



An assessment of the impact of the National Student Financial Aid Scheme (NSFAS) on Student Accommodation or Housing – Focus on the University of Pretoria (UP)

by

Lesedi Neo Lerato Kgomotso Mabuse (15101721)

Submitted in partial fulfilment of the requirements for the

**LLM
Multidisciplinary Human Rights**

**PREPARED UNDER THE SUPERVISION OF
Dr ELVIS FOKALA**

**FACULTY OF LAW
(UNIVERSITY OF PRETORIA)
05 December 2023**

DECLARATION

I **Lesedi Neo Lerato Kgomotso Mabuse** with student number **15101721** declare that this mini-dissertation submitted in partial fulfilment of the requirements of Master of Laws in Multidisciplinary Human Rights, Centre of Human Rights at the University of Pretoria is my own work and has not been submitted at any other tertiary institution by myself or anyone else. The academic material used in this mini-dissertation has been acknowledged by footnote referencing.

ACKNOWLEDGEMENTS

To my LORD and Saviour JESUS CHRIST, I am grateful for the opportunity, strength that you have given me through this journey. Your word in Psalm 122 says you do not sleep nor slumber, you have seen me through another degree and I know that you will always be faithful.

To my supervisor, Dr Fokala, I will forever be grateful for the support that you have given me. You believed in my ability even when you did not know me that well. Your words "Let's do this" echoed in my brain every time I wanted to give up. I pray that the good Lord keeps you and protects you. You have so much to offer the world and the world needs more people like you Ntate.

ACRONYMS AND ABBREVIATIONS

ANC:	African National Congress.
CESCR:	International Covenant on Economic, Social and Cultural Rights.
CNOUS:	Centre National des Oeuvres Universitaires et Scolaires
DHET:	Department of Higher Education and Training.
EUA:	European University Association.
TEFSA:	Tertiary Education Fund of South Africa.
FTEN:	First Time Entry Students.
HAI:	Historically Advantaged Institution.
HE:	Higher Education.
NCHE:	National Commission for Higher Education
NFF:	New Funding Framework.
NPHE:	National Plan for Higher Education.
NSFAS:	National Student Financial Aid Scheme.
NSFAS Act:	National Student Financial Aid Scheme Act.
NSFAS CAP:	Accommodation amount of R45 000.
OECD:	Organisation for Economic Co-operation and Development.
PFMA:	Public Finance Management Act.
PBSA:	Purpose Built Student Accommodation.
POCA:	Private Off-Campus Accommodation.
PWC	Price Water Coopers.
TuksRes:	The Department of Residence Affairs and Accommodation.
SADC:	Southern African Development Community.
SAICA:	South African Institute of Chartered Accountants.
SAUS:	South African Union of Students.
SCOPA:	Standing Committee on Public Accounts.
SARS:	South African Revenue Service.
SASCO:	South African Students' Congress.
SLSJ:	Student for Law and Social Justice.

SIU:	Special Investigating Unit.
SRC:	Student Representative Council.
UDHR:	Universal Declaration of Human Rights.
USAF:	Universities South Africa.
UCT:	University of Cape Town.
UP:	University of Pretoria.
WSU:	Walter Sisulu University.

Table of Contents

DECLARATION	2
ACKNOWLEDGEMENTS	3
ACRONYMS AND ABBREVIATIONS.....	4
Chapter 1: Background of the study	8
1. Introduction	8
2. Research problem	10
3. Literature Review	12
4. Objectives	16
5. Research questions	17
6. Methodology.....	17
7. Chapter outline.....	17
Chapter 2: The adequacy and sustainability of student funding	19
2. Introduction.....	19
2.1. The National Student Financial Aid Scheme Bill	22
2.1.1. Background.....	22
2.1.2. A sustainable student financial aid	22
2.2. The NSFAS Act	23
2.2.1. Allocation of student funding.....	24
2.3. The University of Pretoria as a case study.....	27
2.3.1. Student demographics	27
2.3.2. The demand for student accommodation	28
2.4. Sufficiency of allocated funding	29
Chapter 3: The impact of NSFAS on the HE Sector	32
3. Introduction	32
3.1. The history and situation analysis of student accommodation	33
3.2. The first indicator of inadequate funding	35
3.2.1. FeesMustFall protests	35
3.3. The Aftermath of Fees Must Fall	37
3.4. The second indicator of inadequate funding: The shortcomings within a supposed sustainable financial aid scheme (NSFAS)	39
3.4.1 Continued student protests.....	39
3.4.2. Lack of engagement from the NSFAS with USAF	40
3.4.3. The process of revoking funding from students that were funded in the beginning of the year.....	42
3.4.4. Disbursements of student allowances directly to students	42

3.4.5. Corruption and maladministration	43
3.5. Conclusion.....	45
Chapter 4: Conclusions and Recommendations.....	46
4. Introduction	46
4.1. The establishment of additional legal framework on student accommodation	46
4.2. The establishment of Purpose-Built Government Accommodation (PBGA) by the DHET.....	47
4.3. The consideration of the redistributive tuition fee model/sliding scale approach.....	48
4.4. Lifestyle Audits	48
4.5. Conclusion.....	49
Bibliography	51

Chapter 1: Background of the study

1. Introduction

Prior to 1994 the system and access to Higher Education Institutions (HEIs) in South Africa was dominated by White South Africa.¹ The Higher Education (HE) system in 1980 consisted of a majority of 74.8% of white students and a percentage of 12.5% of Blacks, Coloureds, and Indians as the previously disadvantaged group in the country.² This persisted all the way to the 90's with only 37.7% of black students who were represented in HEIs.³ This indicated a significant disparity in the level of access to HE for predominantly black students. The same system produced a greater number of white graduates and a disproportionate number of black graduates.⁴ There was no equality in the access to HE and this historical disproportionate graduate rate that could only be eradicated by post-1994 by government's intervention through HE policy reform.⁵ The intervention in transforming and enhancing access to HE included an introduction of a HE funding model for students who came from financially-poor families.⁶ A need arose for a financial model that would cater for previously disadvantaged students that were previously excluded from HE.⁷ Unfortunately, South Africa at the time could not afford a financial scheme that relied solely on bursaries or grants as it would cause unsustainability.⁸ Due to the uncertainty of sustainability, it was imperative to establish a financial assistance scheme that had a bursary or grant element and allowed for a deferred repayment of loans.⁹

Post 1980 and particularly in 1991 the Tertiary Education Fund of South Africa (TEFSA), was established to serve as a channel for foreign donor funding to assist previously disadvantaged students who are academically suitable to have access to, HE.¹⁰ TEFSA was a non-profit company that was incorporated in terms of section 21

¹ Unpublished: P de Villiers 'The poor and access to Higher Education in South Africa: The NSFAS contribution, University of Stellenbosch, 2017 1.

² De Villiers (n 1 above) 1.

³ n 1 above, 1.

⁴ R Jackson 'The National Student Financial Aid Scheme of South Africa (NSFAS): How and Why it Works' (2002) 11 (1) *The Welsh Journal of Education* 82.

⁵ Roy (n 4 above) 82 -83.

⁶ n 4 above 83.

⁷ n 4 above 83.

⁸ n 4 above 83.

⁹ n 4 above 83.

¹⁰ n 4 above 83.

of the Companies Act and in July of 2000 ceased to operate.¹¹ TEFSA ran for almost nine years as a non-profit company and NSFAS took over all existing loans thereafter.¹² TEFSA in its beginning stages funded 7 400 students from R21 million that was raised.¹³ The funding made provision for living and tuition costs.¹⁴ Following the democratic elections in 1994, TEFSA developed a working relationship with the government and in 1996, a national financial aid scheme was announced by the National Minister of Education. The then Minister¹⁵ tasked TEFSA with the responsibility to manage the national financial aid scheme.¹⁶

The National Student Financial Aid Scheme (NSFAS) was established as a statutory body¹⁷ in accordance with the National Student Financial Aid Scheme Act 56 of 1999 (The NSFAS Act).¹⁸ The NSFAS Act and Public Finance Management Act (PFMA) govern NSFAS as a public entity and further regulated by Treasury Regulations.¹⁹ Chapter six and Part nine of the Treasury Regulations include 'requirements regarding the responsibilities of accounting authorities of public entities, budgets, annual reports, internal controls, strategic planning, cash management, investment policy and audit committees'.²⁰ The preamble of NSFAS alludes whereas it is desirable, three main objectives must be reached by the financial aid scheme. The first objective is redressing past discrimination and ensuring representivity and access that is equal.²¹ Secondly, the scheme aims to respond to the development of the human resource needs of the nation, this means producing graduates and ensuring the countries' development.²² Lastly, the scheme aims to establish an affordable and sustainable national student financial aid scheme that is expanded.²³

TEFSA and NSFAS have the same objectives of driving social change through education. That is, providing access to tertiary education to previously disadvantaged

¹¹ <https://www.nsfas.org.za/content/governance.html> (accessed 13 August 2023).

¹² n 11 above.

¹³ n 4 above 83.

¹⁴ n 4 above 83.

¹⁵ Mr Sibusiso Bengu.

¹⁶ n 4 above 83.

¹⁷ n 4 above 83.

¹⁸ And its Amendments

¹⁹ n 11 above.

²⁰ n 11 above.

²¹ National Student Financial Aid Scheme Act 56 of 1999 (The NSFAS Act)

²² The Act (n 20 above); Y Rabin, "Chapter 12: The Many Faces of the Right to Education." in Barak-Erez and Gross (eds) *Exploring Social Rights: Between Theory and Practice* 269.

²³ n 21 above

students. The establishment of an affordable and sustainable national student financial aid scheme was the rationale for the transition from TEFSa to NSFAS.²⁴ The central objective of this mini dissertation is to ascertain the suitability of the current NSFAS structure to adequately respond to students' HE needs in the sphere of student accommodation. The focus as indicated earlier is on the University of Pretoria (UP). The purpose of focusing on the UP is based on the distinct nature it has of having the highest number of residences in all South African universities.²⁵

2. Research problem

NSFAS as a government entity has 6 main obligations:

To allocate funds for loans and bursaries to eligible students;

To develop criteria and conditions for the granting of loans and bursaries to eligible students in consultation with the Minister;

To raise funds as contemplated in section 14(1);

To recover loans;

To maintain and analyse a database and undertake research for the better utilisation of financial resources;

To advise the Minister on matters relating to student financial aid; and

Perform other functions assigned to it by the Act or by the Minister.²⁶

For NSFAS to allocate funds for loans and bursaries to eligible students, a criterion needed to be set for eligible students. In 2022, NSFAS released a policy on eligibility and conditions for financial aid which replaced the Department of Higher Education and Training (DHET) rules and guidelines for Universities and TVET Colleges as well as the NSFAS Disability Policy.²⁷ The policy encompasses the costs of study covered by NSFAS, this includes tuition costs, university allowances that include accommodation. The 2022 allowance for student accommodation (university managed and off-campus) was set at R 5 200.²⁸

²⁴ n 4 above 88.

²⁵ <https://www.up.ac.za/student-accommodation#:~:text=With%20an%20extensive%20residential%20community,residential%20university%20in%20South%20Africa>. (accessed 12 August 2023).

²⁶ n 21 above.

²⁷ NSFAS: 2022 Eligibility Criteria and Conditions for Financial Aid Policy Standard 2022 Academic Year.

²⁸ NSFAS (n 27 above).

In 2023, students and public universities experienced a significant shift in government funding, with the announcement of the NSFAS cap on student accommodation²⁹ to R45 000.³⁰ Students across the country took to the streets in the beginning of 2023 in protest to the NSFAS cap of R 45 000.³¹ The NSFAS cap was introduced as a way of mediating what it believes to be 'price fixing and in some instances collusion from the University staff for exorbitant fees at tertiary accommodation.'³² Six universities³³ were said to be prioritised as students were believed to have no access to accommodation and had to settle the remaining surplus due to the cap.³⁴ The University of Pretoria (UP) was one of the six listed universities affected by the NSFAS cap. The UP, in a statement regarding the NSFAS decision concerning the cap on accommodation, stated that the shortfall for 12 000 NSFAS students at UP will be approximate to a loss of R240 million.³⁵

The funding shortfall precipitated by the NSFAS cap seemed to reduce the access opportunities for previously disadvantaged students, as discussed in the introduction of this research proposal. It could even be argued that the NSFAS cap went against the ideals of redressing past discrimination and ensuring representativity and equal access to education.

Post-apartheid, saw the birth of the South African Constitution and various legislations focused on specific human rights injustices.³⁶ In 1997, the Higher Education Act 101 of 1997(The Higher Education Act)³⁷ was enacted to address the right to further education and the state progressively working towards its realization. The Act would regulate HE through the establishment of a Council on Higher Education and provision

²⁹ Student housing and student accommodation will be used interchangeably.
³⁰ NSFAS Eligibility Criteria and Conditions for Financial Aid Policy Standard 2023 Academic Year.
³¹ News24 'NSFAS intervenes after students protest over its R45 000 housing bursary cap' 09 March 2023 <https://www.news24.com/news24/southafrica/news/nsfas-intervenes-after-students-protest-over-its-r45-000-housing-bursary-cap-20230309> (accessed 11 August 2023).
³² News24 (n 31 above).
³³ University of Pretoria; University of the Witwatersrand; Stellenbosch University; University of KwaZulu Natal; Rhodes University; and Sol Plaatje University.
³⁴ n 31 above.
³⁵ UP website: https://www.up.ac.za/news/post_3128600-nsfas-decision-regarding-cap-on-accommodation (accessed 12 August 2023).
³⁶ United Nations Human Rights Office of the High Commissioner <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights> (accessed 25 July 2023).
³⁷ And its amendments.

of the funding of public higher education institutions.³⁸ The Act and its amendments³⁹ would promote the values of equality, human dignity, and freedom.⁴⁰ In the same year 1997, the Housing Act 107 of 1997 (The Housing Act) was enacted to address the right to have access to adequate housing that the state should progressively realise within its available resources.⁴¹ The Housing Act⁴² involves housing at the different levels of government, that is national, local and regional. The Higher Education Act and the Housing Act were enacted in terms of the Constitution of the Republic of South Africa, 1996 (The Constitution).⁴³ Within the scope of HE exists student accommodation which forms a vital part of access to HE. There existed no legal framework for student accommodation/housing prior to 2015.⁴⁴ The establishment of the policy on the minimum norms and standards addressing student accommodation in 2015 shows a significant delay in addressing student housing.⁴⁵

The capping of student accommodation in 2023 by the sole government funder that enables access to HE for disadvantaged students' draws attention to its function and legal framework. It is therefore imperative to look at two matters, and those are NSFAS and its adequacy within student accommodation costs and whether the statutory body determines or hinders access to student accommodation.

3. Literature Review

NSFAS started as a catalyst for transformation in the HE sectors. At its inception, the policy makers were aware of the failings that had taken place on an international HE level.⁴⁶ Among researchers who have assessed the effectiveness of NSFAS, Jackson highlights six requirements for a successful design and operation of a student loan scheme: sound administrative and financial management; a legal framework that ensures loan recovery is legally enforceable; effective mechanisms for targeting based

³⁸ The Higher Education Act.

³⁹ <https://www.gov.za/documents/higher-education-act> (accessed 12 August 2023).

⁴⁰ The Higher Education Act.

⁴¹ The Housing Act.

⁴² And its amendments.

⁴³ Section 29 (1) (b) and Section 26 respectively.

⁴⁴ Department of Higher Education and Training Republic of South Africa (DHET): 22-23 April 2010 Report on the Stakeholder Summit on Higher Education Transformation Called by the Minister of Higher Education and Training, Dr Blade Nzimande 19.

⁴⁵ Higher Education Act 101 of 1997, The Policy on The Minimum Norms and Standards for Student Housing at Public Universities (Hereinafter, the policy on the minimum norms and standards).

⁴⁶ n 4 above 87.

on financial need; publicity to ensure understanding and accepting of the terms of borrowing and repayment of loans; a credible collection institution with its incentives to collect; and a willingness to charge interest rates on loans equal to or above inflation.⁴⁷ Jackson further indicates what he believes the above requirements together with sound legislation were vital components for the success of NSFAS in 2002.⁴⁸ NSFAS was created as a legal entity with legal framework in which it could operate,⁴⁹ to increase access to HE.⁵⁰ According to the UN Committee on the Economic Social and Cultural Right's General Comment 13 a meaningful access to education has three dimensions that overlap, these are;

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme);

Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary, and HE: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and HE.⁵¹

According to Section 26(1) of the 1996 Constitution everyone has the right to have access to adequate housing; (2) and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. This speaks to the three dimensions mentioned above, that the state should progressively ensure accessibility that means inclusivity, physical and economic. The Constitution makes provision for the right to further education, which the state, through reasonable measures, must make progressively available and accessible.⁵² Progressive realisation means that although the right cannot be met immediately, the Constitution's goal is to ensure that progressive steps are taken for

⁴⁷ n 4 above 87.

⁴⁸ n 4 above 87 – 92.

⁴⁹ n 4 above 88.

⁵⁰ W Mdepa & L Tshiwula 'Student diversity in South African Higher Education' (2012) 13 *Widening Participation and Lifelong Learning* 24.

⁵¹ UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (Article 13 of the Covenant) 8 December 1999.

⁵² Section 29 (1)(a).

its realisation.⁵³ Mdepa & Tshiwula are of the view that there is a direct correlation between access and funding in the African HE system.⁵⁴ This a different view from the European University Association (EUA) students, whom in their study, believe the journey to success in HE requires food, housing, medical care, study material and transport which form part of a 'strong social-security system'.⁵⁵ In South Africa, NSFAS paved the way to funding that would allow for access to HE.⁵⁶

However, student accommodation was not subsidised by the state until 2009.⁵⁷ What has become student housing market in South Africa is viewed as mature in nature compared to other African countries and is considered among the emerging markets.⁵⁸ Xulu-Gama maintains that student housing plays a pivotal role to the success of students.⁵⁹ In most developed countries, policy and regulatory frameworks exist regarding student housing.⁶⁰ In a report on the Ministerial Committee for the Review of the Provision of Student Housing at South African Universities, some developed countries such as, France; the United States of America and the United Kingdom were used as a benchmark to policies and frameworks for student housing.⁶¹ The Centre National des Oeuvres Universitaires et Scolaires (CNOUS, 2009) in France provides housing, food and manages student social services and financial aid.⁶²

In the United States, while student housing regulation is fragmentary and lacks any apparent over-arching policy framework or support structure at either the federal or state levels, the National Association of Housing Co-operatives (NAHC), which works together with Canada through the North American Students Cooperation (NASCO), facilitates the provision of affordable housing through a network of local and regional cooperatives (ICA, 2007).

⁵³ Government of the Republic of South Africa v Grootboom [2000] ZACC 19 par 45.

⁵⁴ Mdepa & Tshiwula (n 50 above) 24.

⁵⁵ n 50 above 24.

⁵⁶ n 50 above 24 – 25.

⁵⁷ n 50 above 24.

⁵⁸ International Finance Corporation, *World Bank Group: 2021 Market Assessment, The Student Housing Landscape in South Africa* Page 11.

⁵⁹ N Xulu-Gama 'The Role of Student Housing in Student Success: An Ethnographic Account' (2019) 7(2) *Journal of Student Affairs in Africa* 16.

⁶⁰ Department of Higher Education and Training Republic of South Africa (DHET): 2011 Report on the Ministerial Committee for the Review of The Provision of Student Housing at South African Universities 26.

⁶¹ DHET (n 60 above) 26.

⁶² n 60 above 26.

In the United Kingdom, the Housing Act of 2004 (United Kingdom, 2004) exempts HE institutions from having to license houses of multiple 25 occupants provided they sign up to the Universities United Kingdom (UUK) Code of Practice for University Managed Student Accommodation, which sets standards for health and safety, repair and maintenance, environmental quality, landlord and tenant relationships, health and wellbeing, anti-social behaviour and disciplinary procedures, and code administration and compliance.⁶³

Tswai and Netswera believe that there is complete silence in the South African Constitution and general housing policies on student housing.⁶⁴ The Constitution is hailed in history as the most advanced⁶⁵ and the best in the world due to its comprehensive nature⁶⁶ as a result of the Bill of Rights in chapter 2.⁶⁷ The Constitution is regarded as transformative by both the Constitutional Court and other courts.⁶⁸ It essentially represents a breakaway from old systems and embraces a new system that includes healing the divisions of the past and establishing a society based on democratic values, social justice and fundamental human rights.⁶⁹ According to the former Deputy Chief Justice Dikgang Moseneke, at the heart of the post 1994 transformation of society is the notion of “social redistributive justice”.⁷⁰ Social justice is deemed as a premier ‘foundational value along the values of human dignity, equality, freedom, accountability, responsiveness, and openness’.⁷¹ The intention of the Constitution post-apartheid is seen in the preamble and is validated by discourse-setting essay in which he contends that the Constitution prescribes “transformative constitutionalism”⁷² and should not be forgotten or overlooked.⁷³ Madlingozi stipulates

⁶³ n 60 above 26 – 27.

⁶⁴ E Tswai & FG Netswera ‘Student Housing in South Africa- a Conflated Housing Mandate between the State and Higher Education’ 2013 3.

⁶⁵ CE Dugger (2007) ‘Rights waiting for change: Socio-economic rights in the new South Africa’ 19 *Florida Journal of International Law* 197.

⁶⁶ EE Goodsell ‘Constitution, custom, and creed: Balancing human rights concerns with cultural and religious freedom in today’s South Africa’ (2007) 21 *BYU Journal of Public Law* 109.

⁶⁷ JD Mujuzi ‘The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa: South Africa’s reservations and interpretative declarations’ Doctoral Researcher, Civil Society Prison Reform Initiative, Community Law Centre, University of the Western Cape (2007) 42.

⁶⁸ P Langa “Transformative Constitutionalism” (2006) 17 *Stell LR* 351.

⁶⁹ The Preamble of The Constitution; *Soobramoney v Minister of Health (Kwazulu-Natal)* [1997] ZACC 17; 1998 SA 765 (CC) at para 8.

⁷⁰ T Madlingozi ‘Social Justice in a Time of Neo-apartheid Constitutionalism: Critiquing the Anti-black Economy of Recognition, Incorporation and Distribution’ (2017) 1 *STELL LR* 128.

⁷¹ Madlingozi (n 70 above) 128.

⁷² n 70 above 128.

⁷³ *President of the Republic of South Africa and Another v Hugo* 1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC) at paras 41-3.

three fundamental elements of social justice in South Africa: recognition, incorporation and distribution and elaborates on it as follows:

This constitutional commitment to recognising and incorporating the historically oppressed and marginalised through a programme of social justice, has provided a discursive and structural opportunity for the hegemony of both social justice-talk and the social justice civil society sector.⁷⁴

However, transformative the constitution is deemed, there is not enough research that focuses on interrogating how NSFAS facilitates (or hinders) the implementation of the ideals (or objectives) of the South African Constitution, when it comes to the funding of student accommodation. NSFAS at its core mandate denotes a transformative call to a transformative constitution with social justice as its driving force. In a submission made to the Commission of Inquiry into Higher Education and Training (The Fees Commission) in 2016, the Students for Law and Social Justice (SLSJ) had a differing view compared to Jacksons in 2002. The SLSJ believes that the functioning and effectiveness of NSFAS is a concern and oversight mechanisms should be established in ensuring accessibility.⁷⁵ This comes after student protests for free HE in 2015. Furthermore, the SLSJ suggests that NSFAS has been an insufficient measure.⁷⁶ A questionnaire was compiled by the European University Association (EUA) and completed by students from selected African Universities, the question regarding the lack of resources was met with affirmation.⁷⁷ The lack of resources was the main barrier for access to HE.⁷⁸ There is also the concern of the increase in HE costs especially related to the declining living standards.⁷⁹

4. Objectives

- To evaluate the adequacy of NSFAS to facilitate access to HE for marginalised students.
 - To ascertain the relevance of NSFAS as a drive to improve access to marginalised students
 - To essentialise the role played by NSFAS in improving access to HE.

⁷⁴ n 70 above 128.

⁷⁵ The Commission of Inquiry into Higher Education and Training (The Fees Commission) 2016 39.

⁷⁶ n 75 above 39.

⁷⁷ n 50 above 24.

⁷⁸ n 50 above 24.

⁷⁹ n 50 above 24.

5. Research questions

- The central research question of this study is to ascertain, whether NSFAS is living up to its promises to provide affordable and sustainable national student financial aid to deserving students in South Africa. This central question is further supported by the following sub-questions:
 - To what extent has NSFAS facilitated access to adequate funding considering the high rising cost of student accommodation at UP.
 - What has been the aftermath of recent NSFAS resolutions surrounding student accommodation? This includes assessing the decision-making processes by the statutory body.

6. Methodology

This mini dissertation adopts a theoretical research method. A theoretical research model is based on existing knowledge in a particular discipline and forms the basis of academic research.⁸⁰ This is critical in that it will enable analysis of the policies and provisions within HE. The study will centre on NSFAS and its role, whether it is fulfilling its obligations and mandate within the context of student accommodation at the UP. Firstly, an examination of the legal framework into the agency is made to ascertain its adequacy and sustainability. The use of international instruments and national policies is employed. A further examination is made into the UP policies juxtaposed to the sufficiency of funding from NSFAS. Secondly, a brief history of student accommodation and situation analysis is made to outline its importance in the context of student housing followed by the indicators of inadequacy by NSFAS. Lastly, conclusions and recommendations are made to the government entity.

7. Chapter outline

The first chapter serves as background to the study. The background will comprise of the introduction to the topic; research problem; literature review; subsequent objectives; the research questions; the research methodology; and lastly the structure/outline.

H Snyder 'Literature review as a research methodology: An overview and guidelines' (2019) 104 *Journal of Business Research* 333.

The second chapter provides a historical trajectory of the student funding in South Africa since 1994. This includes an evaluation of TEFSA leading up to NSFAS, the legal framework that existed in comparison to the latter. The sufficiency of funding in relation to the increasing accommodation fees: the increase in percentage afforded by NSFAS, as well as fee increases in student accommodation specifically at UP. The demand of accommodation; student demographics; residence placement and admission policies; policy on the Accreditation of private accommodation at UP will be central to the overview.

The third chapter provides a response to the situation analysis of student housing matters. Assessing the disturbing fall out of NSFAS, this includes a look into the delay in funding; corruption and mismanagement; administrative issues; consultation issues (a look at Universities South Africa's submission (USAF); and student protests. A look into student advocacy and its role in the student discipline. And the impact of NSFAS on the right to further education considering communication and transparency in decision making processes and the challenges and gaps that exist in student accommodation.

The last chapter draws attention to the functions of NSFAS and the scope of mandate in the HE system. The last chapter will ascertain whether there still exists a need for policy or regulatory framework in the student accommodation arena. It concludes the study and makes recommendations to strengthen student financing in South African Universities and increase access to HE.

Chapter 2: The adequacy and sustainability of student funding

2. Introduction

As indicated in chapter one, there is an established causal relationship between adequate housing and the right to education especially in the context of student funding schemes in South Africa. This causality is also manifested in both international and domestic, South African, Law. The 1996 Constitution, for example, is explicit in the consideration of international agreements as they are binding on the State, based on the strength of its ratification of applicable international law.⁸¹ The right to adequate housing is an aged human right that was first recognised in as part of the right to an adequate standard of living under article 25 of the 1948 UDHR and in article 11.1 of the 1966 CESC. The UDHR is not a binding instrument, but the CESC is binding on all states who have ratified the treaty, including South Africa who have ratified in 2015.

On the other hand, article 26 of the UDHR, and article 13 of the CESC protects the right to education for everyone. The CESC states in article 13 (2) that the States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right: (c) HE shall be made equally accessible to all, based on capacity, by every appropriate means, and by the progressive introduction of free education. This, in conjunction with Article 11 (1) of the CESC mandates State Parties to recognise the right of everyone to an adequate standard of living for its family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. Further, States Parties are obligated to take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent. The CESC and the Constitution of South Africa are counted as human rights instruments that acknowledge the progressive realisation of socio-economic rights as based on the availability of resources.⁸²

⁸¹ Section 231 (4) & (5) of The Constitution.

⁸² L Chenwi, 'Unpacking "Progressive realization", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance' (2013) *De Jure* 742.

The qualification for progressive realisation places an obligation on a state to endeavour in the fulfilment and improved enjoyment of socio-economic rights to the extent that it is possible, even if there are resource constraints.⁸³ The right to further education in the Constitution places an obligation on South Africa to make it progressively available and accessible. In a bid to address availability and accessibility the National Commission for Higher Education (NCHE) in 1996 advocated for a national financial aid scheme.⁸⁴ This was endorsed by the Education White Paper of South Africa in 1996.⁸⁵ The White Paper suggested the development of a sustainable financial aid scheme for students.⁸⁶ State funding plays a pivotal role in ensuring accessibility and availability because it forms part of the total income for almost all HE institutions.⁸⁷ Ntshoe and De Villiers in their article titled 'Funding sources for public HE in South Africa: Institutional responses', highlights three sources for HE; first-second- and third-stream income money.⁸⁸ The First-stream income, is where governments fund majority of HE costs. In South Africa, the period 1986 - 2006 saw a decline in the money allocated to all universities.⁸⁹ The Second-stream income, is where four parties direct or indirectly pay for HE that is the government or taxpayers; student or their parents; lending or loans; and philanthropists as well as employers. Student loans are the most prevalent due to increase in student fees.⁹⁰ The third-stream income, is where universities seek philanthropic and entrepreneurial funding. This is made possible through university-industry funding partnerships. These partnerships are an incorporation of the private sector.⁹¹

For purposes of this chapter, the second-stream income which is government funding will be the focus. NSFAS is the most important source of second-stream financial income, as it grants students study loans.⁹² The National Plan for Higher Education

⁸³ Chenwi (n 82 above) 743.

⁸⁴ P de Villiers 'Higher Education and the Poor in South Africa' 2011 2 Department of Economics, University of Stellenbosch 4.

⁸⁵ De Villiers (n 84 above) 4.

⁸⁶ n 84 above, 4.

⁸⁷ A Styger & GW van Vuuren & A Heymans 'Government Funding Framework For South African Higher Education Institutions' (2015) 29 (2) South African Journal of Higher Education 261.

⁸⁸ I Ntshoe & P de Villiers 'Funding Sources for Public Higher Education in South Africa: Institutional responses' (2013) 31 (2) 72 – 73.

⁸⁹ Ntshoe & De Villiers (n 88 above) 72.

⁹⁰ n 88 above, 72.

⁹¹ n 88 above, 73.

⁹² n 88 above, 75.

(NPHE), 2001⁹³ referred to the need to expand NSFAS, the effect of inflation (tuition and accommodation) on the number of awards was noted, as well as the challenge of not being able to provide full-cost of study loans.⁹⁴ In 1994, the total amount available for student funding was R70.4 million, which included money from government (R10.3 million) and from donors (R60.1 million).⁹⁵ By 2001, this had increased to R440 million from government and R160 million from loans recovered. Donor allocations to NSFAS declined steadily from 1994 to 2000 and fell away in 2001.⁹⁶ 'The HE system comprises of 26 public universities differentiated into eleven traditional universities,⁹⁷ nine comprehensive universities and six universities of technology, as well as the private HE sector, currently consisting of 135 registered Private HE Institutions (PHEIs), the National Institute for Humanities and Social Sciences, as well as the Council on HE (CHE)'.⁹⁸ The CHE advises the Minister on certain matters of HE, ensures quality assurance, and does research on developmental systems.⁹⁹

This research chapter aims to provide a succinctly analysis of the legislative framework regulating student funding in South Africa. In doing so, the chapter traces the history of, student funding schemes in South Africa from the inception of TEFSA, to the NSFAS Act. The sustainability of the funding models will also be analysed with the specific aim to ascertain whether the current model needs to be revised to curb the raising funding crises that students are involved in every start of the academic calendar. The University of Pretoria (UP) will be used as case study to juxtapose its

⁹³ Gazetted by the then Department of Education The National Plan was developed to provide 'the framework and mechanisms for the restructuring of the Higher Education system to achieve the vision and goals for the transformation of the HE system outlined in the Education White Paper 3: A Programme for the Transformation of HE.

⁹⁴ BrieflySpeaking Council on Higher Education 'The National Plan for Higher Education (2001) targets: Have they been met?' Page 8 <https://www.che.ac.za/> (accessed 2 October 2023).

⁹⁵ n 94 above, 8.

⁹⁶ n 94 above), 8.

⁹⁷ University of Cape Town; University of Fort Hare; University of the Free State; University of Johannesburg; University of KwaZulu-Natal; University of Limpopo; Nelson Mandela Metropolitan University; North West University; University of Pretoria; Rhodes University; University of South Africa; University of Stellenbosch; Walter Sisulu University for Technology; University of Venda; University of the Western Cape; University of the Witwatersrand; University of Zululand; Border; Cape Peninsula; Eastern Cape; Central University of Technology FS; Durban Institute of Technology; Mangosuthu; North West; Northern Gauteng; Nelson Mandela Metropolitan University; Tshwane University of Technology.

⁹⁸ Department of Higher Education and Training Republic of South Africa (DHET): Annual report 2020/2021 29.

⁹⁹ DHET (n 98 above) 29.

policies vis-à-vis NSFAS' to respond to the, increased demand for student accommodation and residence fees.

2.1. The National Student Financial Aid Scheme Bill

2.1.1. Background

The NSFAS Bill is established by the Government as a loan and bursary to redress the past inequalities; for the management, governance, and administration of NSFAS itself; and to address the rise in student debt that plagued HE institutions.¹⁰⁰ The NCHE's interim proposals determined the modus operandi of NSFAS as requested by the Minister of Education to investigate its sustainability.¹⁰¹ The interim proposals by the NCHE would then form the basis of a comprehensive and long-term development of the set of policies for student financial aid.¹⁰² 'The endorsement was made in the *Education White Paper 3: A programme for the Transformation of HE* which suggested that further research, including identifying and assessing alternatives to the NSFAS was necessary to underpin the development of a comprehensive and sustainable student financial aid scheme'.¹⁰³

2.1.2. A sustainable student financial aid

The Department of Higher Education in August 1998, released a report called a Framework for a National Student Financial Aid Scheme.¹⁰⁴ Recommendations were made in this report that outline a 'comprehensive and sustainable student financial aid scheme framework'.¹⁰⁵ The following was recommended:

The establishment of an expanded NSFAS that is affordable and sustainable. This expanded NSFAS, should take the form of a National Loan and Bursary Scheme to be based administered by TEFSA as the current scheme and recognised by section 2 of the Provision of Special Funds for Tertiary Education and Training Act 121 of 1993.

NSFAS would incorporate all major elements of the current loan and bursary scheme.

¹⁰⁰ The National Student Financial Aid Scheme (NSFAS) Bill, 1999.

¹⁰¹ NSFAS Bill (n 100 above).

¹⁰² n 100 above.

¹⁰³ n 100 above.

¹⁰⁴ n 100 above.

¹⁰⁵ n 100 above.

TEFSA would be administer NSFAS because of its proven administrative and effective management, its ability to keep minimal administrative costs, and its symbiotic relationship with HE institutions that is excellent.

Within the restructuring of the TEFSA regulatory framework, the Government should consider that the main source of funding for NSFAS will be both directly through budget allocations and indirectly through donor funding as part of bilateral and multilateral agreements.

The conversion of TEFSA (a section 21 company) into an administratively independent statutory agency. The educational Minister would appoint a Board from stakeholder nominations. The Boards responsibility would be to advise the Minster on the administration and overall policy of NSFAS.

A finance committee should be established by the Board that includes members of the Departments of Education, Finance, and financial experts from the private sector. The finance committee's function would be to manage NSFAS financially, paying specific attention to the recovery of loans, fund boosting and repayment investments.

There had to be a rally in favour of 'the principles of a loan and bursary scheme', this was directed at changing public opinion as it relates to the responsibilities of recipient repayments.¹⁰⁶

At the time of the recommendations, the international donors for the contribution towards NSFAS were dwindling. And for the establishment of an expanded and sustainable financial scheme, the government would have to be the main funder in their commitment to access and redress of past inequalities.

2.2. The NSFAS Act

In 1999, the NSFAS Act was enacted and its preamble asserts equal access and an expanded national student financial aid scheme that is affordable and sustainable.¹⁰⁷

In chapter two of the NSFAS Act, it is established as a juristic person that is administered, governed, and managed by the NSFAS board.¹⁰⁸ The board would comprise of 13 members¹⁰⁹ from various departments and appointed by the DHET,

¹⁰⁶ n 100 above.

¹⁰⁷ n 21 above.

¹⁰⁸ Section 3 (1) and (2).

¹⁰⁹ Section 5 (1) (a) – (c).

Minister of Finance, and national organisations representing students, of which at least three are appointed based on their financial experience and expertise.¹¹⁰ The members of the board would be appointed by means of nominations from relevant stakeholders.¹¹¹ The function of the board would be to appoint an executive officer,¹¹² executive committee,¹¹³ finance committee¹¹⁴ and other committees.¹¹⁵ 'The finance committee would be responsible for the financial management of NSFAS, this includes recovery of loans, injection of funds and repayment investments'.¹¹⁶ Majority of the listed recommendations coincide with the Act. There were three differences in relation to the recommendations and the Act itself. Firstly, in terms of section 14, in addition to donors or contributions, repayable loans, Government would be the biggest contributor, including interest from loans and any other income received. Secondly, NSFAS did not have any administrative and managerial experience as well as any working relationship with HEIs hence the administration by TEFSA would have sufficed. However, Section 20 incorporates the structure of designated HEIs and their relationship with the statutory body. Thirdly, the services of the South African Revenue Services were incorporated¹¹⁷ to ensure recovery of loans.¹¹⁸

2.2.1. Allocation of student funding

South Africa in comparison to five other states¹¹⁹ had the lowest Gross domestic product (GDP) in 2015.¹²⁰ These five states namely, Finland; Germany; Organisation for Economic Co-operation and Development (OECD); USA and the UK form part of the OECD member countries.¹²¹ The OECD is an international organisation that works to build better lives by means of better policies, together with governments, policy makers and citizens, work on establishing evidence-based international standards.¹²² Price Water Coopers (PWC) in an audit in 2015 reported that South Africa had about

¹¹⁰ Section 5 (5).

¹¹¹ Section 3 (3).

¹¹² Section 9.

¹¹³ Section 10.

¹¹⁴ Section 11.

¹¹⁵ Section 12.

¹¹⁶ Section 11 (2).

¹¹⁷ Section 24.

¹¹⁸ Reference to n 100 above.

¹¹⁹ Germany, United Kingdom, United States of America, and Cuba.

¹²⁰ <https://www.pwc.co.za/en/publications/the-tipping-point.html> (assessed 28 September 2023)

¹²¹ <https://www.oecd.org/about/> (accessed 16 October 2023).

¹²² <https://www.oecd.org/about/> (accessed 16 October 2023).

a 40% contribution in terms of government funding.¹²³ There have been four funding formulae¹²⁴ since the 1950s that were used for HE funding in public institutions.¹²⁵ We see the introduction of the Holloway formulae in 1953 to the New Funding Framework (NFF) that was formulated in 2004,¹²⁶ and essentially the factors that dictate the base of funding remain the same.¹²⁷ That is the intake of students, student output and the output achieved from research still determine funding.¹²⁸ Three steps are suggested by the NFF to steer HE: firstly, the national policy goals and objectives would be determined by the Ministry of Education; secondly, there would be three year rolling plans by institutions in a bit to address access, redress and human resource development; lastly, there would be mandatory interaction between HE institutions and the Ministry of Education in terms of institutional plans as well as ensuring that the available amount of funds available is based on expenditure.¹²⁹ Since NSFAS was established, earmarked grants¹³⁰ annually were allocated to each university.¹³¹ In a report by NSFAS for 2007 and 2008, students were incentivised with 40% of their loan being converted into a bursary in the event that they pass their allocated courses.¹³² This incentive applied for students that were enrolled from 1996 – 2008 that passed 74.3% of their courses.¹³³

In 2017, the then President of South Africa, Mr Jacob Zuma announced that government would fully fund the cost of studies for students whose households earning was less than R 350,000 per annum,¹³⁴ for a period of five years.¹³⁵ This is confirmed through budget allocations from National Treasury in 2018.¹³⁶ A new DHET Bursary Scheme was introduced by the DHET that would fully subsidise funding for poor

¹²³ <https://www.pwc.co.za/en/publications/the-tipping-point.html> (assessed 28 September 2023)

¹²⁴ 1953: The Holloway formula; 1977: The Van Wyk de Vries formula; 1984: The SAPSE formula and 1993: The revised SAPSE formula.

¹²⁵ Styger & Van Vuuren (n 87 above), 260 -276; Higher Education Act, 1997 Funding of Public Higher Education 2003.

¹²⁶ n 87 above, 260.

¹²⁷ n 87 above 260.

¹²⁸ n 87 above, 260.

¹²⁹ I Ntshoe & P De Villiers 'Steering the South African Higher Education Sector towards transformation Perspectives in Education (2008) 26 (4) *Perspectives in Education* 21-22. Grants designated to assist institutional areas.

¹³⁰ n 87 above, 268.

¹³¹ n 88 above, 76.

¹³² n 88 above, 76.

¹³³ BrieflySpeaking Council on Higher Education (n 94 above) 9.

¹³⁴ DHET Frequently Asked Questions (FAQs) 2018: Changes to DHET funding for poor and working-class students in public higher education institutions.

¹³⁵ Guidelines for the DHET Bursary Scheme for Students at Public Universities 2019 5.

students in public universities. NSFAS implemented the Bursary Scheme from the 2018 academic year onwards.¹³⁷ Before 2018, the threshold for eligibility was R 122 000, 00 family income per annum and that would remain for students that entered the system at that time.¹³⁸ After 2018, First Time Entry Students (FTEN) that met the R 350 000, 00 threshold would qualify for the Bursary Scheme. It is imperative to note the difference (R230 000, 00) in the threshold prior and after 2018.

The Bursary Scheme would consider the household income of the direct family members (i.e. parents, legal guardians or spouses) and not extended family members (brothers, sisters, aunts, uncles and grandparents).¹³⁹ It would cover the cost of tuition, prescribed learning material, capped/subsidised accommodation, including subsistence and or transport.¹⁴⁰ Subsidised accommodation and subsistence refers to the following: government provides the cost of accommodation, meals and basic living requirements capped at a specific amount for those who require it based on the policy implemented at an institutional level.¹⁴¹ The funding cap is determined by NSFAS for each year. In 2019 the cap was R 88 600, 00;¹⁴² R 93 400 in 2020;¹⁴³ R 98 700 in 2021¹⁴⁴.

In all the DHET guidelines, university managed catering residences and self-catering residences were not capped. Only Private Off-Campus Accommodation (POCA) were capped at the cost of internal university self-catering accommodation.¹⁴⁵ The policy on NSFAS Eligibility Criteria and Conditions for Financial Aid came into effect in 2022 and replaces the DHET rules and guidelines.¹⁴⁶ The 2023 NSFAS Eligibility Criteria did away with the full subsidisation of student accommodation and placed a capped.¹⁴⁷ The threshold for eligibility remains of R 350 000. Emphasis is placed on the university N+ (The number of years in the academic programme plus an extra year) Rule that is based on the number of years in the HE sector.¹⁴⁸ A broader look into appeals for

¹³⁷ Guidelines for the DHET (n 136 above).

¹³⁸ DHET FAQs (n 135 above).

¹³⁹ n 135 above.

¹⁴⁰ n 135 above.

¹⁴¹ n 135 above.

¹⁴² n 135 above.

¹⁴³ Guidelines for the DHET Bursary Scheme for Students at Public Universities 2020.

¹⁴⁴ Guidelines for the DHET Bursary Scheme for Students at Public Universities 2021.

¹⁴⁵ n 144 above.

¹⁴⁶ NSFAS Policy (n 27 above).

¹⁴⁷ NSFAS Policy (n 30 above).

¹⁴⁸ n 30 above, par 3.5.4.1.

funding is made with students that have not met the academic eligibility.¹⁴⁹ The accommodation fees for university catered and self-catered residences is paid directly to the institution.¹⁵⁰ In 2023, the accommodation allowance is capped at R45 000 for university residences and POCA's.¹⁵¹ In terms of the NSFAS website, all South African citizens that meet the threshold are eligible for funding that includes again, accommodation; as per the actual costs charged by the university (costs for private accommodation must not exceed costs for university residence); a living allowance R15,750 per annum; a book allowances R5 460 per annum; and incidental/personal care allowance R3 045 per annum for students in catered residences.¹⁵²

2.3. The University of Pretoria as a case study

2.3.1. Student demographics

It is important to note that the UP was regarded as a Historically Advantaged Institution (HAI).¹⁵³ An almost exclusively Afrikaans-medium institution.¹⁵⁴ The democratic change brought access to the HE for black students. Its institutional admission policy gives effect to the obligation placed upon it in terms of the constitutional right to education and the legislative duty to ensure that its admissions are appropriate to redress past inequalities and not unfairly discriminate in any way.¹⁵⁵ With a 2022 enrolment statistics of 54 466 students sourced through Higher Education Management Information Systems (HEMIS).¹⁵⁶ The UP aims to achieve at least the demographic representation targets regarding race that it sets annually in conjunction with the DHET, or a higher target, considering the demographic make-up of the pool of candidates qualifying for study in a particular programme.¹⁵⁷ In the overall statistics of 2022, 31 281 accounts for African/black students; 1 758 Coloured students; 3 452

¹⁴⁹ n 30 above.

¹⁵⁰ n 30 above.

¹⁵¹ n 30 above.

¹⁵² <https://www.nsfas.org.za/content/bursary-scheme.html> (accessed 12 October 2023) and n 30 above.

¹⁵³ Ntshoe & De Villiers (n 129 above) 20.

¹⁵⁴ V Webb 'English as a second language in South Africa's tertiary institutions: a case study at the University of Pretoria' (2002) 21 (1) *World Englishes* 50.

¹⁵⁵ University of Pretoria, Department Enrolment and Student Administration: Institutional Admission Policy 2024.

¹⁵⁶ <https://www.up.ac.za/departments-of-institutional-planning/article/2834454/core-students-statistics> (accessed 12 October 2023).

¹⁵⁷ UP Institutional Admission Policy (n 155 above).

Indian students; 46 Unknown students; 17 929 white students.¹⁵⁸ The Department of Residence Affairs and Accommodation, Residence Placement division is responsible for student accommodation at the University of Pretoria and has a residence capacity of nearly 8000 beds.¹⁵⁹

2.3.2. The demand for student accommodation

As access to HE grew through the key stakeholder NSFAS, the need for student housing grew as well. However, this is only unpacked at a Stakeholder Summit on HE in April of 2010, after an audit on existing residences both on and off campus revealed poor and unacceptable conditions due to inadequate facilities.¹⁶⁰ The DHET reported a shortage of beds in 2012 of 200, 000 across campuses.¹⁶¹ This led to the establishment of the policy on the minimum norms and standards.¹⁶² Which provides for norms and standards that should apply to on-campus and off-campus residences in all public universities and university accredited student housing.¹⁶³ Universities are then tasked to implement accreditation policies for off-campus student accommodations in a bid to align with the policy on the minimum norms and standards. From 2015, there is a policy that provides for the standard of student accommodation and is further adopted by means of institutional guidelines from the DHET.¹⁶⁴ A further projection was made of the shortfall rising to 220, 000 in 2016.¹⁶⁵ The enrolment of students increased from 837, 776 in 2009 to 1 085,568 in 2018.¹⁶⁶ Private student accommodation in urban areas at the time was acknowledged as possible solution although it was not an affordable option.¹⁶⁷ The DHET also discovered that about 80% of students require campus-based accommodation in order to succeed.¹⁶⁸

¹⁵⁸ <https://www.up.ac.za/student-accommodation> (12 October 2023).

¹⁵⁹ n 158 above.

¹⁶⁰ n 44 above, 19.

¹⁶¹ J Mashayamombe & R Vally 'Student Housing and Homelessness: A Paradox of Urban Gentrification in Pretoria's Old East, South Africa' (2020) 51 (3-4) *South African Review of Sociology* 96.

¹⁶² Higher Education Act 101 of 1997, The Policy on The Minimum Norms and Standards for Student Housing at Public Universities (Hereinafter, the policy on the minimum norms and standards).

¹⁶³ The policy on the minimum norms and standards (n 162 above).

¹⁶⁴ <https://www.up.ac.za/student-accommodation/article/3016796/accreditationrecognition-of-privately-owned-properties-for-2022> (accessed 16 October 2023).

¹⁶⁵ Mashayamombe & Vally (n 161 above) 96.

¹⁶⁶ n 161 above, 96.

¹⁶⁷ n 161 above, 96.

¹⁶⁸ n 161 above, 97.

The UP has a process of accrediting private accommodations as mandated by the policy on the minimum norms and standards for student accommodation.¹⁶⁹ The Department of Residence Affairs and Accommodation, Residence placement division further differentiated the number of beds for application for accommodation between 10 – 49 as the process of recognition and above 50 beds as the process of accreditation for private service providers, this being the private owners of accommodation.¹⁷⁰ There are 15 000 accredited student accommodation beds.¹⁷¹ Many private providers seek accreditation and or recognition because of NSFAS. Majority of students in UP residences and accredited and or recognised accommodations are funded by NSFAS, this is seen in the deficit of R 240 million required to bridge the gap for the capped accommodation allocation.¹⁷²

2.4. Sufficiency of allocated funding

The UP has the largest number of residences compared to the 25 other universities, as of 2023, there are 30 residences across five campuses.¹⁷³ The University fees are determined by the Council each year.¹⁷⁴ The residence 2023 fees range from R 52 700 – R90, 700, this is an increase from 2022 that ranged between R 52, 600 and R84, 000.¹⁷⁵ The UP is situated in a predominantly student accommodation area (Hatfield) that has over the years increased rapidly in the development of student accommodation.¹⁷⁶ These developments would otherwise be termed Purpose Built Student Accommodation (PBSA).¹⁷⁷ These are the likes of Campus Key, Feenstra Group Respublica, and South Point among others.¹⁷⁸ The costs of these student accommodations according to their websites are expensive.¹⁷⁹ Respublica with a capacity of 2331 charges from R 4 770, 00 for a sharing room to R 7 990 for a single

¹⁶⁹ <https://www.up.ac.za/media/shared/359/2023/up-accreditation-guideline-for-service-providers.zp222718.pdf> (accessed 12 August 2023).

¹⁷⁰ n 164 above.

¹⁷¹ n 158 above.

¹⁷² UP website: https://www.up.ac.za/news/post_3128600-nsfas-decision-regarding-cap-on-accommodation (accessed 12 August 2023).

¹⁷³ <https://www.up.ac.za/student-fees/article/2736000/residence-fees> (accessed 13 October 2023).

¹⁷⁴ <https://www.up.ac.za/media/shared/359/2023/tuksres-guide-2023.zp230317.pdf> (accessed 13 October 2023).

¹⁷⁵ <https://www.up.ac.za/student-fees/article/2736000/residence-fees> (accessed 13 October 2023)

¹⁷⁶ n 58 above, 17.

¹⁷⁷ n 58 above, 17.

¹⁷⁸ n 58 above, 17.

¹⁷⁹ n 161 above, 102.

room (furnished).¹⁸⁰ And South Point charges R 4 420 for a three sharing room to R 5 800 for a single room (furnished).¹⁸¹ Although these PBSA are aiding government in its need for student accommodation to ensure academic success,¹⁸² the private-public partnership model does not necessarily coincide with access to student accommodation.¹⁸³ Mashayamombe and Vally, maintain that business and humanitarian development needs do not mix.¹⁸⁴ They further state that:-

The relatively high rentals in Hatfield coupled with the high demand for affordable student housing leaves students from low income and precariat households stranded without proper and convenient accommodation. There is no doubt that the radical changes that are underway in Hatfield are growth oriented and instead of being harnessed to basic social justice and economic diversity, they seem to do the contrary. Students from the University, although politically equal —as all carry the same registration card, take the same examinations, or sit in the same classes—are not socially equal. Where they stay reflects their socioeconomic status and their access to supporting mechanisms to complete their studies.¹⁸⁵

Education is essentially about investing in the future while business is focused on profit.¹⁸⁶ The annual increases in student accommodation is based on the area, the amenities, demand, and profit for PBSA.¹⁸⁷ Ouma and Cloete undertake the termination of allocations for purposes of building new accommodations in HEs from 1997 and 1998 is a result of the partnership with the private sector and weakening of the fiscal.¹⁸⁸

2.5. Conclusion

The mandate of NSFAS is the provision of financial assistance to eligible students at public universities in the form of loans and bursaries.¹⁸⁹ The students that are eligible would not ordinarily afford to fund their own studies and or acquire a loan or bursary

¹⁸⁰ <https://respublica.co.za/residence/hatfield-square/> (accessed 13 October 2023).

¹⁸¹ <https://www.staysouthpoint.co.za/pretoria> (accessed 13 October 2023).

¹⁸² n 161 above, 97.

¹⁸³ n 161 above, 102.

¹⁸⁴ n 161 above, 102.

¹⁸⁵ n 161 above, 103.

¹⁸⁶ n 161 above, 102.

¹⁸⁷ n 161 above, 102.

¹⁸⁸ G Wangenge-Ouma & N Cloete 'Financing Higher Education in South Africa: Public funding, non-government revenue and tuition fees' (2008) 22 (4) SAJHE 909.

¹⁸⁹ NSFAS Annual Report 2012 <https://www.nsfas.org.za/content/reports/annualreport2012.pdf> (accessed 9 October 2023) 58.

through a commercial bank.¹⁹⁰ The adequacy of funding and sustainability of the financial aid scheme is of paramount importance. The constitutional right to education, its progressive realisation and the redress of past inequalities should be the focal point when addressing matters of allocation of funding. Underprivileged students as identified by the government should be assisted with tuition which includes learning material and accommodation. The DHET attempted to bridge the inequality gap for five years by means of legal framework through the DHET Bursary Scheme. It has also heard the plight of student accommodation and brought in the private sector in the form of PBSA. The introduction of the NSFAS eligibility criteria does seem to be impeding on the access to student accommodation due to the cap. The reason for the cap is suspected 'price fixing and in some instances collusion from the university staff for exorbitant fees at tertiary accommodation'. This in no way addresses the private sector as a cause for increased rentals in private accommodations. The students funded by NSFAS at the UP are affected by the cap and therefore limited in regard to student accommodation. An ever-increasing number of students – in the absence of increased funding to support increased numbers – leads to deteriorating conditions at universities.¹⁹¹

¹⁹⁰ NSFAS Annual Report (n 189 above) 58.

¹⁹¹ Report of the Ministerial Committee for the Review of the Funding of Universities October 2013 143.

Chapter 3: The impact of NSFAS on the HE Sector

3. Introduction

As established in Chapter two, the whole premise of NSFAS, was to expand students' access to financial aid, loan, and bursary purposes, proven administrative and effective management and an appointed board with various committees for checks and balances. As a public entity, NSFAS is also subject to the Public Finance Management Act 1 of 1999 (The PFMA Act), in terms of which NSFAS is listed as a Schedule 3A entity.¹⁹² According to the PFMA Act, a schedule 3A entity is a national public entity. These entities are mandated as an extension of a department to fulfil a specific economic or social responsibility of government.¹⁹³ "The public entities boards have a considerable fiduciary responsibility including the "reasonable protection of the assets and records of the public entity" and prevention of "any prejudice to the financial interests of the state".¹⁹⁴

Although NSFAS has expanded over the years as a loan and bursary scheme that caters for disadvantaged students, the adequacy of funding has been a cause for concern. There has been a significant increase in access to financial aid for such students at a fast growing pace in higher institutions with dwindling on-campus accommodation development.¹⁹⁵ In 2011, the inadequacy of funding was raised by the Ministerial Committee¹⁹⁶ particularly in the area of student accommodation.¹⁹⁷ Furthermore, highlighted by student advocacy through protests facilitated by student organisations such as Student Representative Councils (SRCs).¹⁹⁸ The inadequacy demands further examination into NSFAS and its efficiency in providing access to HE with the checks and balances in place.

¹⁹² National Public Entities: NSFAS is number 86, <https://www.nsfas.org.za/content/mission.html> (accessed 20 October 2023).

¹⁹³ <https://www.nsfas.org.za/content/governance.html#acts3> (accessed 20 October 2023).

¹⁹⁴ n 193 above.

¹⁹⁵ n 64 above, 3.

¹⁹⁶ Senior officials in the Department of Higher Education and Training: Kirti Menon, Brenda Swart, Leonardo Cloete and, more recently, Shai Makgoba; researchers, Dr Iain L'Ange and Michele Berger

¹⁹⁷ n 60 above.

¹⁹⁸ University World News 'What do former student leaders think of #FeesMustFall?' 18 June 2020 <https://www.universityworldnews.com/post.php?story=20200615145222258> (accessed 27 October 2023).

Considering this chapter, it is crucial to note as per chapter one and two, the mission statement with its three elements that describe the existence of NSFAS and the impact on the constituency, that is:

NSFAS exists to provide financial aid to eligible students at public universities; NSFAS identifies eligible students, provides bursaries and collects past student loan repayments to replenish the funds available for future generations of students; and, NSFAS supports access to, and success in, HE and training for students from poor and working-class families who would otherwise not be able to afford to study.¹⁹⁹

This chapter provides a brief overview of the history of student accommodation, the indicators of inadequate funding as well as the shortcomings of NSFAS as a government agency with the external values of ‘accessibility, transparency, affordability, reliability, and authenticity’.²⁰⁰

3.1. The history and situation analysis of student accommodation

The birth of student housing is seen in 1895 residential colleges in Paris as a response to the need of accommodation for disadvantaged students and this later grew to Oxford and Cambridge.²⁰¹ In medieval universities, students would source their own accommodation independently of university control.²⁰² The increase in demand in the 1960s lead to students becoming more assertive in the type and quality of accommodations.²⁰³ The emergence of new universities at that time followed one of three models: non-collegiate dormitory residences, small-scale residences with shared facilities, or reliance on the private housing market in the surrounding areas (private accommodation).²⁰⁴ The current trend within student housing includes residential learning communities, where academics meet accommodation for purposes of student success.²⁰⁵ In terms of the 2011 ministerial report, student residences have four key functions: ‘pedagogical,²⁰⁶ cultural,²⁰⁷ social²⁰⁸ and

¹⁹⁹ <https://www.nsfas.org.za/content/mission.html> (accessed 20 October 2023).

²⁰⁰ <https://www.nsfas.org.za/content/mission.html> (accessed 20 October 2023).

²⁰¹ n 60 above, 14.

²⁰² n 60 above, 14.

²⁰³ n 60 above, 14.

²⁰⁴ n 60 above, 17.

²⁰⁵ n 60 above, 17.

²⁰⁶ A function that relates to teaching, learning within residences.

²⁰⁷ The presence of clubs and societies is stronger in residences.

²⁰⁸ The key to student life is having fun.

leadership function'.²⁰⁹ Student housing plays a pivotal role as a conditioning context for student success.²¹⁰ Xulu-Gama in a research article argues that additional resources and a conducive studying environment offered by Departments of Student Housing in collaboration with various university departments as a way of building living and learning environments guarantees chances of students succeeding socially and academically.²¹¹

The UP as a HAI (covered in chapter two) also experienced rapid increase in students requiring accommodation and it was indicated in 2013 that the situation was steadily worsening.²¹² UP notes the failure of government in building more tertiary institutions as the current ones are experiencing greater strain with limited supply and increased demand.²¹³ TuksRes as commonly known made a submission to its executive in 2018 regarding what it deemed as an accommodation crisis on campus and proposed plans that would assist the institution in bridging the gap of the need due to increased enrolments.²¹⁴ The then Director of Residence Affairs and Accommodation, Prof Roelf Visser, divulged the university's intention in addressing backlog of students who cannot be accommodated in residences by increasing the capacity of POCA's.²¹⁵ At the time, in 2013, the residence capacity was about 8 500 beds for 47 000 enrolled students, which is 18% compared to the normal norm of 30%.²¹⁶ The former Director, acknowledged the shortage and shared that within the next two years, an addition of 1 500 was expected to be built as the university still had land.²¹⁷ The additional private accommodation was dedicated to students that were affected by socio-economic factors and not necessarily their academic standing.²¹⁸

²⁰⁹ Training grounds for student leadership; n 60 above, 18.

²¹⁰ n 59 above, 16.

²¹¹ n 59 above, 16.

²¹² Perdeby 'Campus accommodation crisis being addressed' 18 March 2013 <https://pdby.co.za/campus-accommodation-crisis-being-addressed/> (accessed 29 October 2023).

²¹³ Perdeby (n 212 above).

²¹⁴ n 212 above.

²¹⁵ n 212 above.

²¹⁶ n 212 above.

²¹⁷ n 212 above.

²¹⁸ n 212 above.

3.2. The first indicator of inadequate funding

3.2.1. FeesMustFall protests

The announcements in different universities across the country on the tuition fee increases raised concerns for students in terms of affordability and accessibility.²¹⁹ Students at the time understood that government as the sole funder of most underprivileged students would be adversely affected by the decision taken by higher institutions. Mavunga gives an analysis of the Fees Must Fall movement through a Critical Realism lens,²²⁰ where there is a nexus between culture, structure and agency.²²¹ Culture has been defined in various ways.²²² A modern definition of the concept, however, is provided by the Merriam-Webster Online Dictionary as “the integrated pattern of human knowledge, beliefs, and behaviour that depends upon man’s capacity for learning and transmitting knowledge to succeeding generations.”²²³ Structure²²⁴ refers to the power that institutions have to direct social activities, social structures have the ability to form associations among positions, practices and roles.²²⁵ Agency simply means what our actions are driven by, it is the vehicle that shapes human patterns as provided for by institutions.²²⁶ In the fees must fall movement, through agency, structures influenced the events that took place and therefore created culture characteristics.²²⁷ The driving force was the hankering of free HE, with influences from structures such as Student Representative Councils (SRCs), student political organisations,²²⁸ university executives and government departments that led to the birth of further slogans and movements such as #OutsourcingMustFall; #EndRapeCulture and #PatriarchyMustFall.²²⁹

²¹⁹ Reference to footnote 75 above.

²²⁰ A qualitative multi-method research model. G Mavunga ‘#FeesMustFall Protests in South Africa: A Critical Realist Analysis of Selected Newspaper Articles’ (2019) 7(1) *Journal of Student Affairs in Africa* 82.

²²¹ Mavunga (n 220 above) 84.

²²² JC Mubangizi ‘A South African Perspective on the Clash between Culture and Human Rights, with Particular Reference to Gender-Related Cultural Practices and Traditions’ (2012) 13 *Journal of International Women’s Studies* 34.

²²³ Mubangizi (n 222 above) 34.

²²⁴ We are because we belong.

²²⁵ n 220 above, 83.

²²⁶ n 220 above, 83.

²²⁷ n 220 above, 84.

²²⁸ South African Students’ Congress (SASCO); Democratic Alliance Students’ Organisation (DASO) and the Economic Freedom Fighters Students’ Command (EFFSC).

²²⁹ n 220 above, 83.

The FeesMustFall movement was named newsmaker of the year in 2015 by the National Press Club.²³⁰ The club chairman indicated that the decision was unanimous as the movement was a game changer in the tertiary education system.²³¹ The birth of the movement can be attributed to the April 2015 protest regarding the statue of Cecil John Rhodes at the University of Cape Town.²³² The protest by Chumani Maxwele's realised the individual student activism against what was deemed a colonial symbol.²³³ The Rhodes Must Fall depicted what is deemed as fallism, the term indicates within the movement power and unity, the fall of an old era and the rise of a new one.²³⁴ The wave of student protests that began from Rhodes Must Fall seeped into the University of Witwatersrand after a 10,5% increase in the tuition fees for 2016, various other universities such as UCT, Rhodes University initiated similar protests in solidarity to the increase in fees and a call for free HE.²³⁵ The protests spread to Stellenbosch and UP with demands that also included student housing shortages, ²³⁶ quality accommodation, the removal of academic exclusions and low tuition and accommodation fees.²³⁷ The proposed fee increase for registration at the UP was from R 5000 - R 7500 for SA students, R5000 – R20000 for Southern African Development Community (SADC), and R5000 –R40000 for non-SADC.²³⁸ This came with much disapproval from the SRC and lead to mass meetings and demands that were proven unfruitful.²³⁹ University students from across Gauteng province marched to the Union Buildings on the 23rd of October 2015 to be addressed by the then President of South

²³⁰ Independent Online (IOL) 'FeesMustFall' newsmaker of the year 9 March 2016 <https://www.iol.co.za/capetimes/news/feesmustfall-newsmaker-of-the-year-1995717>. (accessed 25 October 2023).

²³¹ IOL (n 230 above).

²³² R Hodes 'Briefing Questioning 'Fees Must Fall' (2016) 116/462 *African Affairs* 142; M Ndlovu 'Fees Must Fall: A nuanced observation of the University of Cape Town, 2015–2016' (2017) 31(3-4) *Agenda* 128; E Mutekwe 'Unmasking the ramifications of the fees-must-fall conundrum in Higher Education institutions in South Africa: A critical perspective' (2017) 35(2) *Perspectives in Education* 142; n 208 above, 81; S Booysen *Fees Must Fall: Student Revolt, Decolonisation and Governance in South Africa* (2016) 3. n 220 above, 81.

²³³ Hodes (n 232 above) 148; African Arguments 'Fallism's Faultlines: The Paradoxes of "Fees Must Fall"' 16 June 2021 <https://africanarguments.org/> (accessed 25 October 2023).

²³⁴ Global Citizen 'South Africa's Student Protests: Everything to Know About a Movement That Goes Back Decades' 8 April 2021 <https://www.globalcitizen.org/en/content/south-africa-student-protests-explained/> (accessed 25 October 2023).

²³⁵ Hodes (n 232 above) 140.

²³⁶ <https://www.sahistory.org.za/article/student-protests-democratic-south-africa> (accessed 25 October 2023).

²³⁷ S Nomvete & J Mashayamombe 'South Africa's Fees Must Fall: The Case of #UPrising in 2015' (2019) 50 *South African Review of Sociology* 78.

²³⁸ Nomvete & Mashayamombe (n 238 above) 78.

Africa, Mr Jacob Zuma.²⁴⁰ The premise of the call for free HE came from the Constitution and the Freedom Charter that forms part of the African National Congress (ANC) documents.²⁴¹ The Freedom Charter was adopted at the Congress of the People in Kliptown 26 June 1955 and advocates for governance by the people, equal rights and accessibility to HE.²⁴² This was deemed by Prof Cloete as false prophets within the narrative of free HE.²⁴³ Protests came to an end following the announcement of a 0% fee increase in 2016 by the then President, Mr Jacob Zuma.²⁴⁴

3.3. The Aftermath of Fees Must Fall

After the student protests in 2015, on the 14th of January 2016 a Commission of Inquiry into Higher Education and Training was appointed by the then President, Mr Jacob Zuma.²⁴⁵ The commission was appointed in terms of section 84(2)(f)²⁴⁶ of the Constitution.²⁴⁷ The commission's main mandate was to make findings into the feasibility of free HE in South Africa and make recommendations accordingly.²⁴⁸ The Chairperson of the Council on Higher Education, Professor Themba Mosia, and Vice-Principal: Student Affairs of the University of Pretoria and Dr. Genevieve Simpson, Senior Manager: Research at the Council were the specialists appointed to present to the evidence leaders and commissioners.²⁴⁹ The commission was tasked with dissecting feasibility of free HE, feasibility was looked at from a broader spectrum.²⁵⁰ Various submissions were made and most notably, the submission by the SLSJ (referred to in chapter one).²⁵¹ The basis of the SLSJ submission was the constitutional right to education and reference to international law (article 26 of the UDHR) and article

²⁴⁰ Mail & Guardian '#FeesMustFall takes fight to Union Buildings' 23 October 2015

<https://mg.co.za/article/2015-10-23-sas-students-take-on-union-buildings/>

²⁴¹ The Commission of Inquiry into Higher Education and Training (The Fees Commission), Written Submissions on Behalf of Student for Law and Social Justice (SLSJ).

²⁴² African National Congress 'The Freedom Charter' 26 June 1955

<https://www.anc1912.org.za/the-freedom-charter-2/> (accessed 25 October 2023).

²⁴³ Professor Nico Cloete 'Free Higher Education? Why it is not possible in SA. Brilliant analysis!' 28 September 2016 <http://www.fin24.com/BizNews/free-higher-education-why-its-not-possible-in-sa-brilliant-analysis-20160928> (accessed 27 October 2023).

²⁴⁴ n 238 above, 88.

²⁴⁵ n 75 above, 26.

²⁴⁶ (2) The President is responsible for—(f) appointing commissions of inquiry.

²⁴⁷ n 75 above, 26.

²⁴⁸ n 75 above, 26.

²⁴⁹ n 75 above, 28.

²⁵⁰ n 75 above, 28.

²⁵¹ n 241 above.

13(1)&(2)(c) of the CESC. ²⁵² The SLSJ suggested a sliding scale model for funding and made recommendations in this regard. ²⁵³ The sliding scale model seeks to look at students individually and not as a collective, taking into account their personal circumstances, this includes any form of disadvantage and socio-economic disparity. ²⁵⁴

The UP in its submission supported the SLSJ's sliding scale model and further suggested that student's household income should determine the tuition fees charged. ²⁵⁵ This would mean that students would qualify through a means test. ²⁵⁶ The UP is in opposition to a regulated fee model as it would not take into account the different university fee costs and some universities have policies on subsidising expensive programmes or disadvantaged students. ²⁵⁷ Affordability remains the main barrier to access HE for majority of students, the SLSJ believes that subsidisation by governments without due regard to the constitution and the needs of the students within relevant institutions. ²⁵⁸ Disproportionately advantages the wealthy who are a minority in society and are majority registered students, without consideration of the available resources. ²⁵⁹ Availability and accessibility are put forward as the right to education should be progressively realised as a constitutional and international right. ²⁶⁰ The SLSJ acknowledges NSFAS and raises concerns regarding its functioning and effectiveness and requests a full investigation into its capabilities and governance, this includes oversight mechanisms. ²⁶¹ It is the sole state agency that ensures the right to further education being progressively available and accessible. ²⁶²

²⁵² n 241 above, 2 & 17.

²⁵³ n 241 above, 2.

²⁵⁴ n 241 above, 35.

²⁵⁵ n 75 above, 167.

²⁵⁶ n 75 above, 167.

²⁵⁷ n 75 above, 167.

²⁵⁸ n 241 above, 35.

²⁵⁹ n 241 above, 35.

²⁶⁰ n 241 above, 2.

²⁶¹ n 241 above, 39.

²⁶² n 241 above, 39.

3.4. The second indicator of inadequate funding: The shortcomings within a supposed sustainable financial aid scheme (NSFAS)

3.4.1 Continued student protests

Additional student protests are seen following the announcement made by NSFAS regarding the capping of student accommodation to R 45 000 in a bid to prevent what it believes to be price fixing within student accommodation.²⁶³ The UP saw dozens of NSFAS students camping outside the Department of Residence Affairs and Accommodation (TuksRes) in Hatfield, Pretoria.²⁶⁴ The students were seated on mattresses and demonstrating using placards, their demand was for the removal of the NSFAS cap as it prevented access to on-campus and off-campus student accommodation.²⁶⁵ The SRC President at UP, Njabulo Sibeko, indicated that student accommodation near the UP would cost on average R60 000 per annum and that the capped amount is not enough.²⁶⁶ The SRC met with university management and all five of their proposed solutions were rejected hence they resorted to the protest to show the severity of the lack of student accommodation.²⁶⁷ Sibeko further reiterated that the cap could only afford accommodation that is far from the UP and that students were sleeping in libraries, study centres and petrol stations.²⁶⁸ In a response by UP spokesperson Rickus Delport, the university did apply for an exemption for the student accommodation cap which was rejected by NSFAS.²⁶⁹

NSFAS then releases a statement after identifying a crisis within student accommodation because of the cap.²⁷⁰ The media statement asserts consultation with South African Union of Students (SAUS) to mitigate these challenges considering the commencement of academic classes.²⁷¹ NSFAS management and SAUS leadership

²⁶³ <https://www.news24.com/news24/southafrica/news/nsfas-intervenes-after-students-protest-over-its-r45-000-housing-bursary-cap-20230309> (accessed 23 October 2023).

²⁶⁴ <https://www.sowetanlive.co.za/news/south-africa/2023-02-17-university-of-pretoria-students-protest-over-nsfas-accommodation-allowance/> (accessed 23 October 2023).

²⁶⁵ n 264 above.

²⁶⁶ n 264 above.

²⁶⁷ n 264 above.

²⁶⁸ n 264 above.

²⁶⁹ n 264 above.

²⁷⁰ NSFAS media statement. [https://www.nsfas.org.za/content/media-releases/NSFAS%20TO%20INTERVENE%20ON%20ONGOING%20STUDENT%20ACCOMMODATION%20CRISIS%20\(002\).pdf](https://www.nsfas.org.za/content/media-releases/NSFAS%20TO%20INTERVENE%20ON%20ONGOING%20STUDENT%20ACCOMMODATION%20CRISIS%20(002).pdf)

²⁷¹ NSFAS (n 270 above).

agreed in a meeting held on the 6th of March 2023 that SAUS would assist in retrieving information of students that are without accommodation.²⁷² NSFAS would consult universities to speed up the process and identify alternative accommodations within the capped amount.²⁷³ Following its rejection, UP maintains that the financial burden has shifted to students and the university, which are already under financial strain.²⁷⁴ UP has made available a list of accredited private accommodation that are within the NSFAS cap and will continue to engage private providers to negotiate favourable rental amounts.²⁷⁵

3.4.2. Lack of engagement from the NSFAS with USAF

The Minister of Higher Education, Science and Innovation, Dr Blade Nzimande released a statement on the 24th of June 2022 on the way forward regarding NSFAS.²⁷⁶ In the statement, it was alluded that there would be proactive steps taken for 'NSFAS funded student accommodation in order to ensure value for money – through standardizing the cost and quality by grading student accommodation, thus paying a standard rate based on the grading of each type of accommodation'.²⁷⁷ This is after challenges were noted with the student accommodation sector that include quality, availability and safety, to challenges on how allowances for accommodation are being claimed for and used.²⁷⁸ The minister asserts that there has been numerous consultations with students, student leadership bodies, educational institutions, and accommodation providers and student accommodation remains a huge challenge that includes university owned residences and private accommodation.²⁷⁹

The insufficiency of university owned beds and quality of accommodation are noted as challenges.²⁸⁰ In addition to the challenges, the unregulated accommodation increases for private accommodation poses a serious threat.²⁸¹ Student

²⁷² n 270 above.

²⁷³ n 270 above.

²⁷⁴ n 270 above.

²⁷⁵ n 270 above.

²⁷⁶ Statement by the Minister of Higher Education, Science and Innovation, Dr Blade Nzimande on the 2022 National Student Financial Aid Scheme (NSFAS) funding.

²⁷⁷ Statement by the Minister of Higher Education, Science, and Innovation (n 276 above)

²⁷⁸ n 276 above, 5.

²⁷⁹ n 276 above, 5.

²⁸⁰ n 276 above, 5.

²⁸¹ n 276 above, 6.

accommodation increased in 2020 from R 33 950 to R 41 714 per annum in 2022.²⁸² In 2022, accommodation application of caps stabilised the average accommodation cost to an estimated R 24 125.²⁸³ NSFAS would then host a summit in Bloemfontein from 27 to 28 June 2022 for engagement purposes with relevant stakeholders regarding the challenges and possible solutions that include regulation and centralisation of funding norms and standards for student accommodation across the Post-School Education Training (PSET) system.²⁸⁴ After the two day summit, NSFAS would then develop a student accommodation framework that is sustainable and assist in overcoming the challenges faced by student accommodation.²⁸⁵

The USAF released a media statement in 2023 titled: *Key challenges created by the NSFAS place universities at risk of instability and being plunged deeper into debt.*²⁸⁶ The USAF board comprising of all 26 Vice-Chancellors of member universities has tried to have engagements with the Minister and NSFAS but to no avail.²⁸⁷ Concerns were levied in a meeting with the Minister on the 3rd of March 2023, followed by an official communication requesting the withdrawal of the NSFAS policy as budgets had already been finalised for the year. USAF believes that the cap will destabilise institutions, with over R 700 million in student debt that will be accumulated.²⁸⁸ Although, the USAF board supports that the implementation of policies can be limited by available funding, it maintains that such limitations imposed by NSFAS through the accommodation allowance could bring HE to a standstill.²⁸⁹ USAF in the statement note the following:

As NSFAS' student accommodation capping remains unresolved, students continue to be levied full accommodation fees, plunging them into debt that will result in them being blocked from registering in 2024 at a huge risk to the sector. The Board has advised NSFAS

²⁸² n 276 above, 6.

²⁸³ n 276 above, 6.

²⁸⁴ n 276 above, 6.

²⁸⁵ n 276 above, 6.

²⁸⁶ USAF 'Key challenges created by the NSFAS place universities at risk of instability and being plunged deeper into debt' 05 August 2023 https://www.usaf.ac.za/wp-content/uploads/2023/08/key_challenges_created_by_nsfas_place_universities_at_risk_of_instability_and_being_plunged_deeper_into_deb.pdf (accessed 18 October 2023)

²⁸⁷ <https://www.usaf.ac.za/universities-south-africa-board-of-directors/> (accessed 23 October 2023).

²⁸⁸ USAF (n 286 above) 2.

²⁸⁹ n 286 above, 2.

that due diligence should be followed in the formulation or revision of the appropriate policy on the capping of student accommodation fees. It is imperative for NSFAS to consider the geographic, social, and economic contexts of each university in such an exercise. A one-size-fits-all will inevitably create key challenges for the university sector.²⁹⁰

The capping of student accommodation should be dealt with decisively with consultations of various HE institutions. The blanket approach by NSFAS leaves marginalised students at a disadvantage due to the limited access to HE that comes with the capping of student accommodation. A gradual phased in method with the relevant stakeholders could mitigate student debts and possible large scale student drop-outs.

3.4.3. The process of revoking funding from students that were funded in the beginning of the year

USAF in its statement in August noted the process of ‘defunding of students during the academic year of 2023’.²⁹¹ The Minister, Dr Blade Ndzimande in September 2023 announced that the department had indicated that 20, 530 students did not progress and subsequently defunded.²⁹² NSFAS is said to have received 175, 426 appeals from students that were wrongfully defunded.²⁹³ From the group of appeals 63,331 were approved and reinstated accordingly.²⁹⁴ Dr Ndzimande stipulates that funding is based on academic eligibility and that the delay comes from institutions that do not provide the required data that leads to disqualification of students.²⁹⁵ USAF believes that such practices causes challenges for students and universities as no reasoning or appeal mechanisms are in place for students, this frustrates students and staff members and causes instability within universities.²⁹⁶

3.4.4. Disbursements of student allowances directly to students

NSFAS announced that as of June 2023, all university funded students would receive their allowances through the NSFAS Bank Account, this comes as part of digital

²⁹⁰ n 286 above, 2.

²⁹¹ n 286 above, 1.

²⁹² Sowetan Live ‘Over 20,000 students lose NSFAS funding’ 20 September 2023
<https://www.sowetanlive.co.za/news/south-africa/2023-09-20-over-20000-students-lose-nsfas-funding/>

²⁹³ Sowetan Live (n 292 above).

²⁹⁴ n 292 above.

²⁹⁵ n 292 above.

²⁹⁶ n 292 above.

transformation within the agency.²⁹⁷ Four companies were contracted in assisting in the disbursements of funds directly to students, these companies are Coinvest,²⁹⁸ eZaga,²⁹⁹ Norraco³⁰⁰ and Tenet Technology.³⁰¹ Universities are on-boarded by either of the four companies.³⁰² NSFAS met on the 9th of July 2023 with the leadership of SASCO and followed up with a meeting with the South African Union of Students (SAUS).³⁰³ Further engagements were made with SRCs and University management in relation to the direct payments.³⁰⁴ There were delays in the disbursements of funds to students as per their new method, in their statement, reference was made to teething problems that might arise in isolated incidents.³⁰⁵ The USAF board advised NSFAS to have this new system implemented in a gradual approach within universities.³⁰⁶ USAF warned that the agency would be at risk of making payments to students that have deregistered or stopped attending lectures since the system is not integrated into university systems.³⁰⁷ At the time of USAF's statement, 14% of students which is more than 50 000 still needed to be on-boarded to the new system, this leaves students in private accommodation without rent money and threatened with eviction.³⁰⁸ Which further places universities under jeopardy as they have to assist such students whose contractual obligations exclude them.³⁰⁹

3.4.5. Corruption and maladministration

Earlier in 2023, the Special Investigating Unit (SIU) released a statement that more than R 5 billion was allocated to students that did not qualify to be funded by NSFAS.³¹⁰

²⁹⁷ <https://www.nsfas.org.za/content/mastercard.html> (accessed 27 October 2023).

²⁹⁸ <https://www.coinvest.africa/> (accessed 27 October 2023).

²⁹⁹ <https://www.ezaga.co.za/> (accessed 27 October 2023).

³⁰⁰ <https://www.norraco.co.za/> (accessed 27 October 2023).

³⁰¹ n 297 above; <https://tenetech.co.za/nsfas/>

³⁰² n 297 above.

³⁰³ NSFAS 'NSFAS goes full throttle with accelerated processing of student allowances' 16 July 2023 <https://www.nsfas.org.za/content/media.html> (accessed 27 October 2023).

³⁰⁴ NSFAS 'NSFAS statement on defunded students and direct payments' 10 July 2023 <https://www.nsfas.org.za/content/media-releases/NSFAS%20Media%20Statement%20Defunded%20students%20and%20Direct%20Payments%2010%2007%202023.pdf> (accessed 27 October 2023).

³⁰⁵ n 286 above.

³⁰⁶ n 286 above, 1.

³⁰⁷ n 286 above, 1.

³⁰⁸ n 286 above, 1.

³⁰⁹ n 286 above, 1.

³¹⁰ SIU 'NSFAS investigation' 18 April 2023 <https://www.siu.org.za/siu-preliminary-investigations-show-that-more-than-r5-billion-nsfas-funds-was-possibly-assigned-to-students-who-did-not-qualify-for-funding/> (accessed 27 October 2023).

The SUI presented their findings to the Parliament's Standing Committee on Public Accounts (SCOPA).³¹¹ The SIU is in terms of Proclamation R88 of 2022 authorised to investigate allegations of corruption and maladministration in the affairs of NSFAS, and to recover any financial losses suffered by the State through corruption and negligence.³¹² The investigation revealed that there were 76 institutions and more than 40 000 students that were erroneously funded.³¹³ The SIU has since facilitated refunding to the tune of R38, 3 million to NSFAS and uncovered that NSFAS failed to reconcile the funds disbursed to institutions and the list of funded students.³¹⁴ This lead to overpayments and underpayments that date back to 2017.³¹⁵ NSFAS in their media statement welcomed the SIU findings and stated that when the SIU commenced its work, the agency had already started defunding ineligible students.³¹⁶ Similarly, an amount of R14 million was erroneously disbursed to a student, Ms Sibongile Mani who was registered with the WSU and funded by NSFAS.³¹⁷ WSU had appointed Intellimali as a service provider in the administration of allowance payments.³¹⁸ The director called the maladministration an absurd glitch caused by system error in court.³¹⁹ NSFAS remains responsible regardless of third party contractual agreements. This example is seen in the decision to remove the Chief Executive Officer (CEO) of NSFAS, Andile Nongogo, this comes after a report from Werkmans Attorneys revealed that Nongogo had a relationship with one of the companies appointed to run the direct payment system.³²⁰ The former CEO was placed on special leave following protests regarding the direct payment system to allow for proceedings to continue with

³¹¹ n 310 above.

³¹² n 310 above.

³¹³ n 310 above.

³¹⁴ n 310 above.

³¹⁵ n 310 above.

³¹⁶ NSFAS 'SIU findings on unduly funded beneficiaries' 19 April 2022 https://www.nsfas.org.za/content/media-releases/MEDIA%20STATEMENT_SIU%20FINDINGS%20ON%20UNDULY%20FUNDED%20BENEFICIARIES%20.pdf (accessed 25 October 2023)

³¹⁷ NSFAS' Statement on the conviction of Ms Mani who was erroneously paid R14 million by Intellimali- A private company disbursing funds on behalf of the Walter Sisulu University' 11 February 2022 <https://www.nsfas.org.za/content/media-releases/2022.02.11.NSFAS%20sets%20the%20record%20straight%20on%20R14%20million%20confusion..pdf> (accessed 27 October 2023).

³¹⁸ n 317 above.

³¹⁹ Times Live '2022 in review: Sibongile Mani stole NSFAS money and sparked controversy' 27 December 2022 <https://www.timeslive.co.za/news/south-africa/2022-12-27-2022-in-review-sibongile-mani-stole-nsfas-money-and-sparked-controversy/> (accessed 27 October 2023)

³²⁰ IOL 'Embattled NSFAS CEO Andile Nongogo fired. Here's why' 24 October 2023 <https://www.iol.co.za/news/education/embattled-nsfas-ceo-andile-nongogo-fired-heres-why-4e4f2925-a54d-4e06-873f-79996e22b965> (accessed 27 October 2023).

interference, the report later recommended immediate dismissal.³²¹ The investigation revealed that Nongogo approved an overpriced amount of R37 million for a rebranding campaign, appointed Futgenx Technologies as an Information Communications Technology (ICT) specialist for NSFAS and paid it R3 million despite failing to deliver the required services.³²² He was also reported by the Organisation Undoing Tax Abuse (Outa)³²³ to the South African Institute of Chartered Accountants (SAICA).³²⁴ Outa revealed the irregularities in 2022 and warned that the scheme would end up failing, costing taxpayers a lot of money and inevitably disadvantaging underprivileged students.³²⁵ Outa's warnings were disregarding, and the society was threatened with legal action by the Minister of HE.³²⁶ This comes in the wake of students being financial excluded³²⁷ and not able to complete their studies due to the lack of finances.³²⁸

3.5. Conclusion

Although there was great need for an expanded loan and bursary scheme, there was little knowledge in the magnitude of new applicants that would enter the system. At the time of inception of NSFAS, the fast growth of enrolments and need for funding desired long-term planning. The fallouts are seen in the various students' protests and decisions that follow from the government agency. This includes among others capping of student accommodation which forms a pivotal part of access to HE; preventing access to HE without the consultation of USAF; abrupt change in disbursements of funds to students in various institutions; funding of ineligible students; corruption and maladministration that threatens that stability of HE institutions.

³²¹ n 320 above.

³²² n 320 above.

³²³ A prominent civil society watchdog in South Africa.

³²⁴ n 320 above.

³²⁵ n 320 above.

³²⁶ n 320 above.

³²⁷ NorthCliff Melville' Protests at Wits over student exclusions based on financial grounds' 2 March 2023 <https://northcliffmelvilletimes.co.za/373183/protests-at-wits-over-student-exclusions-based-on-financial-grounds/> (accessed 27 October 2023).

³²⁸ n 75 above, 105.

Chapter 4: Conclusions and Recommendations

4. Introduction

In this last chapter, conclusions and recommendations are made bearing in the mind the adequacy of funding by NSFAS and its impact in the area of student housing in its tenure particularly with UP as a case study. All three chapters have laid a foundation of the government agency, with an intrinsic look at its adequacy and sustainability, its impact negative and positive. As a result of the negative impact noted in chapter three specifically. The below propositions are made:

4.1. The establishment of additional legal framework on student accommodation

Since 1994, Universities were unable to construct student residences which resulted in major backlog.³²⁹ The Ministerial Committee (as discussed in chapter three) on Student Housing established by the DHET³³⁰ in 2010, was acquainted with the importance of the provision of accessible, decent, safe and academically conducive student accommodation.³³¹ The discourse on student housing could be attributed to the Stakeholder Summit as indicated in chapter two.³³² There was no clear and coherent student housing regulations at either national, regional or local levels.³³³

This dearth of policy and regulation should be of particular concern since, as some international literature has shown, a lack of planning and oversight can lead to serious unintended and negative consequences.³³⁴

The South African housing policy and regulatory framework exist in general provision for the housing of citizens.³³⁵ There is almost complete silence in law regarding student housing both in the Constitution and Housing policies, this also includes the HE Act 101 of 1997 and the National Plan for HE (NPHE).³³⁶ This is noted at the Stakeholder

³²⁹ n 64 above, 3.

³³⁰ Mentioned in full in chapter 1 and 2.

³³¹ n 64 above, 3.

³³² n 60 above, 25.

³³³ n 60 above, 25; n 64 above, 3.

³³⁴ n 60 above, 25.

³³⁵ n 64 above, 3.

³³⁶ Gives effect to the vision for the HE transformation *Education White Paper 3 – A Programme for the Transformation of the Higher Education System*; n 56 above, 3.

Summit under emerging issues and policy implications.³³⁷ The minimum norms and standards of student accommodation policy in 2015 although delayed tries to remedy the gap that exists in student accommodation.³³⁸ The policy however, deals with the issues of infrastructure, living learning and listening values and social integration.³³⁹ The policy addressed for example that room sizes should 8ms for a single room and a double room should be 14ms, that facilities such as IT/TV rooms, common areas and study areas should be within the residences bearing in mind the capacity.³⁴⁰ And occupational health and safety in regard to bathrooms and overall maintenance of residences.³⁴¹ There is no legal framework that speaks to student housing as a discipline that requires a financial aspect, this also includes contractual obligations within student housing. The increase in student accommodation fees mostly in private accommodation comes from an open-ended industry that includes the private sector. In a newspaper article, the Supreme Court of Law ruled student accommodation does not constitute a home in an eviction process.³⁴² Courts must define student accommodation and give parameters in law when regulatory framework can assist.

4.2. The establishment of Purpose-Built Government Accommodation (PBGA) by the DHET

As discussed in chapter two, the private and public relationship that the government sort to establish by means of incorporating PBSA in a bid to alleviate the shortage in student accommodation has led to the NSFAS cap. The call for the reconsideration of the public-private agreement between Government and private providers of accommodation. The ever-increasing accommodation fees has brought about a breakdown in government's plan of involving the private sector as a role player within student accommodation. To ensure progressive realisation of the right to further education, it is recommended that the state explores the possibility of building or purchasing its own student accommodation for disadvantaged students. It will curb

³³⁷ n 60 above.

³³⁸ n 45 above.

³³⁹ <https://www.up.ac.za/media/shared/359/tuksresguide2021-final.zp203225.pdf> (accessed 30 October 2023).

³⁴⁰ n 45 above.

³⁴¹ n 45 above.

³⁴² Business Day 'SCA rules that student accommodation is not a 'home' in an eviction procedure' 04 July 2023 <https://www.businesslive.co.za/bd/national/2023-07-04-sca-rules-that-student-accommodation-is-not-a-home-in-an-eviction-procedure/> (accessed 30 October 2023).

government spending on accommodation and possibly redirect the funds to a rapidly increasing sector of HE. NSFAS can expand as intended from its Bill and ensure that equality and growth of the economy by producing quality graduates is met. The need for legislation is highlighted in this recommendation as well, the constitution through the Housing Act mandates the state to progressively realise the right to adequate housing.³⁴³ If the same could be facilitated for student housing, government would need to realise the right in a progressive manner.

4.3. The consideration of the redistributive tuition fee model/sliding scale approach

The redistributive tuition fee model and or sliding scale as a recommended approach is based on the students' family's disposal income and can afford students a differential pricing of HE.³⁴⁴ A differential pricing means that students from disadvantaged homes can be charged less for tuition and can only pay what they can afford.³⁴⁵ In this model, financial aid would be able to keep tuition consistency and afford more students that are less fortunate to gain access to student accommodation as envisaged by the NCHE as indicated in chapter two. And in addition, curb corruption. The UP of as indicated in chapter three supports this fee model and believes that government can have a means test in place for eligible students. To avoid funding ineligible students, NSFAS can work together with relevant divisions for example the South African Revenue Service (SARS), the Department of Labour, SIU (discussed in chapter three) etc and verify applicants accordingly.

4.4. Lifestyle Audits

An Australian writer, Karl Kraus describes corruption to be worse than prostitution, prostitution affects a person's morals while corruption endangers the morals of a nation.³⁴⁶ Corruption not only endangers the morals of a nation but is done in secret and benefits those in power, these transactions are not easily detectable.³⁴⁷ However,

³⁴³ K Mashiane & K Odeku 'Analysis of the impediments to the realisation of the right to access to adequate housing in South Africa' (2021) 36(1) *Journal of Social Development in Africa* 153

³⁴⁴ Wangenge-Ouma & Cloete (n 188 above) 916.

³⁴⁵ n 188 above, 916.

³⁴⁶ N Buitendag 'Lifestyle audits in South Africa –overrated or X-factor?' (2023) 30 *Journal of Financial Crime* 1078.

³⁴⁷ Buitendag (n 346 above) 1081.

lifestyle audits are a warning mechanism that can assist with detecting a person's lifestyle versus what they earn. A lifestyle audit in a nutshell is the comparison of a person's source of income and their lifestyle by means of various tests, these tests ensure that an individual is living within their legal means.³⁴⁸ President Cyril Ramaphosa in 2017 made mention of the fight against corruption after his appointment, he maintained that corruption should be fought just as hard as inequality, poverty and unemployment in South Africa.³⁴⁹ Mkhize is of the opinion that international standards should be employed in the realisation of lifestyle audits.³⁵⁰ The implementation of lifestyle audits would help curb the increase in corruption within NSFAS.

4.5. Conclusion

NSFAS plays a key role in student accommodation. The decisions discussed in chapter three shows a decline in the adequacy and sustainability of the financial aid scheme. The capping of student accommodation poses a threat to access to HE for majority of government funded university students, this is not unique to the UP. Many students depend on residence accommodation which leads to academic success. Residences provide access to food, internet connection, computer facilities, recreational spaces and social integration that form part of student success.³⁵¹ The NSFAS cap means that most students would need to find cheaper accommodations that do not provide the necessary support. NSFAS funded students cannot afford rental amounts, laptops, and certain necessities. Consultations must be made with relevant stakeholders such as USAF for the betterment of students and HE institutions. The capping of student accommodation spiralled into resolutions to disburse funds directly to students instead of institutions, delay in the said payments to students, revoking funding in the middle of the academic year and corruption through the very systems created by the agency. The culture of protest through the Fees Must Fall

³⁴⁸ n 346 above, 1081.

³⁴⁹ n 346, 1079.; Africa News 'Ramaphosa pledges to fight corruption' 09 December 2019 <https://www.africanews.com/2017/12/21/ramaphosa-pledges-to-fight-corruption/> (accessed 30 October 2023).

³⁵⁰ M Nkosingiphile 'Implementing Lifestyle Audits in Local Government to Bolster the Anti-Corruption Project in South Africa' (2022) 12(4) *African Journal of Development Studies* 219.

³⁵¹ <https://www.up.ac.za/student-accommodation/article/256215/residences-to-choose-from> (accessed 30 October 2023).

movement has sparked similar reactions in students relating to the NSFAS cap. Student advocacy through student organisations are at the forefront in fighting for the right to HE. There remains a need for NSFAS to turn the tide as elements of corruption and anarchy prevail within the government agency. This is seen in decisions that adversely affect previously disadvantaged students as mandated by our constitution. Recommendations on legal framework on student accommodation, PBGA, a sliding scale method can be used as possible long-term solutions. Lastly, to crackdown on corruption will require greater measures to be put in place in consultation with the SIU by means of lifestyle audits.

Bibliography

Booyesen, S *Fees Must Fall: Student Revolt, Decolonisation and Governance in South Africa* (Wits University Press 2016)

Buitendag, N 'Lifestyle audits in South Africa –overrated or X-factor?' (2023) 30 *Journal of Financial Crime* 1078.

Chenwi, L 'Unpacking "Progressive realization", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance' (2013) *De Jure* 742

De Villiers, P 'Higher Education and the Poor in South Africa' (2011) Department of Economics, University of Stellenbosch

Dugger, CE (2007) 'Rights waiting for change: Socio-economic rights in the new South Africa' 19 *Florida Journal of International Law* 197

Hodes, R 'Briefing Questioning 'Fees Must Fall' (2016) 116/462 *African Affairs* 142.

Jackson, R 'The National Student Financial Aid Scheme of South Africa (NSFAS): How and Why it Works' (2002) 11 (1) *The Welsh Journal of Education* 82

Langa, P 'Transformative Constitutionalism' (2006) 17 *Stell LR* 351

Madlingozi, T 'Social Justice in a Time of Neo-apartheid Constitutionalism: Critiquing the Anti-black Economy of Recognition, Incorporation and Distribution' (2017) 1 *Stell LR* 123

Mashayamombe, J & Vally, R 'Student Housing and Homelessness: A Paradox of Urban Gentrification in Pretoria's Old East, South Africa' (2020) 51 (3-4) *South African Review of Sociology* 96

Mashiane, K & Odeku, K 'Analysis of the impediments to the realisation of the right to access to adequate housing in South Africa' (2021) 36(1) *Journal of Social Development in Africa* 153

Mavunga, G '#FeesMustFall Protests in South Africa: A Critical Realist Analysis of Selected Newspaper Articles' (2019) 7(1) *Journal of Student Affairs in Africa* 81

Mdepa, W & Tshiwula, L 'Student diversity in South African Higher Education' (2012) 13 *Widening Participation and Lifelong Learning* 24

Mubangizi, JC 'A South African Perspective on the Clash between Culture and Human Rights, with Particular Reference to Gender-Related Cultural Practices and Traditions' (2012) 13 *Journal of International Women's Studies* 42.

Mujuzi, JD 'The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: South Africa's reservations and interpretative declarations' Doctoral Researcher, Civil Society Prison Reform Initiative, Community Law Centre, University of the Western Cape (2007) 42.

Mutekwe E 'Unmasking the ramifications of the fees-must-fall conundrum in Higher Education institutions in South Africa: A critical perspective' (2017) 35(2) *Perspectives in Education* 142

Ndlovu, M 'Fees Must Fall: A nuanced observation of the University of Cape Town, 2015–2016' (2017) 31(3-4) *Agenda* 128.

M Nkosingiphile 'Implementing Lifestyle Audits in Local Government to Bolster the Anti-Corruption Project in South Africa' (2022) 12(4) *African Journal of Development Studies* 219.

Nomvete, S & Mashayamombe, J 'South Africa's Fees Must Fall: The Case of #UPrising in 2015' (2019) 50 *South African Review of Sociology* 78

Ntshoe I & De Villiers, P 'Funding Sources for Public Higher Education in South Africa: Institutional responses' (2013) 31 (2) 71

Ntshoe, I & De Villiers, P 'Steering the South African Higher Education Sector towards transformation Perspectives in Education' (2008) 26 (4) *Perspectives in Education* 21-22.

Styger, A & van Vuuren, GW & Heymans, A 'Government Funding Framework for South African Higher Education Institutions' (2015) 29 (2) *South African Journal of HE* 260

Snyder, H 'Literature review as a research methodology: An overview and guidelines' (2019) 104 *Journal of Business Research* 333.

Tswai E & Netswera, FG 'Student Housing in South Africa- a Conflated Housing Mandate between the State and Higher Education' 2013 3

Wangenge-Ouma, G & Cloete, N 'Financing Higher Education in South Africa: Public funding, non-government revenue and tuition fees' (2008) 22 (4) *SAJHE* 916.

Webb, V 'English as a second language in South Africa's tertiary institutions: a case study at the University of Pretoria' (2002) 21 (1) *World Englishes* 50.

Xulu-Gama, N 'The Role of Student Housing in Student Success: An Ethnographic Account' (2019) 7(2) *Journal of Student Affairs in Africa* 16

Rabin, Y 'Chapter 12: The Many Faces of the Right to Education' in Barak-Erez and Gross (eds) *Exploring Social Rights: Between Theory and Practice* (Hart Publishing, Oxford 2011)

Unpublished: De Villiers, P 'The poor and access to HE in South Africa: The NSFAS contribution, University of Stellenbosch, 2017 1

International Covenant on Economic, Social and Cultural Rights (CESCR), 1996

UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (Article 13 of the Covenant) 8 December 1999

Housing Act 107 of 1997 and its Amendments.

The HE Act 101 of 1997 and its Amendments

The National Student Financial Aid Scheme (NSFAS) Bill, 1999.

National Financial Aid Scheme Act 56 of 1999

Department of Higher Education and Training Republic of South Africa (DHET): *2011 Report on the Ministerial Committee for the Review of The Provision of Student Housing at South African Universities.*

Department of Higher Education and Training Republic of South Africa (DHET): *22-23 April 2010 Report on the Stakeholder Summit on Higher Education Transformation Called by the Minister of HE and Training, Dr Blade Nzimande 19.*

Department of Higher Education and Training Republic of South Africa (DHET): *22-23 April 2010 Report on the Stakeholder Summit on Higher Education Transformation Called by the Minister of HE and Training, Dr Blade Nzimande 19.*

DHET Frequently Asked Questions (FAQs) 2018: Changes to DHET funding for poor and working-class students in public Higher Education institutions.

Department of Higher Education and Training (DHET) 2018: Frequently Asked Questions: Changes to DHET funding for poor and working-class students in public Higher Education institutions.

Department of Higher Education and Training Republic of South Africa (DHET): *Annual report 2020/2021 29.*

Higher Education Act, 1997 (Act NO. 101 of 1997) The Policy on The Minimum Norms and Standards for Student Housing at Public Universities.

Guidelines for the DHET Bursary Scheme for Students at Public Universities 2019 5

Guidelines for the DHET Bursary Scheme for Students at Public Universities 2020

Guidelines for the DHET Bursary Scheme for Students at Public Universities 2021

Higher Education Act 101 of 1997, The Policy on The Minimum Norms and Standards for Student Housing at Public Universities (Hereinafter, the policy on the minimum norms and standards)

Report of the Ministerial Committee for the Review of the Funding of Universities October 2013 143.

NSFAS: *2022 Eligibility Criteria and Conditions for Financial Aid Policy Standard 2022 Academic Year.*

NSFAS: *2023 Eligibility Criteria and Conditions for Financial Aid Policy Standard 2023 Academic Year.*

The Department of Higher Education and Training Republic of South Africa (DHET): *Annual report 2020/2021* 29.

International Finance Corporation, *World Bank Group: 2021 Market Assessment, The Student Housing Landscape in South Africa* Page 11

The Commission of Inquiry into Higher Education and Training (The Fees Commission) 2016 39

The Commission of Inquiry into Higher Education and Training (The Fees Commission), Written Submissions on Behalf of Student for Law and Social Justice (SLSJ)

Statement by the Minister of Higher Education, Science and Innovation, Dr Blade Nzimande on the 2022 National Student Financial Aid Scheme (NSFAS) funding.

Government of the Republic of South Africa v Grootboom [2000] ZACC 19

President of the Republic of South Africa and Another v Hugo 1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC)

Soobramoney v Minister of Health (Kwazulu-Natal) [1997] ZACC 17; 1998 SA 765 (CC)

Africa News 'Ramaphosa pledges to fight corruption' 09 December 2019 <https://www.africanews.com/2017/12/21/ramaphosa-pledges-to-fight-corruption//> (accessed 30 October 2023).

African Arguments 'Fallism's Faultlines: The Paradoxes of "Fees Must Fall"' 16 June 2021 <https://africanarguments.org/> (accessed 25 October 2023)

African National Congress 'The Freedom Charter' 26 June 1955 <https://www.anc1912.org.za/the-freedom-charter-2/> (accessed 25 October 2023)

BrieflySpeaking Council on Higher Education 'The National Plan for Higher Education (2001) targets: Have they been met?' <https://www.che.ac.za/> (accessed 2 October 2023)

Business Day 'SCA rules that student accommodation is not a 'home' in an eviction procedure' 04 July 2023 <https://www.businesslive.co.za/bd/national/2023-07-04-sca-rules-that-student-accommodation-is-not-a-home-in-an-eviction-procedure/> (accessed 28 October 2023)

Department of Higher Education and Training Republic of South Africa
<https://www.dhet.gov.za/SitePages/UniversitiesinSA.aspx> 'Universities in South Africa' (accessed 25 July 2023)

IOL 'Embattled NSFAS CEO Andile Nongogo fired. Here's why' 24 October 2023
<https://www.iol.co.za/news/education/embattled-nsfas-ceo-andile-nongogo-fired-heres-why-4e4f2925-a54d-4e06-873f-79996e22b965> (accessed 27 October 2023)

Independent Online (IOL) 'FeesMustFall' newsmaker of the year' 9 March 2016
<https://www.iol.co.za/capetimes/news/feesmustfall-newsmaker-of-the-year-1995717>.
(accessed 25 October 2023)

Global Citizen 'South Africa's Student Protests: Everything to Know about a Movement That Goes Back Decades' 8 April 2021
<https://www.globalcitizen.org/en/content/south-africa-student-protests-explained/>
(accessed 25 October 2023)

News24 'NSFAS intervenes after students protest over its R45 000 housing bursary cap' 09 March 2023 <https://www.news24.com/news24/southafrica/news/nsfas-intervenes-after-students-protest-over-its-r45-000-housing-bursary-cap-20230309>
(accessed 11 August 2023).

NorthCliff Melville' Protests at Wits over student exclusions based on financial grounds' 2 March 2023 <https://northcliffmelvilletimes.co.za/373183/protests-at-wits-over-student-exclusions-based-on-financial-grounds/> (accessed 27 October 2023)

NSFAS Annual Report 2012
<https://www.nsfas.org.za/content/reports/annualreport2012.pdf>. (accessed 9 October 2023) 58.

NSFAS' Statement on the conviction of Ms Mani who was erroneously paid R14 million by Intellimali- A private company disbursing funds on behalf of the Walter Sisulu University' 11 February 2022 <https://www.nsfas.org.za/content/media->

[releases/2022.02.11.NSFAS%20sets%20the%20record%20straight%20on%20R14%20million%20confusion..pdf](#) (accessed 27 October 2023)

NSFAS 'NSFAS goes full throttle with accelerated processing of student allowances' 16 July 2023 [https://www.nsfas.org.za/content/media.htm](#) | (accessed 27 October 2023)

NSFAS 'NSFAS statement on defunded students and direct payments' 10 July 2023 [https://www.nsfas.org.za/content/media-releases/NSFAS%20Media%20Statement%20 Defunded%20students%20and%20 Direct%20Payments%2010%2007%202023.pdf](#) (accessed 27 October 2023)

NSFAS 'SIU findings on unduly funded beneficiaries' 19 April 2022 [https://www.nsfas.org.za/content/media-releases/MEDIA%20STATEMENT SIU%20FINDINGS%20ON%20UNDULY%20FUNDED%20BENEFICIARIES%20.pdf](#) (accessed 25 October 2023)

Perdeby 'Campus accommodation crisis being addressed' 18 March 2013 [https://pdeby.co.za/campus-accommodation-crisis-being-addressed/](#) (accessed 29 October 2023)

Professor Nico Cloete 'Free Higher Education? Why it is not possible in SA. Brilliant analysis!' 28 September 2016 [http://www.fin24.com/BizNews/free-higher-education-why-its-not-possible-in-sa-brilliant-analysis-20160928](#) (accessed 27 October 2023)

SUI 'NSFAS investigation' 18 April 2023 [https://www.siu.org.za/siu-preliminary-investigations-show-that-more-than-r5-billion-nsfas-funds-was-possibly-assigned-to-students-who-did-not-qualify-for-funding/](#) (accessed 27 October 2023)

Times Live '2022 in review: Sibongile Mani stole NSFAS money and sparked controversy' 27 December 2022 [https://www.timeslive.co.za/news/south-africa/2022-12-27-2022-in-review-sibongile-mani-stole-nsfas-money-and-sparked-controversy/](#) (accessed 27 October 2023)

United Nations Human Rights Office of the High Commissioner [https://www.ohchr.org/en/human-rights/economic-social-cultural-rights](#) (accessed 25 July 2023)

University of Pretoria, Department of Residence Affairs and Accommodation
<https://www.up.ac.za/student-accommodation/article/256266/private-accredited-accommodation> (accessed 1 August 2023)

University World News 'What do former student leaders think of #FeesMustFall?' 18 June 2020
<https://www.universityworldnews.com/post.php?story=20200615145222258>
(accessed 27 October 2023)

UP website: https://www.up.ac.za/news/post_3128600-nsfas-decision-regarding-cap-on-accommodation (accessed 12 August 2023).

USAF 'Key challenges created by the NSFAS place universities at risk of instability and being plunged deeper into debt' 05 August 2023 https://www.usaf.ac.za/wp-content/uploads/2023/08/key_challenges_created_by_nsfas_place_universities_at_risk_of_instability_and_being_plunged_deeper_into_deb.pdf (accessed 18 October 2023)

<https://www.up.ac.za/student-accommodation#:~:text=With%20an%20extensive%20residential%20community,residential%20university%20in%20South%20Africa>. (accessed 12 August 2023).

<https://www.up.ac.za/media/shared/359/2023/up-accreditation-guideline-for-service-providers.zp222718.pdf> (accessed 12 August 2023)

<https://www.gov.za/documents/higher-education-act> (accessed 12 August 2023).

<https://www.nsfas.org.za/content/governance.html> (accessed 13 August 2023)

<https://republica.co.za/residence/hatfield-square/> (accessed 13 October 2023)

<https://www.staysouthpoint.co.za/pretoria> (accessed 13 October 2023)

<https://www.pwc.co.za/en/publications/the-tipping-point.html> (accessed 28 September 2023)

<https://www.up.ac.za/student-fees/article/2736000/residence-fee> (accessed 13 October 2023)

<https://www.up.ac.za/media/shared/359/2023/tuksres-guide2023.zp230317.pdf> (accessed 13 October 2023)

<https://www.up.ac.za/student-fees/article/2736000/residence-fees> (accessed 13 October 2023)

<https://www.oecd.org/about/> (accessed 16 October 2023).

<https://www.up.ac.za/departments-of-institutional-planning/article/2834454/core-students-statistics> (accessed 20 October 2023)

<https://www.news24.com/news24/southafrica/news/nsfas-intervenes-after-students-protest-over-its-r45-000-housing-bursary-cap-20230309> (accessed 23 October 2023)

<https://www.sowetanlive.co.za/news/south-africa/2023-02-17-university-of-pretoria-students-protest-over-nsfas-accommodation-allowance/> (accessed 23 October 2023)

<https://www.coinvest.africa/> (accessed 27 October 2023)

<https://www.ezaga.co.za/> (accessed 27 October 2023)

<https://www.norraco.co.za/> (accessed 27 October 2023)

<https://tenetech.co.za/nsfas/> (accessed 27 October 2023)

<https://www.up.ac.za/departments-of-institutional-planning/article/2834454/core-students-statistics> (accessed 12 October 2023)

<https://www.sahistory.org.za/article/student-protests-democratic-south-africa>

(accessed 25 October 2023)

<https://www.up.ac.za/student-accommodation/article/256215/residences-to-choose-from> (accessed 30 October 2023).

NSFAS media statement. [https://www.nsfas.org.za/content/media-releases/NSFAS%20TO%20INTERVENE%20ON%20ONGOING%20STUDENT%20ACCOMMODATION%20CRISIS%20\(002\).pdf](https://www.nsfas.org.za/content/media-releases/NSFAS%20TO%20INTERVENE%20ON%20ONGOING%20STUDENT%20ACCOMMODATION%20CRISIS%20(002).pdf) (accessed 27 October 2023)

The Constitution of the Republic of South Africa, 1996