



**SET 8 Presentation to the Commission of  
Inquiry into Higher Education and Training  
("Fees Commission") prepared by the Legal  
Resources Centre on behalf of Students for  
Law and Social Justice ("SLSJ")**

**Monday 27 March 2017**

# 1. Overview of Presentation

This presentation seeks to address the questions below as requested by the fees commission.

1. What SLSJ understands by the term “fee free”;
2. Whether “fee free” is possible or desirable in the South African context;
3. Whether “fee free” should be applicable to all students from all backgrounds;
4. The proposed funding formula to fund “fee free” higher education, which ensures quality and sustainability of the PSET sector; and
5. Further proposals.

## 2. Introducing SLSJ

- SLSJ was formed in 2008, and has 15 branches at 11 institutions, with approximately 3,500 members (*see **page 1, para 1.1 of SLSJ’s written submissions***).
- During May 2016, SLSJ obtained written submissions from the following branches: the University of KwaZulu-Natal’s Pietermaritzburg Campus; the University of KwaZulu-Natal’s Howard College; the University of Pretoria; the University of Fort Hare; Stellenbosch University; Varsity College, Durban North; the University of Cape Town; the University of the Witwatersrand; the University of the Western Cape; Varsity College, Westville; the Walter Sisulu University; the University of the Free State; and Varsity College, Sandton. SLSJ also put out a call for submissions from individual members.
- Thereafter, the National Executive, chairpersons of the various branches and members of SLSJ held a 3-day national consultation from 24-26 June 2016, in Muldersdrift, Gauteng, in order to discuss and debate the position taken in the written submissions.
- Following the national consultation, an advisory committee was established to work alongside legal representatives at the Legal Resources Centre (“LRC”) in order to finalise the written submission (*see **page 10, para 2.15***).
- SLSJ does not purport to speak on behalf of all students, and acknowledges that the experiences of students across the country differ significantly (*see **page 1, para 1.2***).

# 3. SLSJ's Seven Principles

- SLSJ's written submissions submitted both in this set and the first set are based on the following seven principles:
  1. The right to further education must be made progressively available and accessible and it is a constitutional imperative and obligation under international law that further education become *universally available and accessible*, over time (*see **pages 1-2 and 32, paras 1.3-1.4 and 6.2***).
  2. Universal availability and access to further education may require that further education is fee-free to certain students (*see **pages 3 and 35-37, paras 1.7 and 6.10-6.14***).
  3. The best interests of the student must be promoted and protected at all times (*see **pages 2 and 29, paras 1.5, 5.14***).
  4. In assessing the best interests of the student, regard must be had to any forms of disadvantage, socio-economic disparities, and historic or continuing social systems or structures (*see **pages 2 and 35, paras 1.6 and 6.11***).
  5. No retrogressive measures should be implemented in the pursuit of realising the right to further education, save for measures designed to redress the injustices of the past (*see **pages 3 and 33, paras 1.7 and 6.5***).
  6. The availability of resources is not a justification that should be relied on by the state for non-fulfilment of the right to further education but it may be a component in assessing the reasonableness of measures taken (*see **pages 3 and 30, paras 1.8 and 5.18***).
  7. The Fees Commission should facilitate public involvement and transparency in its processes (*see **page 3, para 1.9***).

# 4. Understanding of ‘fee free’

- SLSJ is clear that fees entails more than just the costs of registration and tuition, but rather that fees should be understood holistically, including, among other things, the costs of residence and the provision of academic materials as necessary in the process of equal access to education.
- A student enrolled without the ability to live a dignified life, or the resources required to study fully, cannot be said to have equal access to education.
- SLSJ suggests that the availability of resources cannot, in and of itself, justify non-fulfilment of the right to further education, but may form a part of the assessment of the reasonableness of the measures taken.

# 5. Should fee free be applicable to all students?

- SLSJ views *fee-free* higher education as a term that must be understood relatively. The current financial resources available to the state do not occasion an immediate shift toward fee-free further education *for all*.
- In this regard, SLSJ advances a progressive system aimed at redress, redistribution of wealth and the provision of access to education to those most in need, both financially and politically, as a pragmatic solution to a harsh economic reality.
- SLSJ submits that government can make use of a model based on substantive equality where those most in need are assisted at the justifiable expense of those wholly able to pay; with the ultimate aim of achieving higher education that is universally available and accessible.

# 6. Proposed funding formula to fund fee free higher education

- The proposed model entails three key components: (1) a waiver of application fees; (2) a review and possible standardisation of the admissions policies of institutions with an aim of redressing the injustices of the past; and (3) the implementation of a sliding-scale system, inversely-proportionate in its nature, as a redistributive measure.

## **Waiver of application fees.**

- SLSJ advocates for the abolition of application fees, on the basis that the levy is burdensome to prospective students who are not in a financial position to pay. SLSJ submits that prospective students making application is part of the right to further education, particularly in relation to accessibility criterion.
- The waiver of application fees serves as a progressive measure that is aimed at redressing the results of past racially discriminatory laws and practices, and, to some extent, addresses the racially discriminatory systems of apartheid that have exacerbated the plight of black people in South Africa.

# 7. Funding model (cont.)

## Review of admission policies.

- The admissions policies of institutions need to address historical inequalities and give effect to substantive equality. When deciding on student admission, institutions must consider in addition to a consideration on merit: race, gender, disability, sex, national racial demographics, and geographic location in furthering the redistributive goals of the Constitution, among other things. It is an imperative that marginalised groups are afforded the protection guaranteed by the Constitution in admissions to institutions -- as a result, admissions policies must progressively advance the interests of vulnerable groups.
- A student's ability or inability to pay fees should not act as a barrier to being admitted into an institution.
- It is submitted that the admissions policies of all institutions must be reviewed as a space in which to effect redress of past and present injustices. The DHET should ensure the rigorous implementation of a national standardised policy. Education is one of the most effective means to bring about the attainment of equality.<sup>85</sup> It is suggested that institutions are required to consider the financial position of prospective students to effect redress of current class and societal-structural inequalities, but should be barred from denying admission based solely on the inability to pay fees.



# 8. Funding model (cont.)

## **Implementation of the sliding model.**

- The current system of governmental subsidisation that funds the relevant institution -- without a constitutionally considered view to the needs of the students in that institution -- unduly benefits the minority of privileged and wealthy in society who are in the majority as registered students, without differentiation based on resources available.
- This leads to a reality of further inequality, continued marginalisation of the poor, prevented potential to escape from poverty, and the hindered progressive realisation of the right to further education. **See pages 35 of submissions.**

## 9. Funding model (cont.)

- The sliding-scale proposed leads to greater subsidisation of those with an inability to pay, and lesser and subsequently no subsidy to those able to pay, depending on personal circumstances.
- The system would entail *fee-free* education to those wholly unable to pay; using increased governmental expenditure on higher education coupled with reducing or removing subsidisation of those wholly able to pay. **See pages 36-37 paras 6.10-6.14**

# 10. Further recommendations / proposals

- We note that the responsibility ought not to fall solely on the state, and that, in line with section 8(1) of the Constitution, institutions, as organs of state, should also consider their role and the measures that can be taken to realise the right to further education.
- Accordingly, SLSJ also urges the Commission to recommend that institutions convene internal working groups to determine what measures can be taken to decrease spending or generate additional revenue. We note that measures taken in this regard should not be premised on outsourcing contracts.