

COMMISSION OF INQUIRY INTO HIGHER EDUCATION & TRAINING

16-03-2017

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Set8 Hearings1 – Public Hearings

COMMISSION OF INQUIRY INTO HIGHER EDUCATION AND TRAINING

PARTIES PRESENT:

The Chairperson

Commissioners

Evidence Leaders

Experts

Secretariat

WITNESSES:

Thembinkosi Dlamini

Lerato Motaung

Isaac Mangena

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JUDGE: Good morning evidence leaders.

ADV. K. PILLAY: Good morning Chair!

JUDGE: Are we ready to start?

ADV. K. PILLAY: Yes chair. The next stakeholder is Oxfam. I will just ask the representatives of Oxfam to put their names on the record.

LERATO MOTAUNG: Good morning. I am Lerato Motaung. I am the Youth Coordinator Oxfam South Africa.

THEMBINKOSI DLAMINI: Good morning. I am Thembinkosi Dlamini. I am the Senior Expertise Leader at Oxfam South Africa.

ISAAC MANGENA: Good morning Chair. My name is Isaac Mangena. I am the Senior Media and Communication Manager, Oxfam South Africa.

JUDGE: Thank you ladies and gentleman. Who is leading the evidence?

ADV. K. PILLAY: I am Chair. Does any of you has objection to taking the oath?

THEMBINKOSI DLAMINI: No objections.

LERATO MOTAUNG: No objections.

ISAAC MANGENA: No objections

JUDGE: Thank. Do you swear that the evidence that you are about give will be the whole truth and nothing but the truth? If you do, raise your right hand and say so help me God.

THEMBINKOSI DLAMINI: So help me God, your honour.

LERATO MOTAUNG: So help me God.

ISAAC MANGENA: So help me God.

ADV. K. PILLAY: Mr Dlamini just before you begin with the presentation. I think it is important to emphasis where we are in the proceeding right now, is that we having

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been sitting for a number of months and as you aware, OXFAM has appeared before us twice. We picked up from your presentation that you do repeat some of the submissions that you made before. The purpose of today is not to rehash any of the areas you have covered before us expect of course for the purpose of emphasis. If you need to emphasis certain points, feel free to do so. The purpose of today is to focus on some of the burning issues which have risen over the past few months and which are really occupying the mind of the Commission and the evidence leaders at the stage. Please do begin with your presentation and as you proceed, we will hole on some specific issues that have become contentious over the period of two months.

LERATO MOTAUNG: I like to say good morning again and repeat that my name is Lerato Montaung. I am the Youth Coordinator of OXFAM South Africa. This forms part of our second presentation to the commission. I will just give a brief history of OXFAM. The organisation has 50 years experience on the continent. And last year, OXFAM South Africa has become African affiliate, the only affiliate in the continent as part of larger global confederation of OXFAM. Oxfam South Africa's submission is made against the background of our 'evening' it up campaign which is a global campaign that aims at ending extreme inequality. That means most of the progress made in the past 20 years is tackling poverty as direct consequences of corrupt direct political and economic choices. (64-62). We are convinced that together we can end extreme inequality by evening things up by ensuring that government around the world make the right economic and political decisions such as:

- a. We can change the rule on tax to make sure the rich pay their fair share.
- b. We can demand more spending on health and education to make sure poor people a fighting chance.
- c. We can demand fair wages for everyone.
- d. We can ensure that poorest people has a voice and the voice by those who are in power.

If the South African government can sort out its tax system so that huge corporations, the rich and high network individuals pay their fair shares of the tax, they need to plug the holes so that South Africa does not lose billions in revenues is

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urgent and also the promise for financing the fees free education. And with that, I would like to hand over to Thembinkosi who will present why these issues matter.

THEMBINKOSI DLAMINI: thank you Chairperson.

ADV. K. PILLAY: Mr. Dlamini would please place yourself on record, please.

THEMBINKOSI DLAMINI: My name is Thembinkosi Dlamini speaking on behalf of Oxfam South Africa. Mr Chairperson, our presentation is made around issues of social and economic rights, especially recognising the constitution of South Africa and the International Convention of Economic, Social and Cultural rights. We are saying that the covenant speaks to the progressive realisation of right to tertiary education as an entrenched right for citizens of South Africa. Therefore, the government of South Africa as a duty-bearer has a responsibility to respect, protect and fulfil this right.

ADV. G. ALLY: Mr. Dlamini, you would recall that you dealt with this subject last time in your presentation. On this occasion, I just like you to indicate to us in the ratification of this convention whether they were any reservations, qualifications or declarations because in the first presentation by Oxfam it was not mentioned. I can recall Dr. Dianne Parker from the Department of Higher Education indicating to us that there was a qualification in terms of the convention. Are you able to enlighten us?

THEMBINKOSI DLAMINI: Mr Chairperson, the question of qualification has to do with progressive realisation as it were to the effect that it is not expected that government immediately goes to full realisation of the right. It is an issue of government having to demonstrate progress over time. Therefore, we are using this preamble to introduce some sort of guidelines which we lead us to determine as to whether the government is making enough progress towards full realisation of the right.

ADV. G. ALLY: How different, because the qualification indicates implementation of this particular article, I think it's 13 and 14, is in accordance with our constitution and education policies of our country? Is that correct?

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THEMBINKOSI DLAMINI: It is correct Commissioner.

ADV. G. ALLY: Is there any difference from what is stated in that convention and what the government is presently doing in terms of the policies and the legislation that are in place?

THEMBINKOSI DLAMINI: Chairperson, I think we do make the point in our presentation that, for instance, if we look at the National Development Plan, the vision 2030 for the country. It still makes the point that free education should be made available for the poor instead of moving to the full realisation of the right as it were. So, one of the things that needs to happen under these circumstances is for the government to make a firm policy stance to say that their target is the full realisation of the right as compared to the limited approach of saying free education towards the poor.

JUDGE: There is a difference between free education and full realisation of the right to access. Would you agree? You could realise the right to access without necessarily being free.

THEMBINKOSI DLAMINI: Chairperson, with respect to right, we always talk about rights which are about process both those others which are about outcomes. So, access will be the process issue, but when we talk about outcomes, it cannot be that the right is only limited to giving people access in the first step of the ladder, instead of focusing once people enter access the course, they are able to stay until they achieve the qualification that is there.

JUDGE: That's not the point. You may still not have free education and still be able to access the whole limited education.

LERATO MOTAUNG: If I may just, I believe...

ADV. G. ALLY: Sorry, Ms. Motaung. Remember to place yourself on record.

LERATO MOTAUNG: Lerato Motaung. There is a difference between having access and fee free education. Majority of black people in South Africa because of the constitution and the policy and the laws that we have, have access to facilities

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including higher education. But in the context where majority of black people cannot even afford to get there, access is no immediately realisable in the conditions that we live in right now.

JUDGE: But if education is made too expensive which is the case with the poor, access needs to be provided which is not too expensive.

ISAAC MANGENA:

LERATO MOTAUNG: But the only can of access where majority of the poor exists is free education. That is the only ultimate realisation of access in this country.

ADV. K. PILLAY: Chairperson, Ms Motaung, I think the debate will be far more useful once you have the clauses of the covenant up on the screen, because it does draw the difference between access and free education, and perhaps I will ask Mr. Mabunda to put it up and then we will take you through the exclusion to understand how it relates to the clauses. Mr. Dlamini, you can move on with the presentation, we will come back to the question of the Covenant in about a few minutes as soon we've managed to put it up on the screen.

JUDGE: I am sorry that we have interrupted you. Please carry on, we will come back to this after it is ready.

MR.THEMBINKOSI DLAMINI: Thank you Chairperson. I think the task at hand is to speak to the issue of what we understand as by fees-free in which we draw the attention of the Commission to the work that was done by Children Institutions including the Black Child and Alliance of Entitlement to Social Security where back in 2009. You remember Chairperson, the child-support grant had a cut-off age of 15 years old. The work that they did at that time was to collect information from children as well as care-givers about children between age of 15 and 18 years old. Of which 187 testimonies were collected around the country. In summary, what it showed is that when the child support grant stopped, the children went on hungry, their education suffered, their dignity was infringed and the old age pensions were diverted by the family make sure children had access to basics such water, electricity and transport, and households suffered as a result of cutting off of the grants. Of

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which the government in its wisdom then lifted the cut off age of 18 years old. We think that when we talk about fees free education in the context of South Africa, it has to be a holistic approach, which not only looks at the questions of tuition fees as it were which is excluding the barriers of having to place a deposit at the beginning of the year, but to look at the holistic approach that says all children who qualify to enter the university or tertiary education system are immediately made available the funds that necessary to pay for their tuition, books stationery to access appropriate technology and equipment that they use for their education including accommodation and facilities for internships and other expenses including food, clothing and health etc. So, whilst we do know that this is an enormous amount of money, we do realise that the indications in the research has shown us that there is high attrition rate and low participation rate in terms of education in South Africa. Other challenge such as lack of curriculum innovation and poor knowledge production and low qualifications of academic staff, which are all symptoms of a systemic problems because clearly when students have to go to class with an empty stomach, they cannot learn at an optimal level. Of course, when children have problems around their accommodation where they sleep and those kinds of challenges, they cannot be expected to learn at an optimal rate at a university set up. So, what we have recommended therefore, going forward, is that the question of the NSFAS- the institution should be focus more on the issue of identifying what is the full and holistic cost of providing for a student's education by programme, geographical location of the area the student is supposed to go so that we are able to package a holistic package for a student so that he is able to enjoy his right to education.

ADV. G. ALLY: And in this regard, you are saying the full cost of study doesn't only mean tuition, it means the accommodation of that person, the materials needed for anybody in today's world to study which might include food, laptop and so forth. It is also includes if the person is far from the place, let's assume they stay in Skhaweni in KZN and needs to go to the University of Zululand, that you need transport to get there. These are the things that you are describing as full cost of study. Is that correct?

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MR.THEMBINKOSI DLAMINI: That is correct Commissioner. The second, chairperson that we are required to address is the whether fees-free education is possible and desirable in South Africa context. In response to this question, Chairperson, we refer to our initial argument around Section 29, 1B of the constitution, and say whether it is desirable it is not necessarily in the interest of this commission, but that however, the question of whether it is possible is a question of political will and the fact that the government needs to take a stance in as far as this issue of tertiary education; to say students in South Africa have a right to education and the right will be upheld by the country. We also highlight the promise that was made in the Freedom Charter where it was said that education shall be free, compulsory and universal for all children and that higher education, technical trainings shall be open by all means of State allowances and scholarships. We said it is the basis of this promise that fought apartheid and overcame, and this promissory note was put to bed in the constitution in Section 29. It is true that admission to universities is on the basis of merit, so we do not think there needs to be another merit for someone to qualify for scholarships and allowances. Of course, as a country we need to look at the question of supply and demand for education and particular skills. And therefore, there would be a need for government to have clearer guidelines around what is the cut-off point for students, who qualify for certain qualifications, just to ensure that there is no over-supply of certain skills and under-supply of others as the economy demands. We have also taken into account the question of inequality situations and poverty levels on South Africa in determining whether it is possible. And we have taken into account that the majority of our black population are coming from the households with low per capital income. If you look at the table that we provide on average income of households in Section 4 of the presentation, you will see that some households earn as little as 7,554 per annum. If you look at slide 9, per annum, we are talking of amount of R247.17 only, an average of 20,000 per household, which means 90% of South African population earn a little as 20,000 at a household level. So, it means in terms of our analysis that given the cost of tertiary education which we estimated in our paper to be in the region of R89, 541 and R129, 910. So, it is almost impossible for parents in the slide 9 of the presentation to afford to send one of their children to tertiary education. And we

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make the argument that if it comes to the slide 10 which talks to 10% of the population, the people who earn the top 10%, most of them still end up in the category where they can afford tertiary education. What is driving that average income of R61, 1049.95 per month; we argue that it is because there are a number of billionaires that are sitting at that level, who Oxfam has said that they earn and income and own assets which are equivalent to 50% of the country's population which means only 3 billionaires in South Africa can have those kinds of assets, and for the corresponding income. So, they have the tendency; those few people who enjoy significant wealth in South Africa, to pull the top 10% of the population towards that higher average which the study by the University of Cape indicated it was a cliff because it was showing some significant rise in the income of the top 10%. Yet, when you try to look at it, it is only a small size of the population. This is also confirmed in the recent presentation of the Honourable Minister of Finance who highlighted that in South Africa we had only 23,000 people who earn incomes above 1.5 million per annum. This shows that it is just a small size of the population with significantly higher income who typically can afford higher education.

So, we are concluding therefore that fees free education is a must if we look at the figures before us. We argue that we need to follow that trends to ensure that all South Africans benefit from the new constitutional dispensation and to ensure that our economy to grow and be in a position to carry the weight and burden of running the state because we know with an educated population, we will tend to achieve more in terms of economic growth and also the ability of households to cope with the requirements of life. One of the other things that we need to realise at this point is our approach to welfare state. One of the things that government can do is an approach which says; let's go to every household; let's ensure they have a proper house, sanitation, access to water and electricity. The flipside of thing is that if you educate the young population, they are likely as they grow up to lift other members of their families from the poverty. A lot of people who have benefited from NSFAS and other similar schemes have gone forward to make sure that their families are well taken care of. So, it is one of the things we can do to ensure that our policies have got broader impacts in terms of livelihoods and economical lives of South Africans.

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ADV. K. PILLAY: Mr. Dlamini, the Article 13 and 14 of the Covenant are now on the screen and perhaps it is the opportune moment to deal with it before you move on to your next point. Perhaps what I could do is lead you through Article 13 which you would see it is made up of 13.1, 13.2, 13.3 And 13.4. If you look at 13.1, it is recognition by state-parties to the covenant of the right of everyone to education. And in 13.1, it basically sets put the basis on which the state-parties recognise the right of everyone to free education. In 13.2, then deals with the full realisation of the right. The state-parties to the covenant recognise that with view to the full realisation of this right. 13.2A deals specifically with primary education which forms part of our basic education. It states that primary education shall be free and available to all. Do you see that? 13.2B deals with secondary education. And the formulation of the covenant includes technical and vocational secondary education and it states that it shall be made generally available and accessible to all by every appropriate means. It also provides that in particular the progressive introduction of free education. Do you see that? Now, 13.2C is the one that deals with higher education. It states that higher education shall be made equally accessible at all, by equally accessible, we understand that it is a reference to 13.2B which deals with secondary education; states that by the basis of capacity and every appropriate means and in particular by the introduction of progressive free education .

JUDGE: I am sorry. I don't think you are correct. It doesn't say that higher education shall be made equally common access to all. It says it shall be equally accessible to all. It is a principle of equity to everybody in the system.

ADV. K. PILLAY: Alright. Well, we will deal with the interpretation of that section in due course, Chair. The point Mr. Dlamini is that it states that it is by progressive introduction of free education. It was put to you by Commissioner Ally that there had been a declaration by South Africa in respect of Article 13 and 14. Article 14 states that each state-party to the Covenant which at the time of becoming a party has not been able to secure its metropolitan territory or any territory under its jurisdictions, compulsory primary education free of charge and it takes up to two years to work out an adopted detailed plan of action for progressive implementation within a reasonable number of years in the plan of the principle of compulsory education free

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of charge for all. So, 14 deals specifically with compulsory primary education. Perhaps, we can just turn very briefly to the declaration by South Africa which was brought to our attention by Dr. Parker. While we wait to appear on the screen, I will just read the declaration. It states South Africa's declaration under Article 13.2. sub A.

JUDGE: Before you start, where is the declaration made?

ADV. K. PILLAY: It is recorded in all of the declarations to the ICESCR. So, the United Nations when it puts up the Covenant also has the full record of all declarations in respect of the Covenant; so that anyone who reads the Covenant will know the reservation of a particular state-party. So, there is a long list of declarations

ADV. G. ALLY: Perhaps specifically, Ms Pillay, because I was looking for it and found it rather somewhere else than in the Covenant because declarations and reservations of one of the parties such as Belgium and others are there but South Africa isn't there. Did you find on a UN website?

ADV. K. PILLAY: We found it on a few websites, Chairperson. One is on the website of the office of the High Commissioner.

JUDGE: Will you ask the secretary to get it for me, please?

ADV. K. PILLAY: Yes, Chair. Just want to take you through the declaration and its wordings. It states declarations under Article 13.2A and it says the following:

The government of the Republic of South Africa will give progressive effect to the right to education as provided for specifically in Article 13. 2 A and Article 14 within the framework of its national education policy and available resources. If you go to 13.A, again Chair, it deals specifically with primary education which shall be compulsory, available and free to all. And if you go to Article 14, it deals with compulsory primary education. Perhaps you want to take us through Mr. Dlamini, what your understanding of the declaration is respect of the Covenant.

MR.THEMBINKOSI DLAMINI: My understanding of the reservation is that when it comes to international covenants there are binding between governments. However,

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the constitution is what is binding between the government and its citizens to the extent that the constitution came into effect in 1997 and there was already a binding Covenant between the state and its citizens. An understanding of the broader framework around human rights is the fact that government cannot at a subsequent day decide to renege or retrogress in terms of the achievement of basic human rights. Then, I wouldn't think that a declaration such as that one even if it was to say certainly South Africa can only commit itself to progressive realisation of free primary education without considering the others. So, if we look at Article 13.2 B and C, they speak to the question of secondary education and higher education. There is nothing in the reservation that speaks to those two articles and we cannot then assume that the reservation was then saying they will focus on the framework of national education policy and available resources. I think it is specific to Article 13.2A and we cannot assume that it certainly says then there will be no progressive realisation in as far as Article 13.2 B and C.

ADV. G. ALLY: So in your submission, for the purpose of this Commission, you are saying Article 13B should be read as to include TVET and Article 13.2 C is higher education as in universities?

MR. THEMBINKOSI DLAMINI: Chairperson, that's correct Commissioner.

ADV. G. ALLY: Now, let us assume that the constitution as you indicated is the primary indicator of the right that you possess. The constitution also says that we must have regard for international laws and covenants. To take the constitution in respect of higher education as it is pronounced in Section 29, 1B in respect of further education. In your submission earlier on, it seems to move ahead to say that is free, and Ms. Motaung was also moving to the area of free without explaining how you get the free. She explained about the access and access unless you explain how you understand access doesn't necessarily mean that access is in the terms you stated that. I just want to put to you that if the government makes access available; one example will be, we had testimony by Professor Faure Monty, whose proposition is that you don't pay upfront at all; nobody pays upfront. Everybody takes out a loan, what you termed income contingent loan. First of all, you will only pay when you have sufficient earnings to pay.

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JUDGE: Black, white, rich or poor.

AD.G. ALLY: So across the spectrum, it can be interpreted that that is providing the access and making it progressively available to everybody not a certain spectrum of the population but everybody. What do you say to that proposition?

MR. THEMBINKOSI DLAMINI: To the chairperson, I think the question of frame of human right it speaks to duty to respect, protect and fulfil. So talking to the question of access, it is an issue of government saying that no one will buy access to tertiary education, whether on the basis whether they are black or poor and they don't have to have the upfront deposit as it were. Now coming to the question that Commissioner Ally is posing, it's a question that is related to the question of government applying measures to ensure their full realisation of the rights. That is the administrative part of us collectively thinking that what is the best way to make this happen. One of the arguments that we make is on the question of efficiency. If people take out a loan, the cost of education will be similar for people going for the same course. However, at the end of the day people who will have different opportunities when it comes to their working life. For a student who graduate with the same graduation day, their income earning potential might differ significantly which means that... (cuts).

JUDGE: That they may be poor or they may be rich at the same time?

MR. THEMBINKOSI DLAMINI: That is correct, Chairperson. And then we argue therefore that it is important that whatever mechanism we take on board in terms of funding tertiary education, is one that takes into account one's ability to earn income. So we do understand that at the end of the day the ability to pay is an important principle when it comes to the issue of taxation if we...(cut).

JUDGE: Now more than that, in addition to what you are saying, you don't satisfy the right if terms that you are charging for the repayment are exorbitant that the person that is taking that loan. So the repayment terms will have to be reasonable, otherwise you are destroying the value of the access that is been given.

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MR. THEMBINKOSI DLAMINI: And may be negating the right, if you make it too exorbitant, thank you Mr Chairperson.

JUDGE: Because that way if people know that is what is going to happen, they will be driven away from the education that should have been a power to them.

MR. THEMBINKOSI DLAMINI: Thank you Chairperson, we tend to agree with that approach. We can look at our submission again on the way forward since we are now delving into the funding aspect. We have looked among others, the sort of taxes available in South Africa where we have shown... (whispering). Chairperson, if we look at the picture on the screen, it is just a demonstration of overall income tax in the whole of South Africa, that is the total income where we are showing that 87% of the personal income tax is taken from people who are in the ten design of the South African population and then 11% comes from the 9 design whilst 8 design are people contribute about 2% is the total stake. If we look at the studies that have been conducted by others, they have shown that as a percentage of the market income by the various groups, taxation tends to be a significant component in higher income levels as compare with lower income levels. It shows that South African taxes is one of those that is very progressive, which is one of the ideas that make us say that it better if we remove the tax and spread it towards the more rich people, based on the principle of the ability to pay again. However, we arguing that there is a lot of loss of tax revenue in the case of South Africa, particularly one associated with the tax expenditures because we know that South Africa has a number of tax benefits that they give to the citizen or companies which have the effect of reducing the effect of the overall tax burden. In our presentation, we submitted a table that is provided by the National Treasury to show just how much the tax expenditure are in with as much as 15% of the overall tax that is collected annually. We therefore suggest that in order to move forward and ensure that the fiscals is able to bear their cost of fee free tertiary education, we need to introduce certain measure which will allow South Africa to collect more revenues so that the introduction of fee free education does not result in shifting of resources away from other key priority of the nation-state. So we argue that in order to finance Fee Free education in manner that we proposed, we need to introduce some element of fore-saving instead of each household saving

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over many years towards the education of their children, rather we fore-saving the population at large. That means all income earners are then charged a payroll tax of let's say 3%, which means everyone will contribute towards this education levy. Therefore, this amount of money is to be loosely set aside for the provision of tertiary education. We say this measure is important as a demonstration of the integrity among country people. If to say if we have 15 million income earners, let all of those 15 million contribute towards the cost of Fee Free tertiary education. As compared to only those households who have children going to tertiary school as it were. If we look at the question of total tax income, it is the subject of both the tax rate and the tax base. So if we approach it from a broader tax base, it means the burden of Fee Free education will be borne by a broader larger tax payers in terms of the number of people which will be contributing and with full confidence when their children come of age as well they will be opened the door of higher education or learning as it were. So, we see this as a more efficient mechanism to provide for the full realisation of their right. We do understand that if it is in the manner that we suggest, means even the people at the lowest income level will have to contribute. We see this as a positive indicator in terms of which they will start to appreciate the value of education some of those workers who were excluded from tertiary education will take this opportunity with a comprehensive offering to go back to school and study so that they can increase their chances of being successful in life. Then we also thought that the benefit to an educator or skilled population flows also towards our companies or the corporate sector as it may. Therefore, we suggest the lifting of the taxation of corporations that is corporate income tax from the current rate of 28% to 30% and we do believe that the lifting of 2% is not so sensitive as to discourage investment into South Africa as it were and if we look globally, it is still within the reasonable rate with comparable countries to that of South Africa.

ADV. G. ALLY: In your proposal, for instance you 3% and you said 2% on corporate tax. Have you worked out the amount that could be available via these?

MR. THEMBINKOSI DLAMINI: Chairperson, we didn't worked out the amount that will be available because we do say in our submission that we do not believe that the revenue coming for tertiary institution should be earmarked as such, which means

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that we just suggest measures that will help the fiscals to cope with the increased demand of resources for the purpose of tertiary education. We do know that we have capable officials in government who can do the numbers to show us.

JUDGE: (INDISTINCT SOUND) and that may depend on political will.

MR. THEMBINKOSI DLAMINI: Chairperson, correct, if I may continue chapter 7. We also suggest that South Africa continue to look at measures to close loopholes in the tax regime, especially with respect to industries, such as mining and extractives where it has been shown that South Africa loses significant amount of tax through aggressive tax planning and judging by certain corporations in the way it is describing the so called basic profit shifting. We do know that, for instance, South Africa Mineral Resources Development Act make a provision for company to enter into mining licences on the back of all social plans where the significant provision is therefore amount going to human resources development, including the issues of adult basic education and training, issues of bursaries. We do not think government is spending a lot of time to ensure compliance with such. So, some of these companies are dodging their responsibilities to communities where they mine. If we can look at that and shed some light in those areas we believe there are still significant amount of money sitting there which can be under this circumstance be more dedicated to some of those areas of post-graduate education and areas of research, which we believe we still need in terms of skills to improve our outcome as it were.

We are also suggesting that introduction of financial transaction taxes at the rate of 0.001%, which is a tax on financial transactions. We do know that South Africa is a very financialised economy with the movement of money on a daily basis running into Trillions. Therefore, this is one tax we know if we can introduce we can easily get a significant amount coming out of there.

The fifth point that we made is about dealing with the issue of corruption in the public service, and dealing with wasteful and fruitless expenditures across the board, which has covered more extensively in the report of the Auditor-General from time to time.

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JUDGE: We all are hoping to see Treasury again and we are also helping to talk to Tax Commission. I think those your proposals should be put from our side to theirs and because from the Treasury's submission that we had they seems to be in disintonation to your propositions of taxes that you have suggested and if it is a matter of political will, I will make a recommendation that taxes should has may or may not shift the mind set. I am not sure but obviously what you have proposed of financially accessible sources, if there is a will to do so, and so this we must put it to the people in power to implement it.

MR. THEMBINKOSI DLAMINI: Thank you chairperson, we are grateful for the commitment to make this a part of recommendations.

JUDGE: Well, not so much a recommendation. It may be, we are not ruling that out at all. But we would like to hear what the powers that be have to say about this.

MR. THEMBINKOSI DLAMINI: Chairperson, as we conclude we have made other proposals as part of our submission. For instance that NSFAS as a financial aid scheme will have to be review totally so that we refocus its approach whereby they administer a means test in order to identify those who qualify for bursaries and things like that. We believe that the approach of NSFAS might not be exactly in the spirit and in the letter of the constitution and therefore we believe that NSFAS should be limited to an administrative function which is just to look at what we mean by the full cost of education for all children, so that they determine their appropriate levels of investment per child that they are going to tertiary institution

ADV. K. PILLAY: Mr Dlamini, I want you to explain what you mean by that. I wasn't clear about what you mean by the fact that NSFAS is an institution of exclusion and non-inclusion and that it's constitutionality is doubtful?

MR. THEMBINKOSI DLAMINI: Chairperson, if we speaking the language of duty bearer and rights holders, we are simply saying the citizens, especially the young citizens who are supposed to go to tertiary education have the right to education and therefore no one should exclude them from accessing that right. To the extent that NSFAS administers means test on the parents of the right holders and guardians of right holders, and on those basis decides that the right-holders reserves that right to

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have access or not. We don't think it is a correct approach because at the end of the day, if at all there was a means test administered, it has to be administered on the right holder themselves and it will be a situation where once you administer; you then decide what level of progress of realisation we are at. But at the current moment, we don't think the mandate of NSFAS is such that it facilitates access rather it is mechanism to ensure that you try to limit the number of those who access the bursary scheme. But we believe in the universality of human rights as such that all people should be included as a starting point.

ADV. K. PILLAY: On the formulation of the right as you have set out this morning, in respect to government, it is clear that the right to free education should touch the poor because that is the point of progressive realisation which in itself leads one to the notion that there has to be a means test in order to differentiate amongst students so that you identify who are the poor and the needy.

MR. THEMBINKOSI DLAMINI: That it is not correct. Our submission argues that we cannot proceed on the basis that the right is only attached to those who are poor. Then the wording of the constitution does not mention whether the person is poor or rich. It says all of the people are entitled to this right.

ADV. K. PILLAY: How do you then factor in the notion of progressive realisation? And you in fact note in your submission differentiates between those who are poor and needy and others. The notion of progressive realization has to start and end at the point.

MR. THEMBINKOSI DLAMINI: Chairperson, the notion of progressive realization will be at two levels; the question of process and outcome. So, what we are looking at is; what are the measures that are put in place by the state to ensure access? So when we are talking progressive realisation. We want to measure, for instance, the incremental numbers of people who are facilitated access by the state and also look at the financial provision by the state for that purpose. So, the question of whether there is means test, the government administrative will decide many other ways to decide how they achieve progress at the government level. It is not necessarily about screening the individual or their parent or guardians.

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ADV. K. PILLAY: Government has job to do particularly policy frame work to give it effective constitutional obligation to progressively realise the right to Fee Free higher education and that frame work incorporates NSFAR as the implementing agent and requires that NSFAS distinguishes between poor students and other students. Why is that measure unconstitutional?

MR. THEMBINKOSI DLAMINI: Chairperson, to the extent that government policy via the National Development Plan, the national education policy and others, is still of the view that target is about giving access to the poor, instead of full realisation of the right by all, then the target are not the same. So, the target of the government focusing on the poor rather than full realisation by all is the wrong starting point as it were. Therefore if NSFAS was created in such a way that it was suppose to facilitate the achievement of the lower target that is in the national policy, then it is not targeting their right , targeting terms of the constitution. That is why we say it cannot be constitutional, because it is looking at how we making progress in as far as giving access to the poor while constitutional obligation says we need to give access to all. So if we measure progress about giving access to the poor, we might be doing well, but it doesn't mean we are doing well in terms of the constitutional obligation.

JUDGE: I have some difficulty understanding reservation on the NSFAS cases, you can say R120, 000.00 is poor or R122, 000.00 is poor but R122, 001.00 grants is not poor. The whole idea of this means test is to me totally satisfactory and it seems to be administered in totally satisfactory way.

MR. THEMBINKOSI DLAMINI: That is correct, Mr. Chairperson. We agree, especially if you look at the income profile of South Africa. We have demonstration in our presentation that 95 to 97 of South Africans will not afford tertiary education. Therefore, whatever means test you administer is only interested in trying to include that small 3% of the population. So, administratively, it is not a measure that you want to put into place because we are trying to change just 3% out of the population that you are trying to exclude. We can also argue that the people who are pushing the tenth that side to be where it is now, their children do not study in South Africa they study overseas. So, at the end of the day, we do know that there is just few of children from affluent family going to public universities in South Africa.

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JUDGE: Mr Dlamini, personally I find the graph unhelpful in the sense that you have your the middle class and I am sure it is not only 3%, in the ten side. You have between 4 and 9, whose children are studying at private schools, forget about the institution at the moment. They charge 150,000 a year. And you have course and programmes at the university charging on an average of R72, 000.00 a year. Now if you were able to take your child through with R150, 000.00 and for almost 12 years but let's assume for argument sake that it is for 12 years. What makes it now different or more onerous on you to then pay R72, 000.00 per year for 3 or 4 years?

Mr. THEMBINKOSI DLAMINI: Thank you Commissioner. I think our argument is based on the fact that if you look at the public education system is the one that carries the millions of people who are probably belonging to 95% of the population. And there are few I children, who go to private schools who likely belong to the top 2% population. Now, if we proceed with our attempt to deliver on the rights as stated in the constitution the basis of trying to exclude at 2%; we are then going to exclude many others who are not part of this 2%, who are paying 150,000 per annum. What we are saying in terms of our proposal as well; it doesn't matter whether those parents coming from affluent families will send their children to tertiary education in South Africa or abroad, because of the universal nature of the 3% on their income. It may, even if they send their children abroad, they are still going to pay 3% of their income in South Africa to educate the poor children.

ADV. G. ALLY: Perhaps you misunderstand me. I am saying that your statistics that you reflect here doesn't appear to me to be correct because and I am saying to you that it would appear that people between 3 and 9 actually have their children at schools where they pay R150, 000.00. If that is the case, why would you then that say it is more onerous on them to be paying, because you move from the premise that actually from 1 to 9 can't afford the 72,000.00. I am saying I am having difficulty in understanding where you get that. I know you have got some statistics. The problem I have with those statistics... we have gone through statistics in this commission but my view is the statistics are they one way or the other to support certain view point. Now, they are those within your bracket of 1 to 9 that have the children at the schools that they are paying 150 thousand. You might ask how do

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they, according to the salary scales that we have, but they do it and is happening. So what makes it more onerous when it comes to higher education?

MR. THEMBINKOSI DLAMINI: Thank you Chairperson, the Commissioner's question is one that is saying perhaps our Statistics South Africa people are not doing the right job because if that were to be the case, then it means those people do not belong in category of the 3 to 9, they belong to category 10. Now in the absence of robust and credible report which confirms that statement you make, I don't think we can rely on that information. It could be just saying this is what we think is happening but we might need to have some concrete evidence to support that fact.

ADV. G. ALLY: That's fair.

JUDGE: On the other hand, they are very few of these elite schools that do not take the component children who couldn't afford to go there into consideration, but to go there on scholarships, bursaries and grants. And so, they have the benefits of the best education through to matric and the much better chance of getting through into university and succeeding in university as a result of what they've received during their basic education years. So, really the advantage of having a system which provides that everybody can afford to go to university or higher education is very inclusive system because it means you get included or whether they can afford or they can't afford. But if you are talking about the poor, and you are making division between the poor and the relatively poor, and not so poor, they will always be people who can't afford outside of that category. So, people are going to be left out but in a comprehensive system, nobody will get left out.

MR. THEMBINKOSI DLAMINI: Chairperson, we have concluded our submission.

EVIDENCE LEADERS: Thank you chair.

JUDGE: Are there is something specific, you want the presenter to draw attention to in their submission that they have not covered?

EVIDENCE LEADERS: No, at all, at this stage.

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JUDGE: It's ok. There is not going to be another stage.

EVIDENCE LEADERS: If we do have any question, we will raise it directly with Oxfam.

JUDGE: Thank you very much ladies and gentlemen for your troubles and for presenting the presentation. Thank you.

MR. THEMBINKOSI DLAMINI: Thank you Chair.

JUDGE: Ms. Pillay, what is this?

ADV. K. PILLAY: Chairperson, I believe was given to us by the secretariat. It's a presentation from a stakeholder who due to present last week and didn't present. And it relates to an alternative method of financing.

JUDGE: Fair enough. Which particular presenter is this?

ADV. K. PILLAY: Enterprise Connect, it's a private company.

JUDGE: I don't remember...ok, continue.

ADV. K. PILLAY: Thank you chair we have no further witnesses for today.

JUDGE: What are we having tomorrow?

ADV. K. PILLAY: Chair, we will adjourn until next week. We don't have anything on the programme tomorrow.

JUDGE: What about Monday? Have you have any idea?

ADV. K. PILLAY: We will just finalise the programme. I think they have a draft programme. We will just finalise it and let you know. I think we can reconvene on Wednesday. And if I am not mistaken, the first witnesses will be the ANC Youth Leagues, followed by the ANC.

JUDGE: Madam Secretary, can you let me have a hard copy of that reservation, if you please? Right, we are adjourned. But we don't know yet where we are adjourning to?

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ADV. K. PILLAY: I will let you know in due course.

JUDGE: Thank you.

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