Professor du Toit: Okay.

CHAIRPERSON: Yes Mr MADUBA! Who is your witness please?

Adv. MABUDA: Thanks Chairperson. The next witness is Mr BULELE BIKWANI. Mr BIKWANI can you please state your full names for the record?

Mr BIKWANI: MBULELE BIKWANI.

Adv. MABUDA: What is your capacity at the Universities Chairs Forum?

Mr BIKWANI: I am a Chairperson of the Forum.

Adv. MABUDA: Mr BIKWANI can you please just tell us your...

CHAIRPERSON: -Before that can you please tell us what is your qualifications?
What is your specialist are as well?

Mr BIKWANI: I hold a B URIS Degree. I work as a consultant.

CHAIRPERSON: And your work experience? What is your line of work?

Mr BIKWANI: I have been a director of a numbers of companies. I am still a director of numbers of chairs and some board.

CHAIRPERSON: Thank you. Yes Mr MABUDA!

Adv. MABUDA: Before you proceed you...

CHAIRPERSON: -I beg your pardon! I need to swear you. Do you have an objection on taking the oath?

Mr BIKWANI: Not at all.

CHAIRPERSON: Mr BIKWANI do you swear that the evidence that you would to give will be the truth, the whole truth and nothing but the truth?

Mr BIKWANI: Yes I do.

CHAIRPERSON: Say help me GOD.

Mr BIKWANI: Help me GOD.

CHAIRPERSON: Thank you very much. Yes Mr MABUDA!

Adv. MABUDA: Mr BIKWANI I am not sure certain how much details was on the letter that have been sent to you but the aspect that we are dealing with today is contend in terms of our reference. If I can just articulate that part in terms of reference says that the Commission must deal with the feasibility of making Higher Education and Training fee free in South Africa.

Having regard in the Institutional in depended on Autonomy which should occur vice versa of the Financial Funding Model. I am not sure if that is clear enough for you.

Mr BIKWANI: To the extent that is how I understood it.

Adv. MABUDA: So the question that I am going to ask you will be the context of that in terms of our references.

Mr BIKWANI: Thank you.

Adv. MABUDA: Could you please explain to us when the Universities of Council Chairs Forum started and what was its purpose?

Mr BIKWANI: The Forum was started in around late 2009/2010. It was a realisation from Chairs of Council that we need to come together to share that best and next practice as far as Government issues in particular. We were started to be worried about the numbers of universities that were under administration.

When we started reading report of access that administrations we realise that there are quite numbers of Government lapses that occurred at Council level and we thought that it is in the interest of the Sector to come together as Chairs of Council to have this Forum and learn from each other's and share next and next practice as I have said.

CHAIRPERSON: Which university do you chair?

Mr BIKWANI: I chair the CPUT (Cape Peninsula University of Technology).

CHAIRPERSON: Thank you!

Adv. MABUDA: So UCCF was informed in terms of any specific legislation or...?

Mr BIKWANI: No it is not a legislative organisation. In fact, in terms of Constitution is a voluntary organisation. So Chairs has much as their courage to be part of. They can decide if they don't want to be part of.

Adv. MABUDA: Out of the 26 universities in South Africa, how many of them are members of UCCF?

MR BIKWANI: Because we don't have strict membership format I can say that we have seen almost all of the universities attending our meetings. On the basis of that we can say that they are members.

Adv. MABUDA: So what determine that conduct of UCCF? The Constitution or some sort of?

Mr BIKWANI: There is a Constitution yes.

Adv. MABUDA: Just broadly has the discussing with regards to UCCF in terms of the understanding of Institutional Autonomy and Academic Freedom. Are these terms into changeable in terms of the UCCF understanding?

Mr BIKWANI: Not in particular way. We have the Academic Freedom and Institutional Autonomy would be discuss in the course of our meetings not that they would be agenda items to speak. So would be dealing with something and the issue would come out.

For example, it could be when we met with the Minister the first time talking about the issues of fees in Cape Town. There were issues around Institutional Autonomy that were discussed at the meeting in terms of who will be responsible for setting the fees and so on.

Adv. MABUDA: If I may just ask for your view or your understanding of the concept of the Institutional Autonomy?

Mr BIKWANI: My understanding Judge on the Institutional Autonomy is... (let me take one step back). The Act called upon the universities to have their own institutional statutes. That for me is the Department of Higher Education Act of 1997. The Act call upon the universities and their own institutional institutes.

That for me is already an indication that the Government or the legislation is allowing universities space within their own circumstances to determine certain things. Many of the things in fact they are very few things that are not determined by the universities themselves. That is my understanding of Institutional Autonomy.

Adv. MABUDA: Would you say Institutional Autonomy and Academic Freedom are the same?

Mr BIKWANI: No they are not. I would say Academic Freedom is a subset of Institutional Autonomy. Academic Freedom, I don't want to say heights behind Institutional Autonomy but you find it within Institutional Autonomy. They are not the same thing.

Adv. MABUDA: The reason why I am asking is because Academic Freedom is guaranteed in the Constitution itself. So are you saying that Institutional Autonomy is an umbrella term that includes Academic Freedom?

Mr BIKWANI: Yes I would say so.

Adv. MABUDA: So the terms are not be interchangeable?

Mr BIKWANI: No they are not interchangeable but I am sure we would realise that. When we talk about Institutional Autonomy you would find that universities is become restless and my own understanding why they become restless is because there is Academic Freedom within that term which they are trying to protect. In the attempt to try to protect Academic Freedom they just use Institutional Autonomy to protect everything which personally I believe they are certain things that should fall within the Autonomy of universities.

Adv. MABUDA: Could you give us an example of one of those things?

Mr BIKWANI: I believe one of the problem we are facing now that has been exposed by the Fees-Must-Fall is precisely the understanding of Institutional Autonomy. When we come out of the meeting with the President the first time the issue of 0% was discussed. It is precisely because our understanding of Institutional Autonomy that we did not sit together and say how we are going to coordinate this issues at the central level.

I remember that sort of discussion I had with one of the Vice Chancellor and he put forward Institutional Autonomy and I thought in setting operational issues that Autonomy should not apply and that was one of the thing. We are at where we were and we are still at crisis stage of situation of crisis.

We still want to hold on to Institutional Autonomy even on those things that we should come together and find the way of dealing with them in a uniform way. It may not at the same way but at least in a much more uniform way.

Adv. MABUDA: Are you saying that the 0%increase fees of last year was justifiable situation in which State intervention would be required?

Mr BIKWANI: Let me hear that again!

Adv. MABUDA: The 0%fees increase that you refer to last year, the meeting where you were discussing the 0%fees, you said there was a situation in which Institutional Autonomy would not be applicable.

Mr BIKWANI: I believe it should not have be applicable and I believe not on the fee part. I am talking on the operational part after the decision was made because this decision that was made was not made by the Government. We were the part of it. We wrote to the Government to ask them to see us.

Adv. ALLY: Mr BIKWANI just clarify that again? You are saying you wrote to the Government to say you would like to meet. Just tell us the sequent of the events.

Mr BIKWANI: The sequent of the events Advocate ALLY is that we wrote to the Minister of the Department of Higher Education and Training and wanted to see the Minister around the issues of fees and the violence within the universities that was already starting to show withheld. After I think we waiting the Minister to respond to the issue that we were raising, were not satisfactory dealt with.

At some point in our meeting there was there was a view that let's write to the President and ask to see the President so that he can intervene and we did that. We wrote to the President. That meeting that we had last year (my memory tells me that it was 06 of November 2015) was a results of our request to see the President to talk about this issues of violence at the universities fees and all sort of things.

Ms KHUMALO: Mr BIKWANI, when seeking that intervention what was the status of your Institutional Autonomy?

Mr BIKWANI: We went there as a Forum of Chairpersons having had discussions and agreed on the parameter of the sort of the intervention that we would be requesting from the President. So there was consensus in terms of what we were going to put in front of the President.

Ms KHUMALO: In seeking of that political intervention what would have been the status of your Autonomy? Were you still Autonomous universities there or you were saying that you are giving your power to political intervention to take over?

Mr BIKWANI: One may read it in that way but from where I am sitting I think it is part of Autonomy to decide to seek intervention. You still hold the powers. Even at the meeting the President said yes with Cabinet agreed to what we proposed, it didn't come from them.

Adv. MABUDA: I am going to move on to the Funding Model, the Funding Policy for the Higher Education Institutions. We know that the universities are funded by NESIS three ways which is Government grants, fees, statutes income. In relation to the Government grant, this grants are divided into Block Grant and Earmarked Grant. In the recent past we have seen earmarked Grant increased in terms of the percentages compared to the Block Grant. Does the UCCF see this as an Institutional Autonomy?

Mr BIKWANI: It could. It depend how for the inclusion it goes. It could because we can't run away from the fact that those who hold pets would want to impose their own way of doing things.

Even though the funding for Higher Education by Government is not like funding a company by private shareholder because in essence we are sitting with Government and talking about funding as if the money that they are funding as Higher Education does not come from us. So that is the complexity around this. So I believe it depend how far that intrusions goes. It could go to a stage where it can affect the Autonomy.

Adv. MABUDA: One of the concern in relation to Institutional Autonomy is that what it does it protect legislature of Higher Education institutions. So in the instance where you are the Tax Payers the majority of society does not benefit from the universities. So if the universities are not serving the interest of the society as a whole is that not a reason for the State to intervene?

Mr BIKWANI: I believe the State intervene on how the universities run to... -sorry! If we take the annual performance plan and what the State brings to universities in terms of the direction that the universities need to take. I think that is one of intervening. If you say to me then the universities don't play the game according to how it structured by the State.

Because the State does not indicate which sort of qualifications we should concentrate on in terms of bringing institutions. If we don't play the game and if you ask me I believe the State should and does have the right to ask questions on why are we not following the direction. So you are correct Institutional Autonomy can be used even for wrong reasons.

Adv. MABUDA: For instance with regards to Earmarked Grant, this will be if the Government was to reinforce a matter to certain programmes that are developing the economy. For instance to testify in the instance of Higher Education institutions.

Mr BIKWANI: It would. It would support it. I would be justified.

Adv. MABUDA: To what extent? I am trying to find where we draw the line in the sense of you indicated that the increase amount of the Earmarked Grant at this point is not really considered as infringement. But at what point do you draw the line and say that the State is a fringing on Institutional Autonomy?

Mr BIKWANI: As I said behind Institutional Autonomy there is Academic Freedom which is the right that is regarded as jealously. The universities become nervous when the intrusions start to come closer to Academic Freedom. I believe that as far as Institution Autonomy is concern most of the things we agreed on with Government because we submitted plans in the direction of that Government wants and proceed in that direction and we succeeded there, failed there and so on.

I am not too sure that the issues of Institutional Autonomy it is bending it around. Yes, when people talking on media and so on. There are very few times where the issue of Institutional Autonomy become an issue. It became an issue when Government is trying to come closer to Academic Freedom that universities then start to raise the bigger umbrella of Institutional Autonomy.

Adv. MABUDA: I am going to move on to the second means of funding universities which is students' fees. We had submission proposed to the Commission that universities fees should be kept. Why is that the such describes between the fees charged by the various universities?

Mr BIKWANI: I not be sure if I would be able to answer that question. I can give you my view but it would be just a view.

Adv. ALLY: MR BIKWANI perhaps if you can take your own experience of your institution to this impute. How do you come to charge a certain fees for specific course or programme? Does it comes through the Council or it deals at a different level then from the Council? So perhaps that experience might help you in providing an answer.

Mr BIKWANI: At how universities the issue is Advocate ALLY, it is a matter that start with the Students Services Council which is a Committee of Council where students issues are being discussed. Students allowed to make presentation at that meeting. Management also makes their own presentations. That Committee then come to try to find the middle ground or happy medium somewhere.

When that happy medium or the Report goes to the Finance Committee of Council and the Finance Committee looks at the overall financial health of the universities and then would agree or disagree with particular proposal but they will eventually make a proposal to the Executive of the Council before it get to the Council.

Adv. ALLY: And you interaction with your colleges from other universities? The same Model apply that you used it at the universities?

Mr BIKWANI: Not all of them.

Adv. ALLY: Give an example then.

Mr BIKWANI: In some universities the issues of fees is in the domain of that Council and that is full stop. Councils makes the decisions about fees. Even in our university Council makes that but there is a process that gets to the Council.

In some universities I understand it just gets to your Finance Committee, management makes proposal to the Finance Committee and then the Finance Committee then recommend to the Council that this is how much fees, this is the percentages of the fees.

Adv. ALLY: Coming closer to Mr MABUDA's question. Have you have the discussions with the colleges of yours as to the amount of fees charged at one or other of the universities and disparately between them for amounting?

Mr BIKWANI: Advocate ALLY this is still a new organisation. We don't want that. We are not there yet because those are one of the hot potatoes that we thought when we have reach a particular majority level and we can get into those issues. So we have not had that.

Ms KUMALO: Maybe in your discussion discuss a regulation of office in the universities.

Mr BIKWANI: No!

Ms KHUMALO: It is a principle that you don't discuss it or it is something that you are not considering?

Mr BIKWANI: It is not a principle. It is something that has not come up on the agenda yet. I would guess deliberately so from the members that there are issues that are just sensitive and that is one of them.

Ms KHUMALO: As a Chairperson you have a discretion to see what goes to the agenda or not? What inform that sensitivity?

Mr BIKWANI: Yes I do have the discretion which I have to exercise in the interest of the members and if members put forward the agenda item then definitely. I must say we have started moving in some of the areas. For instance we were already started to talk about the salaries of the Vice Chancellors which is another area of sensitivity. You could see just dealing with that issue that there are members who believe that let's not talk about this issue. We said if we have to be honest to people we must talk about it. We must talk about it get to a stage where do we agree and where we don't agree. But we can't say let's not talk about it. This is the nature of the Forum.

Ms KHUMALO: So the Forum it has pursue value over its members or it is binding in a way or whatever that has been agreed on?

Mr BIKWANI: It is influence. It is not binding precisely because is a voluntary organisation and universities are Autonomous. They have their own Councils that takes the decisions so the Forum can't take decision for any university but they can influence in the decisions.

Adv. MABUDA: Jus to follow on Commissioner KHUMALO's question. The reason why I am asking is because there is a perception that previously the White Universities they are very exclusive in the basis of high fees the way they are. So my question to you is why would be the implications camping fees in universities?

Mr BIKWANI: I am not on those universities. I would know what the implications would be but I guess we have to camp fees. I make that bull statement. We have to camp fees.

On this issue when USAF was lodged I spoke about those issue of statement that unless we do something about students. We are assisting the economy of the country because those poor students who go the university and acquire that and that grows as they study until the end.

When they leave the university they have at least four to seven to start economic activities because they have to service the debt that they left university with. So it has an impact in the economic development of the country if we don't deal with that. So I am a firm believer that we have to camp fees.

I can tell you what have done at our universities as back as 2012. I know some universities have starting to do it know because of the Fees-Must-Fall. We took a decision in 2012 that any student who is academically deserving and we defined what academic deserving means that students must pass this year of the study to the next year of study. That student must not be excluded from the university.

The university must find the way because if the student has been assessed and has to be found to be poor then the university cannot exclude that student. It would be a travel of justice and finance and everything else.

Adv. MABUDA: I am going to move on to the Third Stream Income. We know that by the name (this Third Stream Income) this are donation that you received from various entities. In some circumstances there are entities who set conditions as to how these funds should be used. Does UCCF not see this as intrusion into institutions to Institutional Autonomy?

Mr BIKWANI: No! Not at all.

Adv. MABUDA: In essence what does that means in the External Donna to tell the universities how to conduct their business? Is that not the case?

MR BIKWANI: No it is not. If External Donna are giving you money they are asking you to follow a particular path that you are in a framework already. So they are not telling you what to do because it is in your framework. It is something that you have wanted to do also.

There is no External Donna that can go to university and say and say to university do X. When the university its own framework it does not allow X and the university does not. We don't see it as intrusion. We rather see it as a support, as focus support rather than intrusion.

Adv. MABUDA: In that instance what is the different between that situation and where the State in investing at the universities and their essence in directing the universities how to spend their funds?

Mr BIKWANI: When you think about it there is no much different exempt the source of the income, the source of the funding.

Adv. MABUDA: There is a further issue that is set out in the Higher Education Act that says “universities can raised fund by the way of investments”. There is a perception that in this instance because Councils are in essence Self-governance the situation were members of Councils were get involved in university business, would get in the business that they have interested. The situation like that the State intervention, regulating council not be justifiable.

CHAIRPERSON: Sorry! I didn’t understand. Would you mind to read again please?

Adv. MABUDA: Chairperson there is a perception, there are few article that I have read where members of Council of the universities would vote on the universities doing business outside private interest, they have interested. So in that instance there is a conflict but this type of business interaction are not regulated properly. So my question to Mr BIKWANI is “would State intervention not to justifiable in that case to regulate Council”?

CHAIRPERSON: What sort of business do you have in your mind?

Adv. MABUDA: there are instances where for instance cleaning services for example. There would be private companies to be hired to clean universities campuses and then Council members would directed those companies and that type of business is not regulated within the Council. So there is a conflict but it is not regulated.

CHAIRPERSON: I am not sure what the conflict is but anyway! I pick it up with Johannesburg City Council.

Adv. MABUDA: If a member of Johannesburg City Council has an interested on pick it up and had a say on whether to get a contract is that be a conflict?

CHAIRPERSON: Yes. You are right.

Adv. MABUDA: So in that means Council has enough State intervention in the way Council makes this kinds of decisions.

CHAIRPERSON: Do you have any knowledge of such circumstances or do you have any comment on that?

Mr BIKWANI: Yes Judge I do. It happened to me. I am a Chairperson of Actuaries and Investment company. In the process of me being nominated to serve on the Council the company was chaired of without me knowing because I was none Executive Chairperson, was bidding for the business at Cape Peninsula University of Technology.

So when I got appointed as a Chairperson the MD of the company phoned me and said to me we have just got business with the Cape Peninsula University of Technology. It was so early that I haven't even told him that I am a Chairperson of the Cape Peninsula University of Technology. I said to him you better send me the bidding document when you started bidding so that I can see the date.

This happened. I brought came to the Council and I informed Council of it. I said Council need to decide how they are going to handle this issue. When they have handle it and realised that the company was given the contract before I become Chairperson of the Council.

At the point of given the contract I was not involve at the Council at all but now that I am in. there is a conflict whether it can be managed or it can be eliminated is something that Council need to.

But for me I decided to step down as a Chairperson of that company because I cannot sit as Chairperson of Council with the company that I have many Council have that. I don't think it requires the intervention of Government. It is a Governance issue that Councils and Chairpersons need to be deal with because it is a conflict of interest.

Adv. MABUDA: But in a lot of instances Council members would not resigned?

Mr BIKWANI: I am not too sure about this because I guess that is improper. I am just sitting here trying to think of my colleagues who are Chairpersons of Councils that they would set at that nature because it happened in my university and I know a number of universities. If it does, it does require at the State to answer that questions rather than intervene.

Adv. MABUDA: just on the issue of Academic Freedom, we know that the senate of public Higher Education institutions is accountable for the Council for academic and research function for the Higher Education institutions. Are you aware of any Government legislation that intervene in the determination of academic functions and research functions at the university?

Mr BIKWANI: No!

Adv. MABUDA: So in that instance completely anonymous in determining what they teach?

Mr BIKWANI: As I said that is why they regarded as jealously. That is what we teach in universities.

Adv. MABUDA: So in the instance where universities teaching courses that are not beneficiaries to country as a whole. How does State keep pumping money in the universities that they are not benefit everybody? How does the State justify that?

Mr BIKWANI: I think the funding formula or the State funding is already anticipating that. If you look at the funding formula of the State is already anticipating that. For instance there are certain qualifications that the State the State will give you more money for it because that is the direction that they want you to go.

If you go to another direction they give you less money as a way of influencing in a particular direction. I am not too sure about the example.

CHAIRPERSON: Let me put it to you. I am supposing the students said universities has an education which is not decolonised. I am supposing in this way the Minister of Department of Higher Education and Training that he had said. The universities said we have gone extra mile, we have decolonised. We considered it necessarily and we don't proposed to go any further.

Is the Department of Higher Education and Training or the State says we don't agree with you? Can one party, can one student interfere with the universities or with the universities to says I am entitled to do what I am doing or would simple compromise on the basis that is the best of the State?

Mr BIKWANI: I think Judge the difficulties with this things is when we want to sit on different side. We are one country. We need to agree what is important for the country whether is decolonised.

CHAIRPERSON: Where the universities Autonomy stops in that case?

Mr BIKWANI: it is not one of the easy question because that is one that I don't know. For me that will be the answer that I don't know where it stops but what I know is that whatever Autonomy universities have in terms of academic need to contribute to the developing of the country.

CHAIRPERSON: Yes but the universities said we are contributing and the Government said we don't are contributing.

Mr BIKWANI: Firstly let's agree to what mean to contribute so that when the evaluating that we are not arguing about whether we are contributing or not. If we have not first agreed on what it mean to contribute then we will have that discussion but if we have agreed upfront which I know is the case. There is an upfront agreement on what it means to contribute to the economy of the country by universities.

Adv. MABUDA: In your view, is the current funding Policy? Is that possible to deal with the current issues with the universities?

Mr BIKWANI: No! It is still far below to what it should.

Adv. MABUDA: So even though the Funding Policy makes provisions for the developing specific Scares Skills Policy Sector is not sufficient in terms of serving society as a whole?

Mr BIKWANI: Absolutely.

Adv. MABUDA: One of the biggest issues and is one of the reasons why we have current situation in terms of strikes is what the Chairperson alluded to of the issue of the Decolonisation. What is your understanding of the concept Decolonisation?

Mr BIKWANI: I am sure that I am allow to say I have no understanding. I think the approach of those who are talking about Decolonisation of education and Higher Education is particular in this instance is that education that we are receiving need to talk to our life. It need to talk to who we are rather than talk to someone else. For me I believe that is at the centre of the Decolonisation. It is a current education system. It is not talking to who we are and how we live.

Adv. ALLY: Do you agree with the Minister when he says this debate must still take place because what decolonise to you might not be decolonise to me and might not be colonise to Mr MABUDA?

MR BIKWANI: I fully agree with the Minister. We first have to agree what is the Decolonisation. I can give you a simple example, when the road must falls started Council, one of the Council members started by saying we need to start here as a Council and start looking at images that are off their apartheid from their apartheid time.

Let's agree with Council that are going to do that and I said we need to agree what those images are before we can go out and say that one and we need to decide. I believe the Minister is correct, we need to debate to make sure that we get somewhere where there is sufficient consensus.

Adv. MABUDA: I am just going to read you an extract from the presentation that we had before you came to the Commission the definition of the relation. I deal with the relationship between the universities and the State should be was described as we have heard that the relationship quote. We have heard the relationship between the universities and the State.

Should be ideally be a system of Cooperative Governance which would see the State steering and coordinating low while Autonomous Higher Education institutions will turn Autonomy over their resources but there are quite obligation to be accountable for their use. In your view does this statement reflect the true of the relationship between the State and the universities at the moment?

Mr BIKWANI: I think it does.

Adv. MABUDA: So are you saying ideally at this point the State is just in a steering role in the relationship between the State and the Higher Education institutions?

Mr BIKWANI: Yes it is in a steering role and in some cases it has to be put in a steering role because it does from time to time wants to get involved.

Adv. MABUDA: So at this stage you don't not believe that the State is being intrusive the Autonomy of Higher Education institutions?

Mr BIKWANI: No! I don't think so. I think the universities have latitude to decide many things without the State.

Adv. MABUDA: so are you saying that the universities should be provided more latitude or is the room for the State to develop more regulations to govern the universities?

Mr BIKWANI: I think the sufficient regulations already to develop more than what we have now. We must just look at the current Regulations and implement it effectely. I mean that is what we said to the Minister and the Minister amended the Act to make sure that even students complains to him he will send an Assessor to the university. We said it does need the amendment.

The current legislation is sufficient, you must just implement it. For us as we said we believe that there is enough Regulations, it just need to be implemented effectively.

Adv. MABUDA: You have given testimony that current Funding Policy as is not sufficient to address the society of public in the country. Do you not think that will require bit more Regulations in order to serve the society as a whole? Or is the problem just an implementation?

Mr BIKWANI: The problem is implementation and really the level of the funding because the Government is trying to steer things in a particular direction but the funding is not enough.

Adv. MABUDA: Finally, beside the State intervention how does UCCF propose that the State deals with the institutions that you feel to transform?

Mr BIKWANI: I think that is not much choice from the State exempt to deal with that to someway once again of withholding some funding. I am not too sure whereas the State can do within the institutions that they don't want to transform exempt getting into agreement with them that they don't reach an agreement that they had and that might affect their funding.

Adv. MABUDA: With that not being also bridge of an Autonomy in some sense because it is an access of an exclusion?

Mr BIKWANI: Not really. Is not what the State want. What the country has agreed should happened. We all as a country have agreed that the country should transform and therefore anyone who is not doing that there should be consequences that follow and the State is the guardian of the social transformation and hence it is the one that is going to take action.

CHAIRPERSON: Are you aware of any higher institutions in this country that that has refused to transform?

Mr BIKWANI: No Judge but I know of many that are not transforming. They might not have to refuse to transformed and said it is so many words but they are just not transformed.

Ms KHUMALO: MR BIKWANI the provision speaker seems to suggest that the State intervention can be perceive maybe there of lack of trust in Council is disturbing Institutional Autonomy on that. Do you view it that context as oppose the Accountability?

Mr BIKWANI: I think it is Accountability in particular with new Act. (You will correct me if I am wrong). The new Act is different from the previous one. At least is allow the Minister in a number of ways. It can be a Ministerial Committee if there is a problem. If there is a problem with the university the Minister must first talk to the Chairman of the Council of that university about that problem.

If that new sense has not been resolved then the Minister can do one of the three things. Set up a Ministerial Committee to look at that or an Assessor or an Administrator as he see it fit. So he got some wide space to play in terms of making sure that he follows a logical and objectives root to get to a point of intervening later.

Ms KHUMALO: So during that intervention what is the status of Council? Does Council still run varsities on other duties and it is only what refers to the Minister or does the Council suspend all of it in the period? What happen during the intervention?

Mr BIKWANI: From where I am sitting I think Council still takes responsibility for the running of the universities until a Minister has been given a Report by one of those three interventions and at that point the Minister can decide.

Ms KHUMALO: It is not been that an overlap if maybe the decision of the Committee is in a particular matter but on your Council meeting it is still have the same matter to discuss. So do you suspend matter pending there or what does it speaks in terms of the Autonomy there?

Mr BIKWANI: I think Commissioner on that particular definitely the matter would have been put on suspension while it is still investigated and so on. But other issues Council will still have responsibilities over.

Adv. MABUDA: I have no further question Chairperson.

CHAIRPERSON: Thank you.

Adv. PILLAY: Chairperson I have two issues that I need to raise.

CHAIRPERSON: Okay.

Adv. PILLAY: MR BIKWANI time is running out and there are probably be hundreds issues which I thought we needed to deal with you. I am going to choose two issues which I think are most crucial to what we have determine.

Mr BIKWANI: Thank you.

Adv. PILLAY: The first is the question that others mentioned. We know that the Council play a huge role in the admission. Firstly the admission Policy is adopted by universities. In terms of numbers the amount that mentioned will get a draw in a particular programme. Is it that correct?

Mr BIKWANI: Can I ask that you repeat the question?

Adv. PILLAY: Sure! Just is the question of admission. We know that the admission Policy of the universities has to be determine by the Council. Am I right?

Mr BIKWANI: Yes.

Adv. PILLAY: And in terms of numbers, the numbers of students who get enrol in a particular programmes, that also has to be done in your approval as Council?

Mr BIKWANI: Yes.

Adv. PILLAY: And Council does that as a consultation with senate?

Mr BIKWANI: Yes.

Adv. PILLAY: Now we now that the question of admission is actually crucial one to looking at the feasibility of Fee Free Higher Education and Training. We heard in an earlier session that the presenter mentioned that Government in centre vices greater enrolments through its specific funding formula that is the Block Grant funding. I just want to understand from Council perspectives. What other factors do you look at determining how much of enrolment? What is the decision of enrolment for a particular year?

Mr BIKWANI: I think strictly speaking the enrolment are driven by the Government because the agreement on how many students the university should enrol is a matter with the Department, is a discussion with the Department. I know in universities because enrolment means money. They would really go an extra mile to enrol more students but it is a matter that is a discussion with Government.

Adv. PILLAY: That is really the point that I am trying to get to, is that we know that the determination of the enrolment numbers is the product of the enrolment planning process.

Mr BIKWANI: Yes.

Adv. PILLAY: through which enrolment plan being approved by Government?

Mr BIKWANI: Yes.

Adv. PILLAY: But when a particular university go to the enrolment planning process, do you go with the view of getting as many enrolments as you can out of the whole interaction? Is that the approach?

Mr BIKWANI: Firstly yes that is the approach. Maybe I can use Cape Peninsula University of Technology as an example. We are currently trying to deal with the budging of the business faculty. In terms of the formula the business faculty qualifications doesn't give us more money and that is the biggest faculty we have. So we need to find the way of managing that faculty from enrolling more students while we are trying to have Engineering on the other side, getting more students.

So Council does get involved in that way in terms of determining. And in terms of ending the numbers of students really we have Council don't get too much on that because reported by those who are dealing with this on day to day basis. So we can engaged what they put forward to us as proposals.

Adv. PILLAY: Just from the Policy perspective, the Policy approach that has being taken by Council. Is the idea just to ensure that you get the largest possible Block Grant funding allocation from Government? Is that what drives the need to ensure maximum enrolments?

Mr BIKWANI: Not only because if you can do that then there are other things that would be affected your quality of your teaching and all sort of thing can be affected also space and all that. That is the only consideration but it is a consideration.

Adv. PILLAY: Do you taking into account the enrolment target that are set out in the White Paper and the NDP?

Mr BIKWANI: Yes.

Adv. PILLAY: How does Council views those targets that are set out in the White Paper and the NDP when you are making your decisions? What in your view the way the NDP targets and the White Paper targets?

Mr BIKWANI: We view them very seriously because it is what to extent the Sector as we agreed on that is how we are going to deal with the enrolment that are the focus areas that we need to pay more attention. So as Council we do deal with the enrolment in view of...

-In fact the presentation about enrolment need to have a Colum or a line that says these are the NDP goals and these are the White Paper goals so that we can see if in fact we are contributing in that direction.

Adv. PILLAY: So in other ways the NDP targets and the White Paper enrolment targets they are changeable impact on the enrolment planning process within a particular institutions or within UCPT for example.

Mr BIKWANI: Yes they do.

Adv. PILLAY: Just the final issue which I just briefly to touch on what topic of Institutional Autonomy and Public Accountability. What do you understand to be the reason why institutions should submit to Government Regulations? The underline reason for that? Is that due dealing with public funds so that it does go beyond that?

Mr BIKWANI: From my experience is purely because we are dealing with public funds.

Adv. PILLAY: But we know that the Higher Education Act does provide for the registration and the monitoring of private Higher Education institutions who do not receive any public funding. Is that okay?

Mr BIKWANI: Yes.

Adv. PILLAY: On that basis should those institutions or do they submit to Regulation by the Government?

Mr BIKWANI: I believe the private tertiary institutions are contributing to the economy of the country even though they are private. Whatever they are contributing in teaching does have to be filled otherwise we saying private institutions are they must be just allowed to teach whatever they want to teach without anyone not interfering but at least monitoring what is being taught. I believe that that can even go to what we want to achieve.

Adv. PILLAY: Based on what you are saying, does that mean that the nature of the function that institutions if performing, is that what lends itself to the regulation?

Mr BIKWANI: As far as private yes.

Adv. PILLAY: Thank you Chairperson I have got no further questions.

CHAIRPERSON: Is anybody who have any question?

Adv. ALLY: MR BIKWANI

MR BIKWANI: Yes.

Adv. ALLY: -Two issues, you said in terms of the Forum itself, the number of you and volunteers are so fold. How many advantage universities institutions from part of this particular Forum?

Mr BIKWANI: I used my own understanding of advantage.

Adv. ALLY: Let me perhaps start here.

Mr BIKWANI: -Yes.

Adv. ALLY: From presentation from this Commission we have eight previously disadvantage institutions and therefore we have more or less eighteen advantage institutions. Roughly speaking, so let me speak of the UCT, WITS, Stellenbosch form part of your particular Forum as an example.

Mr BIKWANI: They are members in good standing and very active.

Adv. ALLY: Then the issue with regard to... you said the Act makes mention of the universities having their own statutes. Does it have statues in term of how it functions?

Mr BIKWANI: Yes Commissioner.

Adv. ALLY: And therefore has certain rules and responsibilities of Committees and various Councils within its institutions?

Mr BIKWANI: Yes Commissioner.

Adv. ALLY: When you were dealing just now with Mr MABUDA about Council members having an interest in one of the industry as such. Are these matters dealt with it within the statute of siput for example?

Mr BIKWANI: They are dealt with it through the Policy. There are conflict of interest Policies that determine when members must disclose their interest and almost continuously.

Adv. ALLY: Thank you.

Adv. PILLAY: Chairperson I am sorry! There were second issue that I want to raise with the witness move on beyond that.

CHAIRPERSON: Okay.

Adv. PILLAY: Just very briefly Mr BIKWANI, we know that Minister issue on Ministerial statement in relation to funding. In the later statement (the July 2016 statement) we see that the Minister called the universities to put in place what describes does the efficiency Majors to ensure that the available funding is utilised effectively. The majors that are listed there are four majors I just briefly run through around them, I just want to as you for your comment. The four majors listed are:-

- (1) Reducing overheads relative to the core function of universities
- (2) Collaboration amongst other universities in order to serve what is pending.
- (3) Improving the debt collection.
- (4) Putting in place processes that generate additional Third Stream income.

Having regard those four issues were any of them already on CPU's agenda prior to the statement being released or the funding statement now specific require CPU to address these issues?

Mr BIKWANI: Almost all of them are on the agenda for the past three four years now and before.

Adv. PILLAY: Which one of this is reported to the Minister?

Mr BIKWANI: I am not too sure whether... I can't remember the mid-term statement whether he requires that, we report on the issue. But they do form part of the Report that we give to the Minister time to time exempt now probably they would again much focus.

Adv. PILLAY: Thank you Chairperson.

Ms KHUMALO: The last question Judge. On the issue of 0% to 8%, are the Council choose 8% in the institutions on the increment?

Mr BIKWANI: Commissioner our understanding of the announcement is that there is no zero percent, there is 8%. What does it means is "there is 8% for everybody but those who have household of R600 000.00 and below are going to be subsidise by government. (Their 8% is going to be subsidise by government). Those who have household of R600 000.00 AND up will pay the increase of 8% and that is our understanding.

Ms KHUMALO: What inform that? It was the costing or what?

Mr BIKWANI: It was the costing.

Ms KHUMALO: And tin the Forum are all the members in time with the thinking or?

Mr BIKWANI: Yes there has been a meeting of mine consensus on the issue because once and then and I remind Chancellors every time they seems to forget this. What the Minister announced came from the Vice Chancellors, it came from us. We said to the Minister we want 12% if you want us to be really running our institutions effetely at the level but we can see where things are we can do it with 8%. It came from us and the Minister looked at it and make the announcement.

CHAIRPERSON: Thank you Mr BIKWANI.

MR BIKWANI: Thank you Judge.

Chairperson: Thank you for your time.

Mr BIKWANI: Thank you very much.

CHAIRPERSON: Can you please call Mr BAWA?

Adv. MABUDA: Chairperson Mr ZULU will be leading the witness, Mr Professor BAWA.

CHAIRPERSON: Okay.

Adv. ZULU: Professor BAWA thank you for coming.

PROFESSOR BAWA: With pleasure.

CHAIRPERSON: Professor BAWA do you have an objection on taking the oath?

Professor BAWA: No.

CHAIRPERSON: Will you take the oath?

Professor BAWA: Sure.

CHAIRPERSON: Do you swear that every evidence you will give will be the truth, the whole truth and nothing but the truth?

Professor BAWA: Yes.

CHAIRPERSON: If you do raise your right hand and say help me GOD.

Professor BAWA: Help me GOD.

CHAIRPERSON: Yes Mr ZULU!

ADV. ZULU: Thank you Chairperson. Professor BAWA you previously came before the Commission and you made submission of the universities of South Africa. Is that correct?

Professor BAWA: Yes that is correct.

Adv. ZULU: Just on record tell us briefly on what Universities South Africa is all about?

Professor BAWA: Universities South Africa is a membership organisation. Is the umbrella organisation of the 26 public universities. It exists to provide the voice for the Sector as a whole not for an individual institution. At the same time it provides the Policy Development or Policy Interaction Advocacy and so on.

Adv. ZULU: Who represented the universities in...?

Chairperson: -Sorry Mr ADV. ZULU I can't hear you!

Adv. ZULU: Sorry Judge. Who represent the universities in the organisation?

Professor BAWA: -Universities South Africa it has many structures which are reach into the universities and so it has a significant number of people from all the universities participate on its work. But the Board of Directors of Universities South Africa are the 26 Vice Chancellors and the CEO.

ADV. ZULU: Thank you Professor. Can you just go through your presentation? The purpose of this presentation, can you just go through?

Professor BAWA: Thank you very much. I will speak about Institutional Autonomy. I am going to give you cover practical presentation about Institutional Autonomy rather than philosophical one but it is a need to discuss philosophical. I just want to begin by saying that the Higher Education Act of 1997 together with the Act that was amended at around 2001 provides us with the framework.

On that we think Higher Education Act of 1997 is actually probably Act that is really has a path breaker in many aspect. So what is set as essential is a public Higher Education institutions must govern Higher Education Institutions subject to this Act in any other law and the institution or statutes. So each university has a statute that they are approved by the participant and then have got Higher Education Act and any other law that may contain the Higher Education.

The second point that I would like to say is a question of about what is the provisions for Institutional Autonomy. First of all there are Councils and the councils have a maximum of 30 members. But there are very strong principle in this.

The principle is that “not less than 60% of Council should be External member of the university and not more than 40% should be Internal members. That is radically if you like in the Committee of the Council which are really engine of the governance of the universities.

Then of course there is a Senate and the Senate is chair by the Vice Chancellor.

This is very usual thing and other part of it is not necessary chair by the President of the university or Vice Chancellors and that it is the case in South Africa. The Senate of course have the authority over the Academic Enterprise of the universities.

Sometimes of course to the decision making of powers of the Council.

For instance if Council does not like something that Senate has decided it can't really reject it out of that. What it can do is to refer it back and ask Senate to reconsider but it will be very rear occasion where the Council decide to authorise Senate on Academic issues. Then of course there is Institutional...

CHAIRPERSON: -Sorry Professor on that! Where does that principle come from? It is legislated principle?

Professor BAWA: I can't remember the actual formulation in Higher Education Act but the Academic Authority of the universities read the Senate. I can't remember how it catched.

CHAIRPERSON: So the Senate of the academic professionals?

Professor BAWA: That is correct. Is a professional Senate yes.

CHAIRPERSON: Okay.

PROFESSOR BAWA: Then the Institutional Forum is actually a Forum, is not really a Committee. Is a very innovative approach that was created in the Higher Education Act because what it does it provides a none decision making structure where people can get together on discussion and so on. And then make recommendation to any of the formal structures of the universities including the Council.

But the Institutional Forum does not have certain powers. For example, any new Policy is designed which has to be approved by Council need to be pass through that Institutional Forum for its advice. So it has an important standing in the governance. Unfortunately the Institutional Forum hasn't mean functioning at all the universities although some in some universities it has been working well. Then of course...

CHAIRPERSON: -Sorry who is sitting on Institutional Forum?

Professor BAWA: Is a commendation of representative from the council's Senate, Trade Unions, students and so on. Is a very broad. Chairperson if you lie of an opinion is there in the universities system.

CHAIRPERSON: Thank you.

Professor BAWA: Then the students' representative Council which is determined as a necessarily structure in the Higher Education Act. And finally is the question of the Institutional Statues which determine the whole range of issues around governance of the institutions and also it determine the sub-committee (the Forum sub-committee) that are within the universities. Would you like me to...

Adv. ZULU: -Sorry Professor, Section 33 of the Act provide that this is statute must submit to the Minister for approval.

Professor BAWA: That is correct. And it is approved by Parliament.

Adv. ZULU: Do you not have any problem with this section?

Professor BAWA: Absolutely not.

Adv. ZULU: -In terms of Institutional Autonomy?

Professor BAWA: No!

Adv. ZULU: Maybe just before you proceed can you just tell us briefly, what is your understanding of this Institutional Autonomy?

Professor BAWA: Well! From my point of view Institutional Autonomy is the ability of the university to determine what is academic project should be and to determine how to make most effective utilisation of its resources.

Adv. ZULU: And that the universities must be free from the pressure, whatever form of pressure, it can be External, Social, Cultural and so on?

Professor BAWA: Let me go to this and I will come back to that.

Adv. ZULU: Okay.

Professor BAWA: So in the next slide the first point that I would like to make is that Institutional Autonomy is not something like completely isolated. It is something that relate to the society. So it is exist in the Equal System and in the Equal System there is the Department of Higher Education and Training which means by far is the biggest founder of Higher Education System in South Africa.

Then there is a Council of Higher Education which is responsible for advice to the Minister for quality assurance. There is Higher Education Council which is fundamental to maintaining quality in our system. There is South African Qualification Authority which is the structure that manage the Higher Education sub-frameworks.

Each and every Council has on it a certain numbers of Ministerial appointment. Those Ministerial appointment of course can be a maximum of five that are in under Council. So on every Council in South Africa there are representative of the Minister or people who are nominated by Minister to your Council. They play an important role because they act as a bridge.

CHAIRPERSON: Are they accountable to the Minister?

Professor BAWA: Yes they are accountable to the Minister, they are accountable to the Chair. They are part of the Council.

CHAIRPERSON: Okay.

Professor BAWA: Other governments departments which relates to the universities. For example, the Department of Science and Technology is a very substantial player in the Higher Education System. The Department of Labour is very essential in the implementing the Employment Equity Act for example and so on.

There are numbers of governments departments relates to that Equal System. I have mentioned the National Research Foundation in particular because is a very big player in Research Enterprise in our universities. The Auditor General of course plays a very big role in South African Higher Education System.

Adv. ALLY: How is that done? My understanding was you have independent Auditor or not.

Professor BAWA: That is correct. But the Auditor General does two things. The first one is that it approves the External Auditor to the universities. Secondly: it lays out of framework by which the External Auditor has to do the auditing. Of course that has an impact on External Auditor because it means we have to build some CDB's between them.

There are numbers of accreditations agencies like e.g. the Engineering Council of South Africa and others. The universities are very little control to have to say I know that sounds antithetically almost. They are very titled control by in terms of those programmes by those accreditation facilities. We understand why is the case.

There are other quality Councils which the universities has to relate to depending on whether universities are offering programmes which are not in Higher Education sub-framework. There are Science Councils like SIR it sounds lot of collaboration. Then we have SITAS. There are numbers of institutions that are like that.

The whole Equal System within which the Higher Education System is designed it has to understand Institutional Autonomy in the context of that Equal System that start something artificial constructed within the institutions. There are times when tensions arise and you have to manage those tensions. Okay!

I know that you tested this with Mr BIKWANI a few minutes ago but I would like to speak about is a little bit the Institutional Autonomy and steering mechanism.

This is very important because after all the State is a very major founder of Higher Education. So we will expect it in fact that there would be certain level of steering that a State should deploy like in terms of relationship with the universities.

The first one is just the fact that the universities they can't be just simple offer a kind of programmes that they like to offer, they have to present what we called programme in qualifications mix to the State and the State approved the PQM. Then the State will receive, will afford subsidy to university only on the basis of those programme that are approved within the PQM within the programme qualifications mix.

CHAIRPERSON: That means that the university is care of programme but can't expect to obtain subsidy?

Professor BAWA: That is correct. That is within the right of the universities to say we are not expecting subsidy to this. We would like to offer this programme.

CHAIRPERSON: Does that happen?

Professor BAWA: Very rarely.

CHAIRPERSON: Okay.

Professor BAWA: Secondly is the whole issue around enrolment panning which was discussed earlier and I won't spend too much of time on that. It is a five years enrolment plan. That enrolment plan is negotiated and it is tough negotiation but it is a basis on which the Department of Higher Education and training plans its budgets because that is the basis in which it is a Model, the subsidy required and so on.

CHAIRPERSON: Is that negotiated per faculty in a sense when you go to when you are in the interaction between the department and the university? Does the university break up its enrolment planning into faculties?

Professor BAWA: Completely. Is not just a faculty. Is programme by programme. So every single so the Engineering faculty will have several programmes and each one will be listed and each one will be negotiated.

CHAIRPERSON: What is a programme? Is it a combination of subject?

Professor BAWA: It is a combination of subjects and leads to a qualification.

CHAIRPERSON: Okay.

Professor BAWA: So you can think of the Bachelor of Science in Medical Engineering as a programme. I must just mention as well that although is a five years enrolment plan there is a mid-way review which takes place after two and half years and that just to re-visit the nature of the planning.

The third one I just mentioned is the fact that is now requirement from the Department of Higher Education and Training that there is Institutional Maintenance Plan is a very good idea. That is something that the universities can put together. Of course they often the maintenance requirements for what university are mean to do is then indicate that they attempting to do and what they can't.

CHAIRPERSON: Is that mean Maintenance Plan for fix assets?

Professor BAWA: Correct. The fourth one is Institutional Physical Structure Plan.

That is the future projection of the universities in terms of the infrastructures. So each university would have its own plans. I will just give you a simple example.

When I was Vice Chancellor at Durban University of Technology we decided (some while ago) that the major expansion for the next ten years was going to be at Pietermaritzburg.

So there was a whole development plan related to that and that got presented to the department. And then of course there is Institutional audit and accreditation requirements which are mainly managed by the Department of Higher Education and Training.

The programme on accreditation requirements they get another massive steering operation. For example, every four or five years the Engineering Council appears that the universities to spend two weeks at each university and is a very regular process and criticising what is going and what is bad and a lot of kind of intention to improve the quality of offering.

There is an impact on Earmarked Grant. You might want to know why this is a steering mechanism. The reason why is a steering mechanism is because the State determines, the Department of Higher Education and Training determines that is a good idea to focus on building the capacity of the students to perform academic reading. For example, academic literacy.

They must put for that and that money can only be used for that purposes, it can't be used for other purposes. So that they are Ministerial Earmarked Grant. Finally on this list of mine there are others that is the Higher Education sub-framework which determine how qualifications articulate with each other.

You can't design a qualification which you does not articulate both upwards and downwards. It must be completely clear how students must get from qualification A to qualification B. That has to be a clear part where clear curriculum articulation between those programmes.

Ms KHUMALO: Just Professor, in this discussions how do you come to conclusion on which qualification? Maybe a child can work after they have got it or a child need to keep that up? How does that affect the costing and the funding like whether you have got formulative qualification or vocational specific?

Professor BAWA: That is a good question. I think a lot depend on the nature of the demand for programme. Example, at some universities the cost for students to pass medical programme is higher than for BA. You might ask why is that the case. Partly is got to do with the demand but partly is going to do with the fact that students who's studying BA does not require laboratory, does not require a kind of access to hospital and so on.

So there are numbers of factors that coming to the construction of a fee. I think is fair to say that the question demand will play a role. So I don't know what the figures is but I suspect that the cost of doing BA gives its considerable high studying towards who is doing Biology or Physics. The reason for that is a large demand for it. Thank you.

Ms KHUMALO: If you able maybe if the investment is being made on a student that maybe we look at this again. The qualifications sub-framework to make sure that the vocational base is a responsibility or how flexible are you in that regards?

Professor BAWA: There are very significant part on the programme that are in Higher Education sub-framework. There are vocational there. They are many of them. E.g. I just mentioned the professions like Law profession, Medical profession, Engineering and so on. Those are very strong vocationally back to them. At a places like Durban University of Technology I would say 60 to 70 percent programmes are vocational. There is a very significant numbers of vocational programmes on that sub-framework.

Adv. ALLY: Is this matter also not dealt with in number 6 in terms of the industry you have in an impute?

Professor BAWA: -Correct.

Adv. ALLY: - Into but Commissioner KHUMALO is talking to more certain foundations of qualifications that they don't allow you into vocation and in that instance she is asking (if I read it correctly) that are the discussions around moving away from what I could perhaps that sounds negative where you do away with the degree that does no purpose?

Professor BAWA: You have to give some example because...

Adv. ALLY: -If you have BA...

Professor BAWA: Yes.

Adv. ALLY: -And that BA allows you to do nothing, either a BA Law like I have subjects, I major in Psychology which gave me an opportunity to teach a certain category C because I had English, Psychology as part of BA. Therefore did not have to although you now didn't have to have higher Diploma of teaching to be able you to teach.

Professor BAWA: Let me answer that. I have got three reasons why I think we have to be careful about this discussion. The first one is that every society needs its puts, every society needs artist, every society needs...you might be actually say what I gonna do with that qualification. I think that is a subciary question actually. I am not suggesting that is not an important question.

The second thing is that many undergraduates' qualifications are formative qualifications. So I have to tell you that if a young person come to me and say I am not sure what I want to do. I have a very simple piece of advice, if you can get to a science formative programme, if you feel you are not comfortable about that you go and do BA because that will be applicable for you. Because what the qualification do is to provide you with a strong base from which stand to.

The third point I would like you to know is that I don't think students who qualify for BA are so unemployable. Look at the number of people who have BA are now working at the market for example and they cannot work for the financial sectors.

CHAIRPERSON: It depend on what subjects you do.

Professor BAWA: No! Actually historian for example. I know several students who are working in the banking sector. Because the banking sector recognises that is not about technical skills. What are they looking students with students who have different approach of thinking about things. I think we have to be extra careful.

I am not suggestion, I want to emphasise that we should be paying attention to the employability of our graduates. That is a very important matter and I think that is something that we have to pay attention on.

Very often is those programmes that we think are good for the students to get jobs which are not providing them with the opportunities because they are flattered because there are so many young people who are doing those qualifications. So there is definitely a need for more surveillance and more understanding of what is happening to our graduates' students.

Adv. ALLY: But those degrees also allowed person to venture in particular academic also.

Professor BAWA: Yes correct.

Adv. ALLY: Therefore that is also be a mean of continuing those particular programmes.

Professor BAWA: Correct.

Adv. ALLY: Okay.

Professor BAWA: The next section is what I just to refer to the Institutional Autonomy and Benchmarking. What I mean by this is that is very often that one imagine that the university is a little of compose and they relate to the Department of Higher Education and Training and so on and they makes decision. In fact benchmarking is a huge enterprise that is engaged.

There are different kinds of Benchmarking. On one hand there is National Institution Benchmarking. The Durban University of Technology can say what does University of Cape Town doing about this or what does University of Kwazulu Natal (our neighbour) doing.

CHAIRPERSON: Can I just ask you before you proceed?

Professor BAWA: Yes.

CHAIRPERSON: Who at the universities does Benchmark?

Professor BAWA: I think it happen at all leadership level. It happen at the level of Deans, Deputy Vice Chancellors.

CHAIRPERSON: So they are professional Benchmark?

Professor BAWA: No they are unprofessional Benchmark.

CHAIRPERSON: So within the faculty of law somebody would to be deputed to look at this.

Professor BAWA: Correct. Then we have what we called sub-sector institutional Benchmark. That for example is where the University of Technology look are each other. They talk to each other. By the way there are range of studies that they do together to determine how each of them is performing and what innovation they have been tried and what happened to be tried and so on.

Then of course there is an international Benchmarking. International Benchmarking is very important part of the enterprise and of course this pertains more to the part of the research base universities. They do much more than other universities would. All universities in some level of International Benchmarking and it is important enterprise because it also gives opportunity not just to see what is going on other part of the world but also to take to the other part of the world.

The forth one is the National science dormant. What I mean by that is that is critically important at all the time for universities to determine what is going on at the CSR and what laboratory they have and what equipment they has been purchased so that we don't duplicate that so that we can have the so called supervision students and so on. There is a lot of that there. And then...

CHAIRPERSON: -Is the single database for these things?

Professor BAWA: No. unfortunately not. If you are a particular physicist like I am, I have a fairly good idea what is going on in other universities. Then the Human Resource Development Council and the Labour Market Intelligence Programme which is a new project of the HRSC which is funded by the Department of Higher Education and Training.

The idea of this is really to tell us what changes are taking place in the labour market and how we can begin to shape the enrolment planning and so on around the needs of the changes at the level of the labour market. Is a very important new project. It hasn't yet taken off but it is on the appropriate process of being produced.

The Human Resource Development Council has still got a way to go. It is attempted to put together plans for Human Resource Development, national target and so on but it has a way to go. These would be very important in terms of the future of

CHAIRPERSON: -Are the universities Representative in the Human Resource Development?

Professor BAWA: Yes. Then the issue around graduate's destination service. It is trying to determine what is happening in our graduates either they employed, how long is taking them to be employed, are they getting suitable work, is the work concern with their qualifications.

Adv. ALLY: Is a trace study or something? We just have very substantial discussions to make the Department of Higher Education and Training, to make this regular enterprise. The final one that I put here is Industry trains. That is really to say regular meeting between universities and Industry.

Have a various kinds of Forum to try and work out in what changes are taking place in the Industry. It is very often in other way around so academic would be travelling to see what is going on in other part of the world and you would bring your ideas and see that to the Industrial Sector.

Chairperson I am not so sure if I were just to speak about this but we should think about the possibility of the discussions in the Institutional Autonomy and the question of fees. Can I just highlight that?

CHAIRPERSON: Yes please.

Professor BAWA: Okay. What I have put in the first slide is a sketch of the Annual Institutional Budgeting Process. Subsidy income for any particular year is known to the university before Act because subsidy is calculated prior to the year in which subsidy arrives at the university.

So we have the very good idea what the subsidy are coming from. We makes use of a number of parameters and racial. One of the racial which others use as well is the racial between that Annual Staff Compensation Budget as the racial annual recover income.

The International Benchmark for that is between point 58 and point 62. The idea of course is that if you spend between 58% and 62% of the money you that have on the Staff Compensation Budgeting it means that you have got money to do maintenance so new innovation, new building and so on.

That racial is a very important racial and for many of our universities they operating at around about the point at several level which means above the Benchmark.

Others are operating within the Benchmark figures. And one or two starting operating below which is the very good side.

CHAIRPERSON: So the staff mean all staff is academic and entries?

Professor BAWA: Yes all staff. The entire Staff Compensation Budget.

CHAIRPERSON: Okay.

Professor BAWA: Another parameter might be spending on academic staff this are the support staff. That is another parameter.

CHAIRPERSON: How does the insourcing change the racial?

Professor BAWA: We arrange to make the details presentation about that to you on Thursday.

CHAIRPERSON: Thank you.

Professor BAWA: But just to give you sense of it. That figure that Mr BIKWANI said to you earlier (the 8% to 12%) that is the impact of insourcing. But there will be a details presentation to you.

CHAIRPERSON: Okay thank you!

Professor BAWA: The next thing is the issue around the fees increases. I have put a question mark there because the fees increase are usually go to the process of negotiation with students. There is a throwing, students makes demand and say we like to have WIFI and we like to have this.

We have agreed to 8% so that there is ongoing consultation process with students. And the same with the salaries because salaries issue are very tough and those issues are very tough negotiations.

There is a very strong dependent on what is going on at other universities and so on. So we are trying to keep but not exactly the same but some of level of national cohering of that.

CHAIRPERSON: It sound like it is not realistic practice!

Professor BAWA: I am sure it is!

Professor BAWA: I have put question mark on that because those are really determine at the level, there are negotiation that go on. Numbers can put it to the kind of the interring budget if you like to draft budget. The whole issue of the level of CPI versus the Higher Education price index that and whether what the movement is in those two is the important factor to keep in mind. Then of course...

Adv. ALLY: -But number 4 would be university competence?

Professor BAWA: Correct.

Adv. ALLY: And Government has no saying it might one to say and who is paying your ear but that is a university competence.

Professor BAWA: It is all my years in university administration which is like twenty years so does happened on of the department say sorry we can't so that is a really Institutional Competence. There are numbers of reasons for that but at the same time I can tell you now that there is a discussion going on between us and COSATU about the possibility of the sector wide negotiation.

That is to be a very difficult discussion. Then number 6 what says what are the new initiatives that we want to try and put in place this year. Due to the main budget what kind of the maintenance should we do? Even if we can get grant from the Department of Higher Education and Training for new infrastructure it is very often that the requirement that the university should cover 20% of the cost so that has to be factored in.

The rates of the budget is ring factor, there is a national approach of this to say that this shouldn't cause subsidise residences with subsidy income and fee income budget form the main. That is really big issue for the universities because is so difficult to cut on this residence budget without putting up fees.

CHAIPERSON: How are the residence funds pushing between the universities?

Professor BAWA: Mm! sorry Chairperson?

CHAIPERSON: This is in terms of your own fund?

Professor BAWA: Yes Chairperson.

CHAIPERSON: Okay.

Professor BAWA: Alright! The last one I have got what I mentioned earlier that in fact the universities talk to each other. What we don't want is... you know is very risky for the university to say we gonna give staff 10% increase this year and some other universities doing it in 5% because that is an extremely a challenge.

CHAIRPERSON: It does sound occasion maybe when one heard an announcement like on the radio that certain university jump game?

Professor BAWA: Yes it does happen. On the next slide I just make a few points which I think will be useful just to set the context to the kind of crisis that we are in. For the most of the periods up to 2004 says fees increases were really quite consistently around CPI. What happened after that was that we began to have a gentle but serious kind of decline in subsidy per FET.

So the decline is that in the total amount that the national Treasury gives the Department of Higher Education and Training is the FET related subsidy. The key reason for that is that the system grow so rapidly. Up around 2004/2005 it was very rare that the fee increase would beyond the CPI. In fact there was a kind of understanding that it would be around CPI. Now of course the more natural figures is 8% or 9% or something like that.

The second point I want to say is that... sorry I have made the second point already! The third point is that residence fee are negotiated separately. There is ring-fence budget. Fourthly, the important point from all points of view is that for those students who qualify for NSFAS grant, this fees increases is actually built into the NSFAS grant so students from poor families the impact of fees increases came later in terms of the debt payment and so on. That cause a possible issue in fact.

Finally, this Benchmark racial that I have spoken about earlier is really depend on the kind of issues that we are talking about. At Durban University of Technology the ratio is about point 69. There is a strong effect by the Council and the university to bring that ratio down. But the fact of the matter is that the university grows under staff so is not that the money is sitting around there.

If there were money to be serve somewhere you will re-directed it to staffing. In other hand the more in doubt the university have much more kind of lead way in terms of that ratio.

CHAIRPERSON: Do you lay that to the Minister personally?

Professor BAWA: Absolutely yes.

CHAIRPERSON: Thank you.

Professor BAWA: Most budgets are constructed from a combination of 0%budgeting and study budgeting. You may ask why that, that sound like a crazy thing is. But the fact of the matter is that we have a significant staffing compliment. You not gonna start at 0%budgeting staffing compliments. We know that is about but on the operation side, research funding and so on then you can do 0%base budgeting.

Fees increases are always put on negotiations with students structures. I put negotiation fees in inverted comas because one doesn't want to a kind of giving impression that students are overly happy about the fees increases. But the fact of the matter is that there is always an attempt to budget students' budget because what we don't want is to have big spec on the council meeting where the final decision is made about the fees increase.

CHAIRPERSON: It takes it as a matter of balancing in respect of the interest?

Professor BAWA: Correct.

CHAIRPERSON: -Because you gonna never allow students to run your budget.

Professor BAWA: That is correct. That is absolutely correct Chairperson. Of course students are... like I did when I was a student I think that we have...

CHAIRPERSON: -It was easy?

Professor BAWA: Not just that is easy but we have a knowledge about everything. The budget are then presented internally to various Committees and Forum within the university. There is discussions within, very often they are five between faculties. We have this in very highly level of cross subsidisation in our universities so the management of faculty of science is always complaining because it prophesising te inverted comas be used for the Arts faculty and so on. So there are a lot of things are throwing there.

Finally, a draft budget goes to the Finance Committee also. Finance Committee is probably the most powerful committee of Council and is that committee which would make the final recommendations to Council.

CHAIRPERSON: Who is putting in the finance Committee?

Professor BAWA: Finance Committee will settle have that 60/40 split. General speaking is the members of the Council who are financial expects. Every university would have its own Council people who are CA and so on. They are hugely important people in the running of these universities. Then of course there is the full Council then make the final decision. Is very often I want to you that the Council would say though 8.5% is to high let's bring it down to 8% and of course the Finance Officer is saying but you know...

CHAIRPERSON: -Is that a political decision within the university?

Professor BAWA: Correct.

Ms KHUMALO: What is the time frame for this process?

Professor BAWA: The process usually start around about October at the last Council meeting of the year which is normally in the first or second week of December. Chairperson that is my presentation. Thank you.

CHAIRPERSON: Thank you.

Adv. ZULU: Chairperson?

CHAIRPERSON: Yes Mr ZULU!

Adv. ZULU: Professor, can I ask one or two questions?

Professor BAWA: Sure!

Adv. ZULU: What challenges did you face in the part relating to these issues of Institutional Autonomy if any as universities?

Professor BAWA: There was recent amendment to the Higher Education. I will give you an example, there is a recent amendment of the Higher Education Act which... I don't think is actually...

-I think is now on the present table for signing. But in that amendment there was a statute which gave the Minister the right to determine the transformation agenda for the universities. We said is a very dangerous thing to have the Minister to decide what the transformation agenda for the universities should be.

That is really a social issue because universities are public institutions. The Minister actually he is a member of our society. What we should really do is to use the facilities of the Higher Education to provide the opportunity for those targets to be set. Eventually that was agreed. So that was one of the example.

Another example would be... but as a Vice Chancellor you will get a phone call from the department says that we have got a list of students, we want to be a students and you have to say sorry. That doesn't mean that we won't consider that students and so on. But the good sake don't try to cancel in the must of the university.

So we do that from time and time and I am sure Professor MUSIYA know exactly what I am talking about. But those kinds of things happened from time to time. Let me also just say that if...

-Let us assume that this department can come to us and say we would like you to abandon your Engineering programme, we would in fact put a knee, I have to tell you not because we think it is wrong for the department to say that but simple because that really is the decision that has to be taken within the university. We could say...

CHAIRPERSON: Well! Supposing in such we want to stop your an Engineering programme and moving to other.

Professor BAWA: Yes but that has to be discussed with us. What we would resist very strongly is the closing down the programme.

Adv. ZULU: Sorry Professor, If the Minister were to come and say that this university should merge with this one as he is empowered in terms of the Act what would you say? You would not regard that as interference?

Professor BAWA: No! We would ask for the process. We would say we not have to decide here but we would like to be engaged in the process. That happened in the past.

Adv. ALLY: Let's go back in history, between 1997 and 2005 there were merges that took place.

Professor BAWA: Yes.

Adv. ALLY: The process there, there was a consultation. Is there any different now?

Professor BAWA: There was an important consultation. Let me just give you an example, there was a proposal for the merger of University of Western Cape and University of Cape Town.

University of Western Cape put up a steering fight and say "sorry but there is enough differentiation between us and the University of Cape Town to keep the University of Western Cape. It was such a wise decision of all the success stories that we have in Higher Education. Each of the institutions went to the process of engagement and discussions and so on. By the way in some cases there were splits where in more than three ways.

CHAIPERSON: How do you mean?

Professor BAWA: Well! Just for example the University of MEDUSA or the old Medical University of South Africa, for some reasons which is almost comprehensible was lamp ting now with University of Limpopo which was doomed to fail here. So there was very silly decision to make in the first place.

Adv. ZULU: -Professor, government keeps in now and then to say the fees need to be kept in so much, 8% when in fact is beating the competency of the universities to say fee increases. What is your views on that?

Professor BAWA: Actually this is the first time they have camp fees, they have never done it before. We understood the logic behind the camping of fees for this year.

Adv. ZULU: Is the issue that is not interference with your operations?

Professor BAWA: Yes definitely. But let me...

CHAIRPERSON: -It is mean surely the universities could charge more when there is a subsidy?

Professor BAWA: Yes. What I should say is that if you read the Minister statement of the 19th of September is very clear. What is saying is that he is recommending to the universities that should be a camping of fees. We made prior to that as the universities Vice Chancellor and then with the Chairs of Councils and we said we will go with the camping this year.

I don't think personally (I am saying for myself now). I don't think that there is a strong argument to be made against the idea of having regulative framework for fees. I think that is fine. What it brings in focus is the point that was raised by... sorry I can't remember the Advocate's name!

Adv. ZULU: Is Advocate MABUDA.

Professor BAWA: Yes. The question that he raised with the last witness which is that a 10% increase in fees at WITS is very different from 10% increase in fees at DUT because of the differential. That is an important issue. When we look at the regulative framework we would like to start looking at that details.

CHAIRPERSON: Is there any initiation of such a process?

Professor BAWA: Yes. The Council of Higher Education was given two mandates in relation to the fees crisis. The first one was to determine the fee increase for 2017 and the second one was to begin to explore the idea of the regulative framework.

Adv. ZULU: Finally, what was the role that was played by universities in determining the targets which are set on the NDP?

Professor BAWA: Mm!

Adv. ZULU: The enrolment targets.

Professor BAWA: I will just give you one example, the NDP is following a long process of engagement between the department and the universities and so on. Picked up the idea that the total enrolment in our university system by the time we get to 2030 should be something like 1.6 million.

The only way to get there you can't do it magically between 2025 and 2030, you have to do it in increment way. So in the enrolment plans between 2012 and 2017 you will see that the enrolment plan for the sector if you add them together put us on that trajectory.

Adv. ZULU: Professor, we heard that those targets are not achievable. The Department of Education came and tell us that is not going to be possible to achieve this targets.

Professor BAWA: I think we need more time to think about that things. I think we need to try to understand whether the main gross is gonna be kind of formal universities or whether is gonna be distance education using technology and so on. I think we need more time to come to conclusion of that.

Adv. ZULU: Thank you Judge. I have got no further questions.

CHAIRPERSON: Thank you. Do you have any evidence leader who have questions?

Adv. PILLAY: No questions Judge.

Chairperson: Thank you.

Adv. ALLY: Two issues Professor, the one is the Department of Education would not able to tell us. Is there a camp on how long qualification can takes at any given university?

Professor BAWA: Both universities will have rule which says that for a three year qualification a student cannot take more than five years to complete. So at the end of the second year is very rare that at the end of the first year that the university will say to the student "you know what pack up and leave". I mean it would be very foolish thing to do.

But at the end of the second year is quite clear to see whether a student is gonna be able to finish a five year programme also. Then there would be an advice of change, either change direction or try something else.

Adv. ALLY: Now is this contain in the prospectus or some kind of within the university?

Professor BAWA: Every university will have a set of rule books in which this things are lay out.

Chairperson: Are there age limits?

PROFESSOR BAWA: No!. Absolutely not.

CHAIRPERSON: I heard a curious story on the radio this morning about certain students, certain person was previously involved with the SRC at the age of 33 in university reasons.

Professor BAWA: As far as I am aware Chairperson there are no age limits.

Chairperson: Okay.

Adv. ALLY: Then the other issue is when we had the Department of Basic Education and examination system and evaluation of that particular system in respect of going to the universities or to the colleges. Their testimony was to the fact that in determining the NSC evaluating you have got contributory to Higher Education South Africa and you have got from the universities themselves, expects from the universities who play a role in the quality assurance on that particular certificate. Does that takes place?

Professor BAWA: As far as I am aware there is a formal universities participating in that process. But of course they are academics who are brought in that process by UMALUSI or by the department. And of course you will have academics there. The only real predictive power of the matriculation examination has been really at very top end. What we know for sure is that if somebody who does very well at school there is likely hood that that person will do well at university. But the moment you drop below a certain level the predictive power of schooling system just breaks down.

Adv. ALLY: Thank you.

Ms KHUMALO: But professor in your opinion are there state readiness of the children from Basic Education does it have an impact on the graduation? They drop out?

Professor BAWA: There is two questions about that but that is true. At the same time I have to tell you that most universities if not all have put in place enormous kind of capacities to provide students with support including that kind there is rejecting curriculum so that students coming to the university there is kind of an area intersection between what they come with and what to start at the university.

CHAIRPERSON: We have been told that there is bridging programmes but we haven't been told how successful they are!

Professor BAWA: Is such not a bridging programme Chairperson is also just the extent to which the nature of teaching has change that universities where there is much more emphases now on building the capacity of children to learn in the first year and trying to ensure that is not just about cramming resources, is more about making them learning and developing the capacity to learn themselves.

There is some fantastic experiment that is going on in that light. If you want to see the impact of that, the place to look at the impact to that will be in the true put studies. What we see over the last five years is that there is a gradual improvement in true put rates, success rates and graduation rates.

CHAIRPERSON: Thank you. Any further questions from anybody? Mr BAWA thank you again...

Professor BAWA: With pleasure.

CHAIRPERSON: -For coming and for presenting so clearly.

Professor BAWA: With pleasure.

CHAIRPERSON: Thank you. Mr ZULU you did indicate that there will be a days where you want to start at 09H: 00?

Adv. ZULU: It will be on Thursday.

CHAIRPERSON: Thank you.

Adv. ZULU: -And Friday Judge.

CHAIRPERSON: Thank you.

Adv. ZULU: Thank you. That is all for today.