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Set8 Hearings1 – Public Hearings

COMMISSION OF INQUIRY INTO HIGHER EDUCATION AND TRAINING

PARTIES PRESENT:

The Chairperson

Commissioners

Head of Evidence Leader

Evidence Leader

Experts

Secretariat

WITNESSES:

Prof Ahmed Bawa

Universities South Africa

Adv Lunga Siyo

Olwethu Mhaga

Asisipo Cawe

Legal Resources Centre and Students for Law and Social Justice

Adv. Lester Basson

Master of High Court

SESSION 1

JUDGE HEHER: Good morning Professor. At this stage we are swearing in witnesses? Are you willing to take the oath? What is your full name please?

PROF BAWA: Ahmed Bawa.

JUDGE HEHER: Mr. Bawa, do you swear to tell the truth and nothing but the truth?

PROF BAWA: I do.

JUDGE HEHER: Are you leading the evidence?

ADV. K. PILAY: I am chair. The next witness to testify in set 8 Chair is the Universities of South Africa. We have asked USAF to address one issue essentially and that is the question of students' success and specifically to address the question of drop-out rate and the flexible curriculum approach that was put before us by Professor Scott.

JUDGE HEHER: Is Mr Bawa aware of what Mr. Green has to say?

ADV. K. PILAY: No we have given Dr. Bawa Dr Green's evidence chair. Professor BAWA perhaps you can proceed with presentation and we will ask questions when the need arise.

PROF BAWA: Thank you Chair, it is good to be back here again. I think to begin with it is one of the most inefficiencies in our education system what we refer to as drop-out rate. I have to say though while we have to pay attention to this inefficiency; it isn't something that is unusual in international higher education system. Our dropout rate is comparable to those in the universities in the USA for example even in India. This is one of things that is raised about higher education regularly around the one. There are two major studies that have been done in 2016. They are both cohort studies meaning that they have taken students that have come into the system in particular year and follow them through until they leave the university system or they graduate. The major problem that we have is that we do not have in South Africa at the moment a decent graduate destination survey system in place. This means we do not know what happens to our graduates as we go along. We are in the discussion at the moment with the Statistician-General to see whether there is a possibility of building that into the national surveys.

ADV. G. ALLY: Is that the same Prof, the term (TASE), is that the same as the one you are mentioning now? Will the (TASE) study give you the same information that is required in terms of graduates?

PROF BAWA: I think the (TASE) study is almost like a deep stick; you taking a sample. We are talking about the Stastician-General- which is much more permanent and long term and longitudinal and that should give us a better handle on what happens to the graduate in the system.

JUDGE HEHER: When a census is done, does one not reflect on the state of one's education in the census?

PROF BAWA: Yes. I think that it does that but what it doesn't do is to relate that to the nature of employment. That is a very big issue and there is an indication that young people who are graduating especially mechanical engineers are in fact in other kinds of job. There is nothing wrong with that, but it is important information to have. The studies are quite different from each other.

JUDGE HEHER: Before you start let me find out. Ps Pilay and your expert, are we in possession of these two studies? We will have it? And the first one?

ADV. K. PILAY: We have got the first one.

JUDGE HEHER: Can you identify where they will be or there are just in bundle?

ADV. K. PILAY: We will try and locate it Chair.

JUDGE HEHER: Thank you. I beg your pardon.

PROF BAWA: The first one is a technical paper. It looks at number of students that are coming in a particular year and then follow them by using their Ids to see how many of them graduated after three, four or five years. And how many of them leave the system during their period. All universities have graduation rule which requires student to graduate with a five year for three years qualification. Sometimes, those

rules have to be juggled a lit bit in case there are issues around financial aids. But generally speaking, those rules are rigorously applied. And some students have come into the system and it is clear within two years that they are not going to graduate in five years. They are either asked to go into another program or asked to leave the university.

On the other hand, the second study is a much more detailed, nuanced study. It does the same thing; follow students that came into the system in 2008, but then does a whole lot of analysis of what was the rate of matriculation was and how that relates to how they did at the university. Both are very useful of course and they need to be repeated on a regular basis.

JUDGE HEHER: Just give me an idea, if you will, does the 2008 study effective if they are only published much later? And what material differences are they likely to be? Or is not possible to say?

PROF BAWA: We just have to remind ourselves that these are about students who came in 2008. Some of them would have graduated by 2011. Others could have stayed until 2013. The first study goes beyond 2008. In fact, I think it goes into 2010 (I can't remember exactly). There shouldn't be any substantial changes. What we are seeing is a trend- the dropout rates are falling over a period of time. It is very slow but it is a real fall. The question there is that why that happening and I will try and explore that shortly.

JUDGE HEHER: Is that reflected in the study or are you speaking in addition to the study which shows continued...

PROF BAWA: No, the actual drop in dropout rate is shown in the first study. As you go by year to year, you can see that the figures are coming down. It is also true that some universities have done better than others in addressing the issue of dropout.

JUDGE HEHER: Yes, now there is a reference to undergraduate studies in the first one and simply to higher access in the second one. This only relates to university education.

PROF BAWA: Just only university education. The common threats to the two of them; first, we have a high drop-out rate. By the way, this serious inefficiency is not just about getting students through time, there is high cost associated.

JUDGE HEHER: I am sorry. Why is inefficiency if it is something that is common all over the world? Or is it a systemic abnormality?

PROF BAWA: I just attended a meeting a few days ago in San Francisco around students' success. They are trying to improve their own triple rate simply because of the costs that are involved in this phenomenon.

JUDGE HEHER: So, the cost part is the most important factor?

PROF BAWA: Yes, most important factor and the toll on the young human beings.

ADV. G. ALLY: Sorry Dr. To return to the phraseology that is used. Now I am aware that they are various differences in various documents on, about the success rate, graduation rate and drop-out rate. And I think it is important, for instance, you were now in San Francisco where you discussed success rate, is it the same as triple to graduation rate?

PROF BAWA: No, they are different.

ADV. G. ALLY: There are different? And what insights you got from that after you've given your presentation?

PROF BAWA: I will be happy to do that. So, the first issue is the high dropout rate. The second is that the average time for completion for three years degree is about 4.6 years. And that changes year by year. We shouldn't be surprised; there are large differences across the universities. So, one would expect the dropout rate in the UCT to be lower than in other universities like DUT or one of the rural universities. But on the other hand, the time to completion is also low. But that is significantly lower which an important fact is.

Fourthly, we require more work to understand what we mean by the high dropout rates. The reason is this is that when we think of high dropout rate, the immediate thought that comes is that the students are failing or they are not meeting their academic requirements. Those are not always the case. Most times, it is about other factors like financial difficulties that students and family face. There was study done at the Durban University of Technology, a short while ago, where the success rate of students was much higher than was expected. It wasn't about success rate it was about issue around financial constraints. So, we need much more work to be done on the dropout and find out its main cause. There are other findings, particular the first study indicates that the drop-out rates are decreasing even though it is very slow.

Now, I will come to success rate. Success rates are very high. What we mean by success rate is that if student writes exams in four modules, there is an 80% success rate for that across the system, if you take UNISA out. But if you take the contact universities, the efficiency with which the students are passing the courses are very high.

JUDGE HEHER: So what is the complaint about the system?

PROF BAWA: I will come to that in a minute. Let me mention it now. What of the big issues is that we have what I call gateway courses. Gateway courses are those courses that prevent students from graduating; mathematics, physics, the languages etc. Identification of the gateway courses are very critical to trying to understand how to get students through the system moiré efficiently. Interesting fact; 1/3 of the students who graduate with bachelor pass do not go public universities. Many young people are choosing now to go to private sector higher education. Many young people are going directly into work. Many students feel if they get work opportunity it is a good thing to go into the labour market as early as possible,

JUDGE HEHER: Why do you conclude that more are going into private higher education?

PROF BAWA: I think there is definitely deep concern about the instability in the public sector now and the fact the universities are really operating at their maximum

capacities. So, facilities are at a stretch, etc. Another factor is that for many students and their families, private universities might feel safer to be at this period of time. If one goes to Brazil for example participation rate in private sector is higher than public sector.

JUDGE HEHER: If I might ask you, in your opinion, should private sector higher education be treated any differently from the public sector universities?

PROF BAWA: It has to be different somewhat differently on the basis of... in South Africa; it is primarily the profit motive that drives the private sector. So, at a national level, we have to have a very thorough regulatory system to try and ensure that young people and their family aren't ripped.

JUDGE HEHER: That is why I am asking you supposed one make fees free education available... in part I am trying to say is there any reason why there should not be fee free education right through in private and public universities? In principle.

PROF BAWA: In principle?

ADV. G. ALLY: And if you come from the school of thought that says public education should be the main entry point rather than private institutions, then say it; whether it right or wrong is immaterial.

JUDGE HEHER: But shouldn't it be, if you are going to fee free education, shouldn't it be fee free education according to people's choice, whether they want to

PROF BAWA: Let me make three points. The first one is that there is no possibility of South Africa meeting the demand for post education in the public sector; that we have to find ways of expanding the private sector. It has happened all over the world and it is something we have to look at in South Africa. Care has to be exercised.

ADV. G. ALLY: Why are you qualifying, if it is that the public sector cannot take as the NDP requires. Why not say so and leave it there? And that we then make

provisions, just as you have provisions in the public sector, you do so in the private sector higher education system.

PROF BAWA: If the motive of the private higher education is to make money, then you have to come to grip with the fact that costs per student might not be the same as it is in public sector.

ADV. G. ALLY: Let's just interrogate that. We have heard the testimony from the private higher institutions. And we take Richfield for example; their BComm and UCT's BComm degree are miles apart in terms of costs. Richfield says they can't understand why they shouldn't receive subsidy and UCT receives one. So, irrespective of the profit making issue, they still maintain some of their courses at lower rates.

PROF BAWA: Let me go to my second point because I think my second point begin to answer the question you are asking. The private higher education system doesn't offer the full programs that are offered in public system.

JUDGE HEHER: Then it offers something that the public ones don't.

PROF BAWA: Not that I know of. I will be very surprised if that is the case. So, one has to understand that the private sector in deciding on the kind of courses that they offer, choose those courses that you might think of as low-hanging fruits where they can generate profits, with the least amount of... so, there is no private university in South Africa at the moment which is offering engineering, simply because it is so expensive to offer engineering programme.

The second is the one I raised a while ago. It is not uncommon in our universities to have vast cross-subsidization, while it might be free expensive to run a program in music, it may not be expensive in commerce. But the extra money generated goes into running the music programs. So, there is a high level of cross-subsidization.

ADV. G. ALLY: I am to so sure. It may be but the other issue is that the public higher education, has to maintain ruby, sports fields

PROF BAWA: And research.

ADV. G. ALLY: I am not so sure because in research, you have your National Research Foundation and private donors that provide your equipment with other forms of support. Now, the private higher institutions don't need to have your soccer field. I am not sure they can afford the research component of education; or whether also regulations allow them to do the whole spectrum of education in private higher education. All I am saying is this, in private higher institutions, what we have heard is that students come in for those courses- BComm as well as some stem programmes and do it and move out. So I am not seeing, except for your distinction in terms of broader spectrum of education programmes of within the public, I am not seeing why the delineation and distinction, whether it is so pronounced as to what you appear to be saying.

PROF BAWA: My response to you is that I will find it very difficult why we would be using the public purse to generate profits?

JUDGE HEHER: Well I tell you. You have said that public high education cannot probably cope. Now, if that it is so, how can you say to somebody who says I can't be accommodated in a public high education system, but I can be accommodated in private system? Why should I not get the assistance that those who goes to the public education system can get? What can possibly be the problem with that?

PROF BAWA: Chair, as things stand at the moment, it is not clear to me that the provision of public higher education isn't meeting the needs of those students, for example with bachelor passes. Now, that I indicated earlier that if we are going to meet the needs of the future, we clearly not going to do it from the public sector unless there is a major expansion of the public sector. A very big part of the operations of our public institutions is research. If you take the National Research Foundation for example, it covers just 14% of the costs of post-graduate studies at our universities. It is a pittance in comparison to what comes in through universities own coffers. There are a huge investment infrastructures and power and so on form within the universities for production of research. So, it seems to me that when we think of the public purse, not just in terms of the BComm, it is about the series of

things that the public her education does. Going back to the sporting facility for instance, that is a choice. We can say we don't need it in our universities. But we will have to ask ourselves where are we going to produce our Bafana Bafana football players a t decent level, and our athletes etc? So, it is asset of choices we have to make.

JUDGE HEHER: May I just ask something. Supposing a student graduates at Monash, will he be permitted to come to Wits to do research works?

PROF BAWA: If he completes Bachelor degree in the private sector?

JUDGE HEHER: Yes.

PROF BAWA: Yes of course. Our qualifications in public and privates sectors are fully accredited by the Council on Higher Education.

JUDGE HEHER: In so far you say the public sector cannot possibly cope without substantial expansion; we are the areas which have to be accommodated by the private sector?

PROF BAWA: Clearly we still have to expand significantly in the stem areas. That is a national priority for us. If we compare ourselves with any comparable economy which is similar to ours and what we want to see is our engineers per our population is very small by comparison. So, there has to be expansion in that area but it will likely take place in the public sector. I think the big area of growth will be management sciences, teachers' education and information technology, where there is clear trajectory for young people to the labour market. The other big area which will likely take hold in the areas of postgraduate studies is the specialised areas like the MBA and so on. There are several institutions which run professional qualifications of that nature.

JUDGE HEHER: Private institutions.

PROF BAWA: Yes.

JUDGE HEHER: Is there any reason why that should not be so?

PROF BAWA: Not at all.

ADV. G. ALLY: I think Prof, what we are putting forward on the basis of your NDP target and whitepaper targets that you have, it would seem that they wouldn't be met if will continue along the same trajectory, because you have institutions whose infrastructure has to be expanded to make provision for that. Where there is no place for expansion in infrastructures, logically one must look elsewhere. The constitution is very clear about private higher education institutions and doesn't bar that and go further to say it doesn't bar financial aid to that institutions. In that realm of educational provision, should one not be saying going forward this need to be looking at seriously in terms of fulfilling those NDP targets?

PROF BAWA: My response to you is that we have to get our private education sector to work more effectively and efficiently to expand because there is no possibility of the public sector taking up the challenges as we go into the future. I think we have to distinguish between two things. One is if it is an argument that we should think about financial aids for students who are going into the private sector institutions, that is one thing and I can see the logic behind that as something we should keep in mind. If we are saying, that the private sector should be subsidised in the same way that public universities are subsidised, then I have a problem with that. Primarily because, the role of the public higher education is much more broad than the role of the private higher education.

JUDGE HEHER: I am thinking more of tuition fees.

PROF BAWA: I am prepared to go into discussion about that.

JUDGE HEHER: May I ask if presently whether there is any cooperation between USAF and any the university body and private higher education sector?

PROF BAWA: Chair, just at the moment, we are talking about that whether they should be chapter within USAF relating to private higher education.

JUDGE HEHER: Surely, it will be in everybody interest.

PROF BAWA: Correct.

ADV. G. ALLY: Let me get you right in terms of your presentation today which deals with the issues raised in the report by Professor Scott, which is the purpose of your presentation is that so?

PROF BAWA: Yes, I am coming to that.

ADV. G. ALLY: The Chairperson asked Ms. Pilay whether you had sight of DHET's testimony on Thursday/ Friday; because you are aware now that the department has a Chief Director dealing with UCDP which is dealing with the development arising from your response as USAF to Scott's report as well as their own analysis.

PROF BAWA: I skip the next two points. Going back to the very significant drop-out phenomenon in our system, the other structural thing we have to keep in mind is the fact it isn't that universities aren't paying attention, but is a whole a range of serious structural problems. The first one is we already do have fractured schooling system in the sense that you set of schools in the top who are functioning brilliantly and they are many other schools who are performing well. That is a very big issue because what it means is that different cohort of students coming from the school system into the university system having different needs. This is where I think the high success rates needs to be considered. The question is; how come the students are passing all the modules, but taking so much time to graduate? Part of the problems is that students have poor guidance and counselling; that just not happening at a decent level. This isn't just sufficient guidance for young people.

JUDGE HEHER: Would lack of guidance matter if a person is in the right course?

PROF BAWA: Absolutely correct.

JUDGE HEHER: And so, what does it matter whether is properly guided or he isn't, if the success rates are high?

PROF BAWA: No, it doesn't work like that. I grew up in this little town called Greytown in KZN. Young people there would hear about somebody who has graduated as electrical engineer; heavy current you know and student comes to the university and say I want to study heavy current engineering without the faintest idea what it means and requires. And he or she has the right matric and so gets in, and spends first year and then discovers that not they want to do.

Let me go on to the fact we have this very severe financial pressure on the students and families. I want to just say that when I was the Vice-Chancellor at the DUT, there was genuine hunger in our university- I mean hunger for food. I know that sounds weird. I know that students at our universities have financial aids, but at the DUT and similar universities there are another kind of students; the students who are poor but do not get financial aids.

JUDGE HEHER: We understand that, but I am still trying to understand how they can be success at the level which you described if there are; A. Badly career guided, B. Badly affected by poverty and hunger, and all sorts of things?

PROF BAWA: I think those are the things we have to deal with. I think there isn't enough thought given to those very critical issues.

ADV. K. PILAY: Prof. Chairperson is putting it to you that we do not understand that the success rate is so high given that you have these structural problems. And therefore, would it not mean that somehow, the analysis of the success.... so, perhaps you can help us in terms of that.

PROF BAWA: High success rate does not necessarily translate into high graduation rate.

JUDGE HEHER: Well, all things being equal shouldn't it?

PROF BAWA: No, because if a student is doing 6 modules in a year and passes 4 of them, in all likelihood the other two are the critical ones for them to make progress to the degree. So, if you are an engineering student, for example, if you don't pass mathematics, that's it, you have to repeat it.

JUDGE HEHER: I don't see how you can describe the success rate as satisfactory if out of the 6, they are failing the critical ones.

PROF BAWA: I am just using the term success rate as it is used globally. I am not suggesting that it is an indication of success.

ADV. G. ALLY: Let me try and understand you. If you are doing subjects as the example you gave and you pass 4 subjects that is 80% pass, which is very good. But the person doesn't go forward into the next year, but has passed. Therefore, you get this disjuncture between your graduation rate and success rate because there seems to be a hurdle that can't be climbed over because of various factors.

PROF BAWA: Correct.

ADV. K. PILAY: Professor, may I just ask question and it relates to what has been by both the Judge and Commissioner ALLY, have you seen the ministerial statement on the UCDP?

PROF BAWA: I have, yes.

ADV. K. PILAY: Because in the foreword of the ministerial statement, the Minister states the following, which I think relates to some of the things that has been raised with you now, in respect of the research that drop-out rates are slowly decreasing. The Minister states the following; 'a more worrying picture emerges when you raise questions such as; who is gaining access? Who is succeeding and in what? Who is employed in the university and who is conducting and producing the research? And he does mention that the despite that the drop-out rates are decreasing, the racial patterns still persist and that relates to the inequality of the past.

PROF BAWA: Yes, the inequality of the past and inequality of the present and about the fact that you have some schools which are functioning; urban schools generally function better than the rural schools. You see the replication of that. In fact the second study that I mentioned does a fairly thorough analysis of that.

Just to move along. The fourth point is the issue of epistemic access, but basically it means that for some students that come to university, the way is that the mission between what they come with and what they are expected to start with at the university, there is no enough information on that. So, students flounder there, it takes them time there. It is a big issues and one that has to be addressed.

The fifth one is the continuing financial pressure on the universities. In particular, in the 80s and 90s, we used to have academic development units which were at the centre of university's... Professor Mosia would remember this very well. They were very powerful grouping of people who worked with students intensively. Those worked well as long as the number of students that required academic development was a minority. And now, that has now changed dramatically. The biggest challenge that has been, is to take this academic development work and diffuse it into the faculties.

JUDGE HEHER: Can you explain to me what you mean by academic development?

PROF BAWA: So, for example one of the biggest challenges at the universities is academic literacy; just getting students to read academic texts and able to understand and analyse it. Numeracy is another one. Those kinds of things are pushed into the faculties to try and build the capacity, but that will cost a lot of money. At the beginning, the bulk of that work was funded externally. It was mainly international foundations like the Ford Foundation; the Shell Company that funded science programme at the University of Natal, then. Unfortunately, appetite for that kind of funding has dissipated and it now means we are to find that money within the system. Therefore, the teaching development grants are really important in that regard.

Finally, there were these fantastic experiments in the 80s and 90s which unfortunately that were not systemised; they were not taken in to the system and

there are many reasons for that; particularly funding reasons; they required small classes and expert teachers. We didn't get that going into the system in a serious way. In a sense, we are kind getting back to that now.

The 4 year curriculum was presented to USAF in 2014. To be honest, I am mainly recalling from the discussion that took place at that time. There was a deep concern about the cost of the roll-out of the 4 year curriculum because something like 15-30% of the students depending on which university or programme you are looking at, could quit the programme in the minimum time. What you will be saying to these children you may have to take four years.

JUDGE HEHER: But that is not the purpose of what was presented, it is says it should be flexible.

PROF BAWA: The question is how to do that. How do you decide? The second point is that we have to consider distance education separately for obvious reasons. The third the four year curriculum is that it is not completely clear that it is solely about academics. There are a whole range of other factors that contribute to the high drop-out rate, and the 4-year curriculum will not address those issues. The idea that the 4-year curriculum is the panacea that is going to solve the high dropout rate is not going to work.

JUDGE HEHER: What I also understood the 4-year curriculum intended to do was to provide more time to solve these problems.

PROF BAWA: What I want to say to that is that, that is already happening in our system; all of our universities that have 4-year curriculum for three year qualifications. Some of them are successful and some are not. But the point is that for all intents and purposes, that extension is already very much built into the system. There is a second thing; there is the foundation programme which I found out through the DHET, explicitly has the 4-year programmes which are calculated in the same way we would have thought about the 4-year curriculum.

JUDGE HEHER: When was this introduced?

PROF BAWA: It was about two years ago and they are now very much in the scheme of things. I would say about the region of 15 % of intakes now our universities are through the foundation programmes.

ADV. K. PILAY: And do you have any knowledge, Professor, how successful the foundation programme is working?

PROF BAWA: I don't know the exact details Chair, but from what I can gather they are working well. The big challenge is to try and understand that the 4 year programme is not just about re-curriculating the first year, that it is about ensuring that first year leads the students successfully into the second year.

JUDGE HEHER: One of the emphases in that report was that the extension to four year should not be accompanied by expansion in curriculum.

PROF BAWA: Exactly!

ADV. M. LEKOANE: Prof, I see on the previous slide growing phases in students-centeredness, what does that...

ADV. G. ALLY: You accidentally went forward, Prof.

PROF BAWA: I went forward? Sorry! My analysis of the 4-year curriculum is that we are treating the symptoms rather than the causes. I think what we have today is to address the structural problems that I spoke about earlier. Secondly, the issues around the quality of teaching and learning which I think it needs to be done in our university system. I think there is a very interesting renewed emphasis on teaching and learning in the South African higher education system. There is a lot of research being done; lots of lecturer development work being done; very significant amount of money being put in both by the universities and the department.

JUDGE HEHER: How will this be carried out in relation to teaching, for example?

PROF BAWA: Many universities have some programmes which are locally based, which are actually about improving the understanding of young lecturer about what is required in the classroom, what is required about a particular kind of students. The use of technology is a very big issue which is kind of fused there. USAF runs a programme called HELM- Higher Education Leadership and Management which is funded by DHET to some extent and that is going to be running programme nationally for lecturers.

ADV. K. PILAY: Prof, we know that the teaching development grant will soon be phased out with the introduction of the UCDP grants. Perhaps you want to address us on your view on the UCDP grants.

PROF BAWA: The UCDP grant is an attempt to build some coherence between teaching and learning grants and research development grants and put those together into a common package because they were significant amount of overlaps between them. So, I call the TGDM, but you can also call it UCDP.

The next one is the use of technology to improve teaching and learning and there is a fantastic work going on in South Africa universities in this area. There is great courses being developed; students are integrated into technology from day one, so by the time they graduate, they are fully conversant with technology.

Number 4 is a very enterprise. It is the Siyaphumilela Project which is funded by an external foundation. It involves eight universities and focusing on one thing, which is; how do you use data better to improve the success of students. Let me use one example of data usage to notice when it is that a student is flounder so that they can be immediate intervention rather wait till end of the year when the exams results are bad. There is tremendous amount of data in our system through the marks books and registration documents etc. So, the question is can we begin to use data and data analytics to begin to identify students that at risk for example. Another example is that can we use this to identify gateway courses; which course are really causing the students to fail and how can we then intervene to improve students' performances.

JUDGE HEHER: Isn't that obvious to the teachers and lecturers? (Uncertain... low voice)?

PROF BAWA: It is, but you know when you have huge classes that 30% of the students are failing and 80% are passing, you need a system that can point out which are the courses that students are floundering in? A lot of this automated. The growing emphasis on students' centeredness is another important issue.

JUDGE HEHER: What does it mean?

PROF BAWA: What it means is how to galvanise the resources of the universities to support students; placing students at the centre. In other words, it says can we get the residencies and the student services, the clinics and others in the universities to focus their attention in a coherent ways on students; the same with the sports department and academic development. It is about seeing the students as a whole person with a lot of needs. Again, I am just referring to my own experience at DUT, a particular residence for 5 to 6 years produced 100% pass rate. And it was because that residence took serious efforts to try and ensure that students were in a safe environment and constantly tutored by senior students, and a lot of support etc. The meeting that I attended in San Francisco was precisely about that; how do you galvanise university systems to support students' success?

I have mentioned lecturer development and gateway courses. Gateway courses are major challenge largely because it relates so much with what is going on in the school system.

Chair, just in terms of USAF's own initiatives, I mentioned the Higher Education and Leadership and Management programme. We have (community of practices) around languages and mathematics education, etc.

JUDGE HEHER: I am sorry I don't understand that expression. Would you please enlighten us?

PROF BAWA: It is really bringing together people who are working on maths education into a forum which meets on a regular basis and they update each other

and talk about new research and so on. And finally, it is the issue around focusing on the students.

ADV. K. PILAY: Professor Bawa before you continue, can we just go back to the previous slide. When we measure progress has been made by the department, in addition to the 7 points you have listed, should we not include other earmarked grants including the foundation provisioning grants, infrastructural and efficiency grants and the historically disadvantaged institution development grants?

PROF BAWA: I think we can include all of those. There are other initiatives. I should also mention the works done by the CHET on the quality enhancement project. Those are all very important initiatives. There is a lot of work going on. I mean the fact the drop-out rate is decreasing is happening because there are a lot of interventions. I think that we are pointing in the right direction.

ADV. G. ALLY: Of course the big one is the UCDP and that should be included in the list.

PROF BAWA: I have called the Teaching development grant there.

ADV. G. ALLY: The program is far more comprehensive than just....

PROF BAWA: Yes. It includes research teaching development and so on.

ADV. G. ALLY: Perhaps at this stage Prof and perhaps, Ms Pilay will enter at the later stage as part of the exhibit. He says his response to the report that forms the basis of his testimony today. Is that correct?

PROF BAWA: Things have really moved on since then

ADV. G. ALLY: Well besides that I just want you to know that which has been recorded in that response; he says USAF stands by what they said, although they have been developments since then. I just want to get things clear.

PROF BAWA: Chair, there is a legal question. I really... (cuts)

ADV. G. ALLY: Well, let me put it to you this way. As universities, each university was asked to respond to the report, and because there were varied and many, he said USAF decided to give one response. Is that correct?

PROF BAWA: That's correct, yes.

ADV. G. ALLY: All I am asking is that whether we can regard that response as a response to the report.

PROF BAWA: I think it was a former USAF response.

ADV. G. ALLY: And part of that response said or the interpretation of the report was that the 4 year curriculum seemed a default position that was taken in the report. Am I correct?

PROF BAWA: That's correct.

ADV. G. ALLY: All I am trying to get to... you see that report doesn't form part of the evidence at the moment. It was given to us because we wanted to know what the department did about this report. We were then shown a report which states that HESA has developed into USAF. Is that correct?

PROF BAWA: Yes, that's correct.

ADV. G. ALLY: All I am trying to get to is whether that is the response since then USAF has developed other responses in analysing what is happening institutions.

PROF BAWA: That indeed was former USAF response I think it was 2013 if I am not mistaken. A lot has happened since 2013 and now. All the things I have mentioned here most of them are new. In addition to that, for example, as I have mentioned, we have had quality enhancement projects.

ADV. G. ALLY: But the quality enhancement project as well as your DTG that you have mentioned is mentioned in the ISFAP report already in 2013 and probably forms the backdrop of the improvement made in the system.

PROF BAWA: That's correct. I agree with that. Okay, can I continue?

Chair, it seems to me that we need to begin to think about the challenges facing us. Otherwise, there is a lot of patchwork being done. We have to think seriously about the school system and how to the quality of the school system. Particularly, to understand that the performance of young people in matric is not necessarily a measure of how students are being prepared for higher education. So, when you hear about the increase in pass rate in the national certificate, we have to think carefully whether that is an indication that students are been prepared better.

JUDGE HEHER: How do you suggest that these issues impact on the viability or feasibility of fees free higher education?

PROF BAWA: The question is that how does the impact of the school system not working well impact on feasibility of fees free higher education?

JUDGE HEHER: Our primary instruction is to advise whether fees free higher education is feasible? How does the school system impact on that question?

PROF BAWA: There are two things that immediately come to mind. One is that if one looks at the significant part of the struggles that students have when they come to university is due to the fact that they aren't being prepared sufficiently in the school level. What does that mean for them is that by extending the opportunity to come to university for sat, a year, gives them the opportunity of getting into the system. One thing that has occurred to me even when I was a lecturer is that there is a group of young people irrespective of how badly they are prepared at school, they come to university and there is a rapid growth.

JUDGE HEHER: I take your point, but you've just used the introduction irrespective how bad the school system is. I am trying to see if it is irrespective of how bad the school system is...

PROF BAWA: That's a very small category of the students. If you don't mind chair, if I get to my second point I will be able to answer your question. It seems to me that we really have to do is to reconstruct the post-school education and training system. I know you've heard over and over again, but what I want to suggest is the idea that we have a post-school education and training system which turns out to be 2+2 system. Let's assume a young person grows up in Potschefroom, what we should be saying to that young person is, unless they've got brilliant matric results, they can go directly into a 3 year qualification. Otherwise, they should spend the first two years at a local TVET college. It is a part of the same system and if they get through the first qualification with a certain pass rate, then they will be guaranteed a place in the 4year programme.

JUDGE HEHER: Whose responsibility is it to tell the students; look we don't think you should be going to university, you should be going to college? Whose responsibility is that?

PROF BAWA: It is a way in which you structured the university. Again, there are many examples around the world. For example, if you take the University of California system, there is a community college system. And there is a set of minimum requirements for students to get into the university. If they don't meet those requirements they go into community college system.

JUDGE HEHER: Well, our universities have set of minimum requirements as well? So, is the university applying that system rigidly enough? And is it being made clear to students who are turned away that we think you will be better suited to a TVET college?

PROF BAWA: Of course, the universities can only take the number of students that they have spaces for. The question that you raised is that; are all of those students at the right level to enter into university?

JUDGE HEHER: No, that is not my question. My question is how do students become aware that they should be in a TVET college and not in the university? You

told me about career guide. That may be one possibility. But in all the roles that the universities and schools play, who makes them aware?

PROF BAWA: That's a very big challenge, Chair. Partly, the challenge has to do with the reality- is that the TVET sector isn't functioning at the level we will like it to.

JUDGE HEHER: We know that, but we are talking about the system as it is. Who is telling the students who is coming to our university; you should not be coming because, this is not for you?

PROF BAWA: At the moment, it goes like this; students write the NSE exams, they get either a diploma pass or degree pass, they apply to university, and the universities check to see whether they have sufficient place and take them in.

JUDGE HEHER: Well that sounds awful deficiency in the system if you don't know mind me saying so. It is based on the criteria of first come, first served.

PROF BAWA: Again, it is on the basis that the TVET sector isn't functioning at the right level, because what we should really be seeing is a much higher level of articulation between the TVET and university sectors. What we should be saying is that many more students should be coming into the university system through the TVET system. That is not happening at all at the moment. My answer to your question is that we have to redesign the university and TVET systems. What we have seen is increased them for places at the university. Many students insufficiently qualify to take up academic programmes, and the universities being put in the position where they have to offer significant number of courses to help students succeed. So, it seems to me that we really have to think about redesigning the system

JUDGE HEHER: This is all very nice, but our question is whether fees free education feasible or not. Are we to tell the government it is not feasible until the system is redesigned?

PROF BAWA: Chair, from USAF point of view, whether the fee component of what is currently the university budget comes by fees or comes through the tax base...

JUDGE HEHER: It is irrelevant.

PROF BAWA: I think you are asking a very serious question which is about the roles of post-school education training system on social mobility on trying to meet the need of building a more equal society. So, my view about that if we can get the system to work better, there should be no young person in South Africa that is admitted into the post school education and training system who should not be permitted to enter that system.

JUDGE HEHER: Professor, that ducks the question.

PROF BAWA: I don't think so, no.

JUDGE HEHER: The question is do you have to fix the system before you can feasibly provide fees free higher education? And if you don't, what is the relevance of reconstructing the system to the question we have to answer?

PROF BAWA: Let me start with the second question. I don't think that there is any permanent solution without restructuring the system. Whether you opt for fee free system or for kind of mixed system without addressing the fundamental problem, I think that sooner or later, we will be back where we are.

ADV. G. ALLY: Prof, let me come to you from this angle. You had discussions around higher education system now for many years- post 1994. You've heard of the German example which would seem to agree with as well as the US, in many respects where they come through. Face college, then to the university which is academic. Why is it then that we have not gone the route incrementally along this road, besides decrepit TVET system, although not completely, they are good things happening in the TVET sector- why is it then that we don't have the system that of itself doesn't allow students to go in to a higher academic stage because of some wanting in certain respects? Why is it that way?

PROF BAWA: Chair, I think the fundamental reason of this rests on the National Commission of Higher Education of 1995-6, because I think that process which I think was very substantial and serious process had certain constraints placed on it. The first constraint was that we should be careful that we do not upset the apple cart too much; that we had to be careful that the system doesn't destabilise and that we wouldn't have the emigration of lots of (I am going to say this) white academics to other parts of the world. So for example the issue of participation, building a larger participation rate, was on the table for discussion. The second issue which was on the table was the issue of funding. The issue was discussed but not dealt with in any serious way. So, it seems to me that the place that we are now, 20 years after the Higher Education Act was promulgated, is dealing precisely with that issue, which is to say how you build a post-school education and training system which really does begin to address these issues of social mobility and social justice. Unfortunately, what we've had is a fragmented system. We've had TVET operating until very recently in the provinces. You've had the universities operating in the national system. There was zero communication between them except at the local level. There was no kind of an attempt of trying to understand how to build a forward looking and expanding post-school education and training system. I think that we are at the point where we have to go back to that discussion. I don't think there is any other way out of this. So, the issue around fee free education is tied to this because the cost constraint in the TVET sector is considerable lower than it is in the university system. So, one can imagine then that we have bigger base in the TVET sector with the university footprints which doesn't have to shrink but which can then draw on the best kind of candidates, if you like, from the TVET sector.

The second point is that for individual student, if we can get the system to work, it would have enormous impact because going back to that young person growing up in Portshefroom, in fact they could spend two year at home going to the local TVET college, in KZN, there are a 100campuses of the TVET colleges spread around the province, would mean in fact that young people don't have to move into the city or urban areas to take up their first studies; huge implication for affordability etc.

JUDGE HEHER: Let me see whether I understand you currently. Are you saying to me that the matters that you are dealing with are relevant to the question that

primarily faces us because the more efficient you make this is, the less the cost will be?

PROF BAWA: Absolutely correct.

JUDGE HEHER: That I can follow, but I am not sure whether it is directly relevant to answering the question as at now, because the previously the DHET has taken the view; don't wait to fix the system; you must put the money in now and we will fix it as we go.

PROF BAWA: My response to that is that in 5 years, we will be dealing with the same issues again.

JUDGE HEHER: Don't you have a problem that if your approach is adopted, one cannot immediately deal with the fees free problem?

PROF BAWA: I think we have to deal with these concurrently, but at the same time, what I am saying is this unless you deal with the structural issues over the next period of 5-10 years, whether you adopt the system of fee free or not, it is not going to be the solution to post-school education and system. That addresses immediate need, but it does not certainly address the long terms sustainability of the system. We have what we call the inverted pyramid; we really have to write that. If we don't write that

JUDGE HEHER: I think that was said to us on the very first day of our hearing and nobody has contradicted it.

PROF BAWA: Unless we fix that...

JUDGE HEHER: You keep on saying that.

PROF BAWA: It requires political will, Chair. And I think that...

JUDGE HEHER: That's a very wonderful opportunity to refresh ourselves with tea. May we adjourn now Ms Pilay?

ADV. K. PILAY: Chair, if I may inquire, Professor Bawa is on his last slide. I just want to see if he still got a lot more to cover in terms of presentation.

ADV. M. LEKOANE: I wanted to check Prof. The restructuring, what has been done? Is the suggestion to do more or there hasn't been any improvement in the system?

PROF BAWA: I would be the last one to say there has been no improvement in the system. I think there has been a lot of improvement, but the improvement has been on the system that is not going to work for us. That's my concern.

ADV. M. LEKOANE: So, what will be different from what has been done and what is being proposed now?

PROF BAWA: Well, I have a model for KZN if you would like to hear it. I have written a paper about this, Chair. It goes like this: we've got 9 TVET colleges in KZN and we've got 4 universities. My recommendation will be that we create a single University of Kwa-Zulu-Natal which include all of those. A 100 campuses spread around the province; many of them 2 years college with very serious kind of connection with local context. The others become 4 years college with postgraduate stuff on top of that. And students are required to go to the 2 years college first unless they have exceptional school results which allow them into the three year programme. So when the students go to Ngamawalake campus, Greytown campus of the university, they will be entering the campus of the University Not of the TVET college. So, immediately there will be a connection. That will be my model. It is much efficient model and the cost constraint will be much lower.

ADV. M. LEKOANE: Thank you Prof.

ADV. K. PILAY: Thank you Chair, we have no further questions.

ADV. G. ALLY: Well, Prof is that is your presentation, let me ask you this: the view you've expressed in the second point- connection, is this a view that has been work-shopped among USAF or is that a personal view, because you will seem to be propagating for the whole of the system. And it is important for us in the report when observations are made to know whether that particular proposition is a USAF proposition that has been work-shopped or it is an idea from yourself which taken into account from your point of view that is the only way we can correct and rectify the system?

PROF BAWA: The universities accept the fact that we are part of the academic training system. The second point is that there is acceptance that there should be a very serious differentiation between the different sectors if you like. The third point is that full agreement that there should be very strong articulation. The 2+2 system is something that is mine.

ADV. G. ALLY: That's all I needed to know. Thank you.

JUDGE HEHER: Thank you Professor

PROF BAWA: Thank you chair.

SESSION 2

ADV. K. PILAY: Thank you Chair, the next stakeholder is Student for Law and Social Justice and representing the SLSJ is Advocate Lunga Siyo and from the Legal Resources Centre. Advocate Siyo is accompanied by a number of students that I believe will be collaborating with him in the presentation. The first is Asisipo Cawe and the second is Mr Olwethu Mhaga.

JUSTICE HEHER: This are the same three set of people that appeared before us in the past. Am I correct?

ADV. K. PILAY: I believe Ms Asisipo Cawe and Olwethu Mhaga have not appeared before us, but Advocate Siyo has.

JUSTICE HEHER: I beg your pardon.

ADV. SIYO: Thank you very much. Good afternoon, Chairperson.

JUSTICE HEHER: Are you giving evidences like a witness or are you doing the leading?

ADV. SIYO: I am simply doing the leading chairperson.

JUSTICE HEHER: Okay then, you can call the witness and I will place the witness under oath.

ADV. SIYO: The first witness I will call is Ms. ASISIPO CAWE

ASISIPO CAWE: Good afternoon Chairperson. My name is ASISIPO CAWE. I am part of the UP. I am currently doing my second year in LLB at the University of Pretoria.

JUSTICE HEHER: Are you prepared to take the oath?

ASISIPO CAWE: Yes Chairperson.

JUSTICE HEHER: Do you swear to say the truth, the whole truth and nothing but the truth?

ASISIPO CAWE: Yes Chairperson.

JUSTICE HEHER: Raise your hand and say 'so help me God'.

ASISIPO CAWE: So help me God!

JUSTICE HEHER: Thank you.

ADV. SIYO: Can you please tell the commission what sort of questions you will be addressing?

ASISIPO CAWE: I will be addressing question 1 and question 3.

ADV. SIYO: Can you please address the issue?

ADV. K. PILAY: Asisipo, I think before we continue perhaps you may want to introduce the next student.

ADV. SIYO: Should I do that now? On my left, I have Mr Olwethu Mhaga?

OLWETHU MHAGA: Good afternoon, Chairperson.

JUSTICE HEHER: Are you prepared to take the oath?

OLWETHU MHAGA: Yes Chairperson.

JUSTICE HEHER: Do you swear that the evidence you will give shall be the whole truth and nothing but the truth? If you do say so help me God.

OLWETHU MHAGA: So help me God.

JUSTICE HEHER: Thank you, which issue are you addressing Mr Olwethu?

OLWETHU MHAGA: I will be addressing the second and the fourth question

JUSTICE HEHER: Yes, thank you.

ASISIPO CAWE: The understanding of Fee free education. Free education goes beyond the cost of registration and tuition but rather that fee should be understood in its entirety. Cost of inter alia residence and academic materials should always be borne in mind in the context of equal access to Education. As well as application fees that continues to be a hindrance to ourselves. Having been part of the vulnerable group of students for lack of a better word, I myself have experience the harsh reality of a commodified educational system in our country. Application fees are a hindrance from the word go. And now the minutes a child can not actually

individual apply out of educational institutions because of financial constraint. There is not much that can be done going forward because there can never really be a step 2, between actually being able to fund the child and being actually able to enrol and study at the institution.

Step 1 means actually getting the child into the university. Upon enrolment you are welcomed by registration and academic material fee, not for someone who doesn't have the initial application fee, i can really fathom with thousands of Rands to cater for their academic needs for the sourced by this child. The suggestion here will be to scrap application fees however not for just a certain group of students but for all students. The difference is such a contradiction in our stands here, I will provide a writing.... model is not in agreement with the scrapping of fees for all students. However the administrative burden will be too much of we are to uphold the sliding model to the application fees. Also because the relevant circumstantial fact to each individual case is the type that rates the financial affordability of the state are not known; right now they are not student yet but are merely prospective students. Now come the issue of the tuition fees, it is no doubt that we have been failed by the National Student financial aid scheme. Hence we students find ourselves at the desperate hand s of frustration as the price of education is too high and therefore hindering access to education. As an(indistinct sound) has provided the funding model that provides funding for students such has access lacks. However I guess that there should be limits to it, it should not be for every student but those who cannot afford to pay for their education. The sliding model on the redistribution of education and educational subsidy is to be able to open access to every student, more so those that lacks.

ADV. K. PILAY: Before you continue let me just ask you a few questions. You have covered quite a bit of content from that short period of presentation. From my understanding of what you are saying, are you saying it should be no application fees payable by any student?

ASISIPO CAWE: Yes!

ADV. K. PILAY: Are you saying that students have no confidence or they feel that they have been failed by NSFAS?

ASISIPO CAWE: Yes, Ma'am

ADV. K. PILAY: Why do you feel that way?

ASISIPO CAWE: As students we feel that government has failed to open access to education. But NSFAS did not perform anything and it is students who are still frustrated, even when some students are funded by NSFAS, they have a certain cap. So for like University of Pretoria, including in your account is to for NSFAS to say they have R71, 000, which leaves you frustrated because who is going to fund the outstanding fees.

ADV. K. PILAY: I think dealing with NSFAS is quite a complex topic, so let break it up into small sections. I will like to get your view on most aspects. Let start with the big picture, which is the model used by NSFAS called the income contingency loan model. But you will like to tell us whether you agree whether there should be income contingency.

ASISIPO CAWE: I do agree, but at the same time you find out that the student who cannot education now are the very same studentswho when They get into the work force have so many responsibilities at home so now to pay up the NSFAS will be a burden and aside the burden which is already there which is to look after their home.

JUSTICE HEHER: You speak as a student who has not earned a decent salary?

OLWETHU MHAGA: The policy with NSFAS is that when you graduate in most cases it's substantively defers because you find that sometimes they say there is a waiting period before payment just to grab the loans. Sometimes when you are told they say it accrued on this loan. How different is this loan from NSFAS to the loan from FNB when it also accrued interest. Why should they accrue interest? Why should it accrue interest?

ADV. G. ALLY: The first question asked by Ms Pilay was that do you agree with Income contingency loan, you said yes, your answer says something different.

JUSTICE HEHER: Do you agree provided that terms made are reasonable?

ASISIPO CAWE: Yes.

ADV. G. ALLY: In other words, if NSFAS provide you with that loan and allowed time to earn sufficient income and that sufficiently will have to be determined to have a sufficient income to pay back that loans, is it that my thought also is correct?

ASISIPO CAWE: Additionally so, with regards to the interest, I don't see why a study loan should accrued interest.

JUSTICE HEHER All money borrowed must accrued interest at some point and this you say must be an interest free loans should it be so?

ASISIPO CAWE: I totally take that stance, I feel student loans should not accrued interest but rather we pay back the principal amount.

ADV. G. ALLY: There is no incentive to pay back the loan, if there is no interest on the payback of the loan and then we could say that...

ASISIPO CAWE: Asisipo will start working for instance a month after she has graduated and then when she starts working she will pay back the loan and if there is a period that you must tie to what a reasonable period must be and really there is a reasonable period but the loan will accrue interest.

ADV. K. PILAY: Can I just quickly ask of you a question regarding the interest rate? We know that interest rate charged by NSFAS is 80% of the repo rate with the equivalent of 4.5% interest rate you will get in the market regarding student loan. Is it not fair interest rate to you?

ASISIPO CAWE: My issue ma'am is because this is a student loan. This student loan is trying to open access to education. I don't wish to see it as money-making scheme rather means of opening access to education for those who cannot access such education. I think I still maintain my position with regard to the interest.

JUSTICE HEHER: The position is quiet clear in one sense there is no money to provide interest free loan without an income contingency responsibility. If there is enough money to provide a loan which is payable back and sufficient money to charge well and good, but we are trying to find the money that can be used to finance student education. Supposing there is money but as part of sustainability it is necessary to form some interest on that, what do you say to that?

ASISIPO CAWE: My question then comes that the interest that is charged on student loan, what does it do? So why will it be if, I Asisipo, pay back the principal amount but not the interest?

ADV. G. ALLY: Well let's interrogate. For the purpose you put in the money you get in 2017, is not what the money in 2020. So one of the reasons is that if the rate that is charged it is not even inflational rate and you have the problem that you not necessarily getting back all the money but you are getting back part of the money because you need to take into account the money given at the entry point is not the same as the money at the repayment point. So that is the one reason for the interest.

JUSTICE HEHER: Another reason for the interest is the risk that the lender is carrying that you may or may not pay back and other reason for the interest rate is the cost of collecting what is necessary to claim from the debtor, this are all reason for charging interest rate.

ASISIPO CAWE: Perhaps, with regards to the risk, a much more reasonable approach would be to say so now we funded Asisipo from the first year up to the fourth year when she finishes her degree. So now, if Asisipo manages to finish her degree, the amount of interest that she will pay can't be the same amount that Olwethu Mhaga will pay when he drops out for argument sakes. Perhaps with regards to interest, there should be some motivation so as to push you to actually finish so that you can actually pay and kind of lower the risk at the same time.

JUSTICE HEHER: What you are talking about is a flexible system which caters differently for more deserving cases, for example, the person who does 2 years and drops out is not to be equated with the person who finishes the degree?

ASISIPO CAWE: Like I said chairperson, the objective of student loan is to open access into the education and through that access we have more graduate going through it and the entire working force. I feel in a way justified to perhaps punish Olwethu who end up dropping out because it is a waste of resources, so why charges Assisi who finishes the degree with Olwethu who doesn't finish the degree the same amount of interest.

ADV. K. PILAY: Ms, I think rather than punishing the dropout, I think it is better to put it that you want to incentivise the graduate,

ADV. G. ALLY: That incentivisation could take the form of interest or the form of expecting you paying the whole of the amount in a given year which presently I am told NSFAS if you pass your final year within three year period, you don't have to pay back 80% of your final year fee. And that is a sort of incentivisation. But let me ask first before we jump the gun. Are you aware of the system that incentivises the students in time? Secondly, in the final year you don't have to pay the full amount?

ASISIPO CAWE: I am well aware that part of the NSFAS loan at some point get converted to bursaries but now with regards to inefficiencies of NSFAS you find that you have historical debt since first year, even though you are NSFAS beneficiary BUT 80% it only incentivises your final year what happens to the historical debts that you have been accruing since the first year.

ADV. G. ALLY: MS Pilay was taking you through the system. Perhaps, she will deal with that. Now at your university you might have historical debt, at the university of Zululand you might not have historical debt because NSFAS has catered for the whole amount and the 71,000.00 would take care of your accommodation and tuition it is differently done in different institutions. Perhaps Ms Pilay can take you through the understanding because I know there are problems with certain institutions with historical debt.

ADV. K. PILAY: On the NSFAS part that covers the contingent loan and you have testified that you don't have a difficulty with the income contingency loan into the NSFAS system and before we deal with the implementation challenges the means test, you mentioned that out of ...is a proposal, includes the system that financial assistance be extended only to those who cannot afford to pay, how do you identify people who are not able to pay and what vehicle do you use to identify people that cannot pay, do you have any comment on the current NSFAS mean test.

ASISIPO CAWE: Okay, firstly with regards to testing affordability, for me it goes beyond just the figure but we also need to consider the circumstantial fact to each individual case, for instance if we say the middle class at just earns just below 600,000 per annum. What exactly equates a case where a father has two Asisipos in the university and a case where a father has only one Asisipo in the university in the same income bracket? So, things like background and other dependents are suppose to be included in the affordability test. Going to the current means test for

NSFAS, we recognise the efforts of NSFAS in order to include the others like the middle class students but now the problem come in that it is inefficient. We still find ourselves frustrated because we are in debt even though we are funded by NSFAS. So perhaps they have tried to make the means flexible but i think it doesn't stretch far enough

ADV. K. PILAY: Sorry, I am just trying to process what you have just said because I think you have covered more than one thing in what you have just said and the submission. Are you aware of NSFAS new student-centered models and UP is one of the universities where the student issue is being piloted?

ASISIPO CAWE: That student model being the one that includes the middle class students?

ADV. K. PILAY: Yes

ASISIPO CAWE: Yes, I am one of the beneficiaries last year under that model.

ADV. K. PILAY: Just on the question of fee capping, what if NSFAS introduces a new model where all the fees in every university is being paid , that means there is no fees cap or residue just everything will be left for the students to pay, will you then be happy with NSFAS model? Lastly, on the implementation and the challenges being experienced by students on the interacting with NSFAS, Perhaps you might want to give us some of the challenges that students are facing with NSFAS?

ASISIPO CAWE: It is a daunting experience because when you get to the officers you are frustrated already. You are welcome by people who tell you that there is nothing we can do about this. In the University of Pretoria and you will be getting calls from the client servicing centre asking you when you will be paying your fee. For someone who has applied for financial aid, I see no reason why he or she should be called and be pestered about paying your fees with regards to the implementation, as it stands now there are other financial aid offices on campus but I feel they are not effective. Moreso now that the financial aid application process goes through NSFAS and not through the institutions. I feel as though there is no proper communication between NSFAS beneficiaries and NSFAS itself.

ADV. K. PILAY: Just to understand you, regarding the new NSFAS model, you said applications are from the students to NSFAS and not through the financial aid office, are you saying that you are unhappy with that process?

ASISIPO CAWE: The new model of NSFAS was effective from 2017 which will be by application, people who applied in 2016 are now to be paid through the institution but now in 2017, you find that whenever you have a query you approach a financial aid office and they cannot actually help you, what is the point of having an FA on campus if they cannot help you and if it is a communication defect between NSFAS and the FAO perhaps they can look into that, because IT IS directly frustrating those people who it should be for .

ADV. K. PILAY: We have the CEO, CFO who testified before us on number of occasions, and their testimony was that the new engage platforms between students and NSFAS for more efficient and allow the student to get remedy for whatever challenges they were experiencing much faster and more efficiently, than going to the financial aid of it.

ASISIPO CAWE: Now I am speaking from my personal experience I was told last year that if you were beneficial in this office 2016, is possible they fund you right to finish your degree provided that you have met the requirements. So now for me, it came as a shock when beginning of this year I currently heard that my application has been rejected because I didn't meet up with the financial. So, now firstly I was confused by the fact that I didn't meet the requirement and if I had met the requirements last year, then what has been changed that I did not meet the requirement this year. So, I approached the CFO on campus and they told me that they can't do much about it because they just received communication from NSFAS and they know nothing, no reply to the emails. You call them and they never replied or tried that they are giving ID number ...call us back and its daunting, because it is January now. Then you need money for textbooks, it's a daunting experience. So in that regard I feel my position that the NSFAS has failed us.

JUSTICE HEHER: May I put a proposition to you? A witness has come along and said a way of solving this dilemma is that every student who needs the loan should be entitled to apply for loans along reasonable part and allow to repay when she earns sufficient income and they should be no means test at all, in other words every

student has an equal opportunity, nobody will be rejected, if you understand. Everybody is entitled to a loan and everybody will have access to higher education. Don't worry about how it will be financed but that is the principle that is been posed. Everybody will be entitled to a student loan or needed a student loan not for the person lending the money to say whether they need it or not, the student must know that if he borrows the money he will have an obligation to repay. Let us assume that the repayment terms are reasonable, what do you have to say to that?

ASISIPO CAWE: Its quiet a confusing stance for me because my issue is the minute I apply for funding that minutes I bind myself to debt before I actually worked. So some kind of desperation

JUSTICE HEHER: No, what we are saying is that students that want to go to university will have automatic funding but only repayable when you can afford it.

ASISIPO CAWE: I think that could be something to work on because now what also frustrating with regards to NSFAS is the means test, and also with regards to that proposal means what will the dynamics to the estimated family contribution be?

JUSTICE HEHER: They say that the means test is demeaning to student, do you agree with that?

ASISIPO CAWE: Definitely, because it is a frustrating experience to have to prove that you are poor. The mere fact that you are stating that you are poor it's daunting; it's not a nice experience.

JUSTICE HEHER: That may have been obviously from all you have said to us about the fact that each person may have different circumstantial background which if the means test is applied they all can be judged differently.

ASISIPO CAWE: Yes!

JUSTICE HEHER: Or on the basis of different facts, let me put it that way.

ASISIPO CAWE: Yes!

JUSTICE HEHER : Which becomes almost impossible to apply?

ASISIPO CAWE: Even it can seem unfair loosely at face value, but I think it is justified.

JUSTICE HEHER: I understand but I am telling you, there you got Mr Hakes who seems undecided on whether a loan should be granted to student or it shouldn't be. He gets some information on a piece paper and now he gets to decide whether loans should be granted to students or not based on the means available on a piece of paper, how does he make such a decision?

ASISIPO CAWE: As it currently stands now, our institutions have FAOs and apply for NSFAS and you fill in details such other dependents, IDs, which other school they aim if there is another Asisipo in the University, proof of payment, so I don't think it will be a big deal per se because part of it is being done.

JUSTICE HEHER: Perhaps the person who received it may not have a means of checking up for us and for many students do not have a means of checking up

ASISIPO CAWE: Mr Hakes could establish an implementation task team to carry out those implementations for him

ADV. K. PILAY Would you like to turn into your slide on funding?

ASISIPO CAWE: Moving me to my next area of focus it should be available to point of address on should Fee Free Education be available to all students and to those who are unable to pay. What is more important is that the issue here is lack of access affecting a particular group of students. I see no point as to why there should be a fee free education to students who already have access to education rather we can focus the resources to those who cannot.

Now the proposed funding model here is what would be to say that those who can pay for education should continue to pay. It is sliding because there are levels as we speak which the rich student will pay amount without educational subsidy currently being offered by government in order to cater for the other ones who are unable to pay which make it that the less rich loose it but obviously pay less and so on and those who are unable to pay completely are then excluded from paying and being taken care of in the finance available through the others who are paying.

AD. K. PILAY May I ask you a question? Don't worry about the use of language, but what shocked me was that this model doesn't take into account different stream of income that governs the funding of universities, government subsidies, university tuition and you get those stream income so when government grants subsidy to university they do it via first stream income. When government gives a university subsidy, that subsidy in a sense covers the portion of a cost of every student in the university because it subsidises the running of the university. So whether you are rich or poor, you will benefit from government granting your university a subsidy to particular university. What we are really debating is second stream in other words cost of tuition fee, whether not that should be covered by NSFAS for all students or for some students etc. So in your submission when you are talking about student from wealthy background not being subsidised, do you realise that they will eventually be subsidized through first stream income?

ASISIPO CAWE: I hope I have comprehended your question. What we are saying here is that the money that is used to fund all students that being in my view student who could do without the subsidy can go to what the student who couldn't meet up now needs or even need beyond the subsidy.

AD. K. PILAY: So when you use subsidy, do you mean government funding from NSFAS?

ASISIPO CAWE: By subsidy i mean governmental subsidy given to the institutions.

ADV. K. PILAY: Just to clarify when we use the language of government subsidy to university. We said that it is the first stream of income subsidy given to the university irrespective of whether the university houses the rich or poor students. The way that we approach the legal means as far as you leave first stream income aside and talk about second stream of income which is the amount of tuition fees that a student pays to an institution

ASISIPO CAWE: I think we need to establish here is it really the cost of education. There is R80,000.00 cost me doing the LLB at the University of Pretoria?

AD. K. PILAY: That is Commissioner All's favourite question. Anecdotic Ally in the commission, "we call it chicken and eggs" and that is really how the university arrives at the cost of individual courses and programme. And you are correct that the

university relations will be responsible. And you create that amount to be investigating, but rich student should be able to pay those costs entirely and the poor students should be subsidized.

ASISIPO CAWE: Definitely.

JUSTICE HEHER: She did actually go further that rich students must not only pay their own fees, but they must have to contribute to pay the fees of the poorest students.

ADV. G. ALLY: From what we are gathering from what you have said, presently the university give subsidy per student funding universities. You were saying with rich students at the universities particular or any university is concern where there is rich people thirst subsidy towards them must come out. If it is the money must go to the midst of the poorest machine poverty. That is what I am understanding you to mean. You are also saying if it is proven that it is R30,000.00 to obtain an LLB, lest say that 80,000.00 for the first year for that matter, we are saying that rich students must pay that 80,000.00 and the poorest student must be subsidize of within that 80,000.00, that is in essence the entire submission means, is that correct?

ASISIPO CAWE: Yes but with regards to the subsidy, for instance if the cost of tuition is R120,000 but then the governmental subsidy comes into play, then we are paying R40,000.00 while 40,000.00 we decide should be catered for. The rich students must pay the 120,000.00 so as to cater for the student who cannot. So the flaw will be, are we saying the rich students must be deprived of the subsidy or within their fees they must be charged as fees that will cater for Asisipo's entire tuition?

ADV. G. ALLY: I am just saying that I do not understand what would you say and what I put forward was what you would say and if it is not, please clarify for the commission?

ADV. K. PILAY: Ms Cawe, we just trying to fully understand what your submission is across subsidization, but it is the one submission that you making before that we are experiencing difficulty with because if you are going to be in the sense cutting off subsidy for student and expecting them to cover the full cost and you are subtracting from what government has made available for them contributing by the virtue of the subsidy for them, then we are going in the territory of reworking the formula to the

university which is fairly complex and I think if that is your submission then we would require far more comprehensive proposal from SLSJ on exactly what you are proposing.

ASISIPO CAWE: And fortunately SLSJ is a group of expert economists, but what we can suggest further but obviously has some sort of economic contradictions but it is a principle that we can use as a point of departure.

ADV. K. PILAY: It is not clearly so much of matter or economic issue it is just looking at the funding formula as it applied to university now, your submission on other funding formula has to change.

ADV. SOYI: If I may want to intervene, Olwethu Mhaga will respond to the question.

ADV. K. PILAY: Ms cawe, you may want to roundup your submission before we call Olwethu Mhaga.

ASISIPO CAWE: I understand the dynamics that comes with that approach, for instance presently for some students who are currently affording to pay for education now, the position may not necessarily be the same when the subsidy are removed or to actually pay so now the counter offer will be to continue subsidizing those students to the extent that they can actually pay. So what I am saying is that this model centers on pay what you can afford and at the same time covering those who cannot afford at all. It would be unnecessary burden in my view to say that every student must not pay for education. However we must also understand that the lack of access to education to a certain group further perpetuates marginalisation and the likes in our country. Therefore the right to education must be realised not only to those who can afford to pay but even those who comes from the darkest corner of poverty in our country. Thank you

ADV. K. PILAY: Just a final question, so all of your submissions are based on the exceptions on the ICL model (income contingent loan model)?

ASISIPO CAWE: We accept such models even though we do recognise that it is broad.

JUSTICE HEHER: You do realise that the model also means a person you can't pay when he becomes liable doesn't have to pay? If it remains poor and he is regarded as poor and he is not required to pay?

ASISIPO CAWE: Chairperson I don't think I quite comprehend your question?

JUSTICE HEHER: It is income contingent if the student who borrowed the money doesn't reach that income level or has not been employed he doesn't have to pay

ASISIPO CAWE: Perhaps with regards to that when a student doesn't reach the income bracket to actually pay for the loans I think practically it will make sense for the student to try to negotiate the scheme. As I haven't reached the 50,000 bracket to pay back the loan and with the 20,000 that I am earning now I should be able to pay.

JUSTICE HEHER: Why should he do that? Your principle is that those who can afford to pay should pay and he doesn't become a person who can afford to pay so why should he pay?

ASISIPO CAWE: With regards to the agreement of the loans, I think there should be a clause saying that even if you don't reach this income bracket you should perhaps try to just pay back.

JUSTICE HEHER: Why? You may have a reason but if you are protecting the poor as to obligation I don't know then I don't know why you feel he has a requirement to pay back?

ASISIPO CAWE: I understand your concept.

ADV. G. ALLY: Chair, may I just ask a follow up question, you understand is it income contingent system the primary proposal for the student of Law and social Justice or is the primary proposal for student of law and social justice in terms of fee free has concerned does it mean that those who qualify should have access for free without the obligation to pay back the money that is being geared towards paying their fee.

ASISIPO CAWE: Income contingency loan is loosely an alternative to our sliding model, we understand that granting a loan to already poor student is increasing the

burden when the student start working. We also understand that every funding model is has its flaws, and our sliding model might have its own flaws particularly. Hence now, we say that okay for Asisipo to have established that her financial position she can't pay something even though she won't pay the 80,000.00 in full but perhaps she will be able to pay for the R5,000.

So the income contingency loan comes in and saying that okay Asisipo, we can loan you this R5,000 in the interim because according to our standard we've established that you can afford to pay R5,000.00, but now come in Asisipo saying that even though you've established that I can pay the R5,000.00. I do not have it now. They income contingency loan comes in by saying that okay we would loan you this R5,000. So it is not our primary basis for finding but it is an alternative to counter the flaw in our sliding model.

JUSTICE HEHER: You do understand that any loan scheme only works if the terms or reasonable if the student can repay, so for instance you can put in flexible or option for example that nobody should oblige to pay more than a certain percentage of their income annually. And student who has not repaid over a certain time should we say 10 years should have the whole debt written off. So you must put in flexible terms into the scheme. I am not suggesting this terms but you do understand what I am saying is that 'there is no one size fits all'?

ASISIPO CAWE: I understand what goes back to the thing of every model, reasonableness should be at the core and reasonableness can't be this objective frame we have but rather substantive to try and include everyone.

JUSTICE HEHER: The people who earn more than six hundred thousand whose family can't afford to send them to the university

ADV. SOYI: Can you please tell this commission about the primary proposal that is made student for law and social justice in respect of the sliding scale can you please elaborate on that?

ASISIPO CAWE: I am scared of overlapping with what Olwethu will be dealing with that but the basis of our model is pay what you can afford to pay. So we obviously with the poor of the poorest, they can't pay, hence now we try and accommodate their financial into this model.

JUSTICE HEHER: Given what you have said, is that everybody should have access to higher education?

ASISIPO CAWE: I can't stress that enough chairperson. I think that is the heart of what we are here for.

JUSTICE HEHER: Put only 50% of people intothen that is not as acceptable as the one with 80% of education because you are putting in 30 % more into it.

ASISIPO CAWE: Definitely, my issue is even with the 80% that will be able to be in the institution. The 20% in itself is a lot even if we were saying we understand that everything has its own flaw but there is an issue with dealing here, it is a very sensitive issue. It one of utmost importance and it is the one of someone's future. So whether it be 1%, 2%, 60%, that is excluded someone's life.

ADV. K. PILAY: Ms Cawe, we have many questions around the sliding fee free model and so we just finished listening to Olwethu Mhaga. Then, we can understand your submission. Then we pose our question to you premised on all your submissions.

OLWETHU MHAGA: Once again we are not economic expert, we are students and we look at the provide principle that we hope that implementation team we take forward to a practical manner provide that principle we are speaking of

ADV. K. PILAY: I raise this with much respect to you, it's not an economic question and that's why we are struggling with it, we need to understand very concretely because you rarely talking about changing the funding formula and because the funding formula is visible/ exist able, we need to understand that what it is that you are submitting should be changed and how it should be changed, that's when we can agree with you.

To assist you if you need more time to present that otherwise to the commission then say that because this reason detailed in which might be wrong for that matter, but it's important in your reason on why it shouldn't be that you do the same, and if you need extra time to do that, don't be shy to say so because it doesn't help us to say well, get an implementation team and lets them do the work and if it's not that difficult to understand the reasoning in that particular statement then surely there are

people out here that could assist you because you cultured it in a manner that makes it are acceptable or reasonable for that

OLWETHU MHAGA: Commissioner, I understand the point you are making and in fact if we are to provide more concrete understanding of how, we will change perhaps even the framework confounding and that will be definitely something to do and perhaps later stage of the commission, however once again I like reiterate we are talking about the fundamental principle, perhaps the main key focus of what we are submitting today “the fundamental principle of how we should view the idea of fee free education.

JUSTICE HEHER: To understand you correctly, principle of what you are saying is the present subsidy system favours the well to do at the expense of those who can't afford and therefore to desirable the balance of the present subsidy system to be disbursed to put more into the tuition budget for the student who can't afford, that's basically what you are saying.

OLWETHU MHAGA: Honestly, speaking chairperson you are quite sincere...

JUSTICE HEHER: But I don't think you have fully thought through how you fully get that you will leave by moving from stream 1 to stream 2.

OLWETHU MHAGA: Mr Chairperson, in thinking that was the discussion I was having with the commissioner earlier and that's when he was referring to that the tuition fee will be a lot higher to get for those student who will be at the top, in our submission the point we make is for student who can afford to pay this kind of fees and higher are those who perhaps go to private institution now receive grant from the state there will be the ones who will be paying that level of fees.

JUSTICE HEHER: You must realise that if we do what you are suggesting it will change the whole perspective of fee affordability because how are you going to have fewer persons who can afford to pay the large amount that has to be paid

OLWETHU MHAGA: Sir, once again Mr. Chairperson, the underlined principle in our submission is that all those who have the ability to go to higher education institution should have that access. Thus, if you are rich and you can't afford to pay 160 then you will not fall in the highest completely therefore this where it comes to the point of

our submission of our first testify who spoke of holistic view in looking at whether that person can afford university.

JUSTICE HEHER: Sure.

ADV. K. PILAY: Mr. Mhaga, I have this to share with you that if you want us to interrogate your proposal beyond recording what your submission was then it will be useful for us to get your submission on the funding formula per se and how you submit that it should be changed. We are happy to make available to you not only the ministerial statement but also the presentation we heard from an expert in the commission who took us through the entire funding formula; what the different components are and how the work in practise. We will welcome your input on the presentation of Professor. We are happy to share that with you as well as the ministerial statement. Again, if you want us in the cost of our submission, I can't speak to the commissioner but in the course of your submission to do concretely with your proposal, we would require that level of detail from you.

OLWETHU MHAGA: Thank you Mama and that would be welcome contribution from you and we would love to go perhaps even go into more concrete details of how make the current funding as it stands. The main point of our submission today is to get more understanding of principle and show you income of today and I will like to move on to answering the fourth question if I have the time.

JUSTICE HEHER May I just put to this question to you. In principle, do you care about the regressive of the first stream, if some means could be found to provide the tuition fees and the access in the second stream?

OLWETHU MHAGA: That will be fine to us Mr. Chairperson, as we look to ensure that all students who wish to attend higher education have the means to successfully complete those studies. If the means can be found through second stream income and we even go to our submissions. We speak about incomes contingent loans which we provide as alternative will be a way to address that issue.

JUSTICE HEHER: Thank you. Just explain that to me, in terms of income contingent loans and this is what I am in doubt of is this. Are you saying even the very poor person could receive the loan and must pay the loan? So, we need to be clear of your understanding of the income because income contingent loans is

saying pay back then in other for other to be able to receive the loan. So let's understand.

OLWETHU MHAGA: I did not believe that our understanding of income contingent loan is the same in this regard and I will like to submit that our income contingent loans and the model... so those who could afford to pay those fees completely who can afford to pay higher education completely they will not pay the fees. However, there will be a model in the original model that we provide will subsidise to a degree depending on how much the family could afford in that sense then the income contingent could fall.

JUSTICE HEHER: It all depends when you determine if that person will be able to pay. If you don't determine to go the university because everybody can't go to the university and you determine that when the people are earning money. You determine if the person can afford it or not.

OLWETHU MHAGA: I would agree with you Mr. Chairperson. However, for those poor student.

JUSTICE HEHER: How do you know they are poor and can't afford it? If they don't then they stay poor and they can't pay.

OLWETHU MHAGA: At the time of that person receives a loan income that will perhaps receive in 10 years time.

JUSTICE HEHER: If they don't receive the income in 10 years time they won't pay.

OLWETHU MHAGA: Ok that's true, that's the law of contingent loans.

JUSTICE HEHER: Exactly!

ADV. K. PILAY: I want you to understand that income and this is the principle the chairperson brings to you that it's a matter of whether you take it or make a determination at entry or at exit at the exit is when you are earning an income and what you are submitting is no they are very poor but it was put to you that how do you know the person is poor at that time because they are earning an income now what do you say in the inspect of that? For argument sake now, at the beginning the person is poor, the family is poor so you don't take into account and the next

argument is they say, that very poor person is no longer poor because is taking an income able to pay at that particular time, what you have to say

OLWETHU MHAGA: At the end of the day, we understand that there could be a point in time that when we are that very poor student could be earning why we did not add the contingent loan to the poorest student. I guess our in family institution the poor student family or the highest income family I agree black, before addressing the public catering ability on it shall be confound, as I know to our submission.

I guess wouldn't exist for the poor student family or the highest income family. I agree in that by the time they return and go to the work force in that particular expenses they are considering is whole bunch of other factors. I believe the colloquial term for this is called 'black tax', that is perhaps out fear in that regards. State grants extended to the universities have been declining. Although in real terms nominal fund have been increasing. Essentially, State funds have not kept pace withand this must be forcing many universities to shelve their costs unto their students. The inevitability of such a crisis exists today and our post-secondary education institutions seem all the more apparent when bearing this in mind. Another consideration to be borne in mind is... (cuts).

ADV. K. PILAY: Let me clarify something with you. The point you just made now has been described as a perverse intention, because you are shifting the flow of money from subsidy to NSFAS allocation and recreating servicing centre on the university so that they increase allocation through the NSFAS allocation. Do you know the flaws that are in the proposal that you proposed today?

OLWETHU MHAGA: I cannot understand the connection between that and our scope. Please, can you elaborate on that?

ADV. K. PILAY: Your sliding scheme model in tactics should be in degree, in subsidy so it takes rich students and those who have been paid. That money is going to the NSFAS allocation towards the students.

OLWETHU MHAGA: That will be one way to do that, we believe that if the capacity exists as soon as, Chair, we love to demand and ... the system in capacity exists and we believe that when expanded will be for the various criteria that we have in our mission and that will be okay. However we know that to vast relationship....

ADV. K. PILAY: Because perhaps NSFAS funds the students' tuition fees funding works. Money moves from NSFAS to the institution by virtue of student fees, the institutions fixes students fees and NSFAS pays the students' fees at the university. What will happen is that to compensate for a drastic reduction in subsidy, the university will then shelve its cost of tuition so that it can get more from the NSFAS funds.

OLWETHU MHAGA: I guess this will be the where we address the issue the commissioner has mentioned in the past; how are these particular costs in this degree attained? And I guess in this particular regard, this is to be where further investigation will be very important to understand why would those particular models increase in stock? Why would the universities increase those funds in order to try to get more money from NSFAS allocation? And I cannot provide for you detailed .at this moment but we could look into it and present you in a later stage.

ADV. K. PILAY: On the current model, let's look at the enhanced subsidy, and the second stream income which is unregulated, which is the current model. And on this current model, you have the problem of chronic underfunding of universities. I can say that now on the model that you propose you will not have enhanced subsidy, but a diminished subsidy, fee capping on second stream income. Do you see that the result will be even greater...(cuts)?

OLWHETU MHAGA: In this regard, I will paraphrase it in that if you are to compare South Africa as a percentage of our GDP and the amount that we allocate to higher education to other countries who fulfil or like to fulfil or have the same aspirations that we have for those kind of aspirations, it is disproportional between our current state and other ones that we look to compete with. And we submit that, included with the sliding scale model or the income contingent loan with sliding scale increase in the allocation as a proportion to the GDP compare to higher education funding.

JUDGE HEHER: We have heard a great deal about this but it becomes more and more disturbing this percentage of GDP, simply because, every country has their different circumstances and different levels of development, different levels of income and different levels of tax payer paying, everything differs. And it is very difficult to say that because Brazil has certain point funding, then South Africa has .75, then South Africa is worse off behind Brazil, such be the case. So because

Cuba has 4.6 and South Africa has .75 of the GDP, Cuba is better off in education context, even when we know that Cuba has a very small higher education sector. These comparisons are very different and can't be used to argue.

OLWETHU MHAGA: I understand that Mr. Chairperson. However, if the disparity was so little compare to those that we are looking to compete with, there have to be a great point with 4.75 figures. And I am sure it has been attested to you and this commission. I mean that is in proportion to our fellow African countries that do not have the kind of economy that exists in this country.

JUDGE HEHER: What do you then say of the National Health Scheme?

ADV. K. PILAY: I think it is an entirely accurate one, because it does include a large amount of transfers made by government towards NSFAS allocation and it doesn't include the whole NSFAS accumulated bailout, just as allocation and I think if you add all of this together, we are close to 22% of allocation. With that compared, it will be comparing favourably with other country.

OLWETHU MHAGA: I will understand. I have not seen any test to that.

ADV. K. PILAY: That is the evidence we have before us, if that is the case that will be a fair point. However, we are looking to provide to a large extent for as many students to get through the higher education and become successful. I believe there is a disparity in our priority in that regards as you can see by the past crisis that persists even till today in our universities. If there should be a way that government can show that they are prioritising the needs and education of students.

ADV. G. ALLY: Look, crisis come up everywhere, and one must be rational in terms of how you deal with them. Because government determines policy and what is how in the interest of everyone; they put money to certain programmes. So, what I am understanding you to be saying is the holistic period. You are recommending that government should look at those priorities and ask itself whether they put enough chunk, big enough into education.

ADV. SIYO: (indistinct).....is identified as a point of closing submission.

ADV. K. PILAY: We are aware of that doctor.

ADV. SIYO: I was very surprised

ADV. K. PILAY: This is the structure that we published at the beginning of the year and if that changes we will let you know.

ADVOCATE SIYO: I will like to participate in that

JUDGE HEHER: What I was putting to Mr Mhaga was that the submissions could be very well be indicting and you could also have other submissions in a form of... in respect of this other issues, you may well in any of that make those submissions to the commission via email, so that you don't have wait for hearing that may not come instead of waiting in vain.

ADVOCATE SIYO: I agree.

ADV. K. PILAY: The amount is close to 2% and it is more complex than what i put to you. And what I will suggest a copy of the Treasury presentation and you will see the bill used for slide and shows you amount spent by government on higher education... that will give you an idea of what exactly is the breakdown of what we are saying and I think it is close to 1.6,1.7 %.

OLWETHU MHAGA: That will be greatly appreciated.

JUDGE HEHER: Do you have any more questions?

ADV. K. PILAY: We have got no further question, Chair.

JUDGE HEHER: Thank you for you. Adjournment till 2:00 clock.

SESSION 3

JUDGE HEHER: What are your full names please?

ADV. BASSON: Lothian George Basson.

JUDGE HEHER: Welcome to the hearing Mr Basson. Do you have any objection to take to the oath?

ADV. BASSON: No.

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

ADV. BASSON: So help me God.

JUDGE HEHER: Thank you very much.

ADV. K. PILAY: Chair, Mr Mabuda will be leading the evidence.

JUDGE HEHER: Yes Mr Mabuda?

ADV. MABUDA: Thank you Chair. As indicated, Mr. Basson has some time constraints. So I'll try to lead the evidence as best as I can. Mr. Basson is the sixth witness and we'll be dealing with the alternative sources of funding. We'll be specifically dealing with the guardian's fund. Mr Basson, just before we proceed, what is your position at the national office of the Master of the High Court?

ADV. BASSON: I am the Chief Master of the High Court of South Africa.

ADV. MABUDA: Just to deal with the basic aspect relating to the guardian fund, please give us the indication of what the guardian fund is and what it's purpose is.

ADV. BASSON: The guardian fund is the state trust, that has been created many years ago, and the purpose of that is predominantly to hold funds for miner beneficiaries and people under legal disability until the age of maturity, or until such time as it can be past unto the state of the person under legal disability.

JUDGE HEHER: What is the statute?

ADV. BASSON: State's Act, the administration state's act 66 of 1965.

ADV. MABUDA: Could you please give us an indication of what is the origin of the funds that are deposited into the guardians' funds?

ADV. BASSON: It's not an easy answer. The fund was initially established way back. It started off with the Dutch occupation of the Cape Province. Then, X the entity was called the orphan master who remained even during the practice and extension of the Cape and continued to function as an independent body, overlooking the interests of the vulnerable.

Since by legislation been placed under the discipline of the government, it took a high court order compelling the masters to account to the auditor general and since then the masters accounting properly to the auditor general. It's situated in the department of justice in the office of the chief master, the Act provides that chief master report to the minister, the sub jury control direction and supervision of the minister, and the masters intern are subdue to the control direction of the chief master. At this stage we have got funds in six offices serving all fifteen masters offices. The funds initially were predominantly inheritances from deceased estates. It's since widened significantly to include expropriated monies, where monies are held for people entitled to that; also creditors who have not collected the monies from insolvency estate.

And in the last 10-12 years there has been a massive influx of funding to the guardians funds when the government employees pension funds replacing the monies in the master's care where there are beneficiaries who are miners. So it's in the discussion of the trustees where to place this money, and that accounts for the expalanational growth in the master's environment. The masters environment wasn't always happy, there's been several years of qualified audits, and I'm happy to say that in the last 6-7 years we've had unqualified audits, with a bit of luck, it will be our third year of clean audits in the guardians funds. So these funds which are kept for the vulnerable are then administered free of charge, and there are some realities around that.

ADV. K. PILAY: Besides administering the funds, what are other responsibilities that the masters' office have in relation to this funds?

ADV. BASSON: The funds are invested with public investment commissioners under the proper guidance of the principles applicable for such investments, and certain current balances kept for the payment of needs of these minor children as and when the needs arise. It ranges from regular maintenance payments to unique needs. Funds have to be immediately available at all times because things can happen, a child might pass away and then the capital should be available. So the investment strategy is such that the amounts can be met at short notice.

JUDGE HEHER: Mr. Basson, I recall when my children had money in the guardians fund left by their grandmother, that the fund only paid I think 3% interest, is that correct?

ADV. BASSON: Yes Judge. I must say the risk of being around for long time not to keep tracks. In the last financial year we were paying 9%, and the current recommendation is slightly less, around 8.25%. But in the last ten years the return has been significantly more market related. I carry with it the risk that this interest rate is pronounced a year in advance, and we are at risk of always not reaching sufficient return, so that one should have a reserve to protect against that happening.

ADV. MABUDA: We'll now proceed to the specific questions that were posed to you in correspondence.

ADV. BASSON: Chair I'm under oath, and I take it very seriously. In the department, the arrangement is that matters financials resorts with the Chief Financial Officer and the Chief Financial Officer directly represented by Mr. Vinay Ramnath, Chief Financial Officer is Mrs. Lorraine Ruso. The masters and the chief masters would carry over our responsibility, but mainly focus on the legal aspects and financial statements analysis resorts with the chief financial officer. I can only say what I see, I'm not in position to testify on (...) I think what will be helpful is if I could explain the various amounts and perhaps the line of questioning might not be the most value adding for the commission. There might be another value adding reality that I could share with you. But as for the responses, I've got no reason to believe that responses that have been provided are not correct.

JUDGE HEHER: Thank you Mr Basson. We are really interested in the bottom lines, if there's anything else that we need we will ask, perhaps you could proceed on the basis that qualifies your evidence.

ADV. BASSON: Can I try to cut the chase? I don't think it will be wise for the commission to focus on the unclaimed component. Because the unclaimed component goes through various stages, firstly it becomes claimable at the age of maturity, and then the funds will be kept for another five years interest bearing, and then from then on the funds goes into a phase of non interest bearing, and then eventually after 30 years unclaimed would be declared the property of the state.

JUDGE HEHER: Are you saying that in the guardians' funds at the moment there is no money that's been there longer than 30 years?

ADV. BASSON: In fact it should not. There is an amount of money, that you might be interested in that doesn't directly link to a beneficiary, unclaimed amounts that relates to a specific beneficiary and strangest things happen people are coming to light. But the amount involved ultimately declared (...) to the state becomes very trivial amount.

What happens in the guardians fund is, there are certain funds that are interest bearing and certain funds that are not interest bearing. If I were just to refer to a minor child who'd been entitled interest up to the age of maturity, plus 5 years after that; but after 5 years those funds are no longer interest bearing. The other funds such as the funds for the creditor who has not claimed his dividend in insolvency proceedings, that creditors money will not be interest bearing. Eventually the interest bearing component in the guardians fund compared to the non interest bearing component, this is a significant gap, and amount of surplus of interest generated over many years have now been building up in this fund. It's not unclaimed money, let's say it's profit so to speak, in other words mainly generated from better interest earned and paid. That amount is significant.

JUDGE HEHER: In terms of what we are talking about, it may be significant at all, but perhaps you should tell us.

ADV. BASSON: If R700 million is not significant..

JUDGE HEHER: R700 million is probably insignificant, but yet there you are.

ADV. BASSON: That's what there is to it. But the problem is these monies have not yet been utilised, and because of cost containment and cost reduction for that money to be utilised. For instance we still use very inadequate accounting procedures, one of our accounting systems, one of the biggest qualifications in our financial statements relates to the system used and so on. So there's an attempt at this stage to get a permission to use some of that money towards a better system, it's not free for all targeted amount.

JUDGE HEHER: Can you give me some idea of each year, approximately what sort of money goes to the state because 30 years has expired? In other words, what is the outflow each year because the 30-year limit has been reached?

ADV. BASSON: Chairperson, I'm going to guess, I'm not sure. But if it's more than 5 or 7 million I would be surprised. Remember these are funds 30 years of which have started way back before the significant increase in the guardians fund activities. I don't see that figure changing significantly, because the vast activity in the master guardians fund 95% around that is pension monies, where immediately as the money becomes available the demands starts, and as the money becomes payable paid. That's why you'll see that after R11 billion that we have, about R1,4 billion is received, we are paying R1,35 billion. So there's enormous flow, but as some money matures the other go, but the growth is continuing. But it's pension money that we are administering for specific dedicated beneficiaries, and that money doesn't really generate that surplus interest that I was talking about.

ADV. MABUDA: Based on Mr Basson's testimony, a lot of the aspects that we did ask him have already been covered. Just for the sake of clarity, I will just ask him the questions just to get a clear indication of what amounts are available if they were going to be used for higher education. The first question that we did ask him was; what is the total sum of money that is in the guardians' fund?

ADV. BASSON: I am relying on the input from our accountant; the assets value of the fund was R11 billion, with the beneficiary liability of R10.1 billion, that makes that surplus fund of R900 million.

ADV. MABUDA: So the R900 million is that the interest you are referring to?

ADV. BASSON: That's the surplus interest that has been earned through at least 50-60 years.

JUDGE HEHER: Why doesn't that go back to the state then at the end of 30 years?

ADV. BASSON: Because legislation in terms of which we have to return would be unclaimed monies, in other words that where the beneficiary has not arrived for the payment of that money. This is the difference between interest paid and interest earned over centuries.

JUDGE HEHER: That's remarkable. So what's the Act provides is the fate of such monies?

ADV. BASSON: At this stage there's no fate, but what it's used for at the moment is to cushion fluctuations in interest earned and interest paid, and we are attempting to access that for the use of system improvement.

JUDGE HEHER: Thank you. Mr Mabuda..

ADV. MABUDA: The next question that we did ask him which I believe have already been answered was what is the amount of money that is deposited into the guardians fund on annual basis?

ADV. BASSON: The answer is R1.48 billion that was in the 2015/2016 financial year.

ADV. MABUDA: The next question we asked him was what is the amount of money that is claimed annually from the guardians' fund?

ADV. BASSON: In the 2015/2016 financial year the amount was 1.48 as against 1.35.

ADV. MABUDA: The following question was what are the constraints...?

ADV. BASSON: Sorry chair, bear in mind it's not like a bank account where the same person deposits and claim; it's a group of people that this money have been with us for many years, the 1.35 most likely generated 10-15 years ago, only now comes to maturity. So, it can be confusing to say there's an easy in and out. We've seen for instance, forgive me if I'm delaying the matter; when the age of maturity changed we suddenly had a huge number of beneficiaries arriving, that we would have had 3

more years suddenly all of them arrived at the same time, but then that's just a spike in proceeding but now that spike have been withdrew. But the money in and money out one stands to think it's like a bank account, but it's not the same.

JUDGE HEHER: I understand that, thank you. When was the age of maturity at? 2006?

ADV. BASSON: I'm not sure. I apologise.

ADV. MABUDA: We then asked Mr. Basson what are the constraints to the use of the funds in the guardians' fund? I think that answer have already been dealt with in the relation to...

ADV. BASSON: The different type of funds; funds are predominantly kept for safekeeping, while safekeeping maintenance needs may arise. But then there are, for instance money for the creditors held until they arise to be paid, so there is a constraint to the use of it. Perhaps I should mention that the Act provides that no more than R250 000 of capital may be utilised without consentive court in which event a simple application to court is made to allow further capital where court is as the upper guardian which ensure that there's no unbecoming transactions.

ADV. K. PILAY: Mr. Basson. I could've misunderstood you earlier, when you indicated the types of monies that come in to the guardians' fund. You indicated deceased's estates in respect of the miners that are beneficiaries, is it only the deceased's estates or miners that benefit out of the funds also?

ADV. BASSON: Where the world creates a trust, the master will not receive those monies. It's where there's no provision and the natural guardian cannot put up the necessary security, so there are some layers in before the money is finally kept in the guardians' fund.

JUDGE HEHER: What about the road traffic payout?

ADV. BASSON: There are permutations of the realities there. Often, let's call it the road accident fund trust, are created; but we do not favour that reality because there's no control. But the often monies in the state of a trust, it's possible that a curator bonus will be appointed to then administer. And a curator bonus may invest, unlike a trustee may not, but a curator bonus may and put the money in the

guardians fund. But in some circumstances the master would take it upon himself to receive the amount in the guardians' fund. Those normally are the types of amounts which would not justify the expense of the curator bonus and the team matters will then be dealt with in the guardians' fund.

JUDGE HEHER: Thank you.

ADV. MABUDA: We asked, Mr. Basson, actually just based on the testimony that you've given, you've indicated that after five years the monies move into the national revenues fund?

ADV. BASSON: No. The interest stop growing, but it's only after 30 years that the money becomes property of the state.

ADV. MABUDA: So while it's not earning interest it remains in the guardians' fund?

ADV. BASSON: The arrangement is that those monies would be paid over to the national revenue on condition that if the beneficiary then arrives, that money would be refunded and paid to the beneficiary within those 30 years. But it's taken out of the immediate flow of the masters' hands after 5 years.

ADV. MABUDA: Are you able to give us an indication of how much money the receiver is holding?

ADV. BASSON: That amount can be provided by the financial people.

ADV. MABUDA: My final question is based on your experience with the guardian fund. Is there any scope for any funds within the context of the guardians fund to be used for higher education?

ADV. BASSON: I think the fundamental challenge is that this is the fund for specific people, it's a trust fund, and it will require significant legislation to get hold of it. It's possible that one can perhaps access the surplus fund once off, but it's definitely not sustainable. I doubt whether there is sustainable revenue over the protected period coming from the guardian's fund. It's not a commercial entity; this is a safekeeping-trusted environment with vulnerable people predominantly orphan, child-headed households, the poor people. Somehow there's very good financial arrangement around the people who have bigger estates will be allocated for in commerce. This

grouping of guardians from beneficiaries is 800 000 are the vulnerable children. It's not going to happen without a fight, that's what I'm called to do, I'm here to protect, I've got intense sympathy with the course of the commission. I just think one should not create an impression.

JUDGE HEHER: Mr Basson, we are financial predators, but we don't even see a meal in what you've got I'm afraid.

ADV. BASSON: That's really good to hear.

JUDGE HEHER: Unless Mr Mabuda can tell me differently.

ADV. MABUDA: Chair, I tend to agree with you in that regard. I have no further questions. I believe that he has clarified the questions that Chairperson has asked us to enquire. I will follow up with Mr. Basson in relation to the amounts that are held by the receiver of revenue and how much is forfeited to the state, the exact amounts.

JUDGE HEHER: Thank you. Mr. Basson you may go and happily catch your plane, as long as you leave the R700 million behind. Thank you.

ADV. BASSON: Thank you judge.

JUDGE HEHER: Thank you for the trouble.

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

JUDGE HEHER: Thanks. We'll adjourn.

SET 7 – HEARING 1 – DAY 10

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