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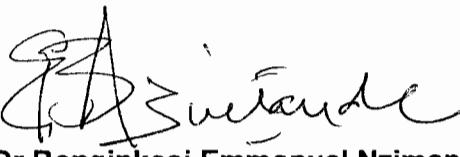
GENERAL NOTICE

NOTICE 1076 OF 2010

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

HIGHER EDUCATION ACT, 1997 (ACT No. 101 OF 1997)

I, Dr Bonginkosi Emmanuel Nzimande, MP, Minister of Higher Education and Training, in terms of section 47(2) of the Higher Education Act, 1997 (Act No. 101 of 1997), publish the report of Dr Vincent Maphai, the Independent Assessor (appointed under section 44 of the same Act) on the investigation conducted at the Tshwane University of Technology, as set out in the Schedule.



Dr Bonginkosi Emmanuel Nzimande, MP
Minister of Higher Education and Training

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

**THE HIGHER EDUCATION ACT, 1997 (Act No. 101
of 1997)**

**REPORT OF THE INDEPENDENT ASSESSOR, DR.
VINCENT MAPHAI TO THE HONOURABLE
MINISTER OF HIGHER EDUCATION AND
TRAINING DR B E NZIMANDE, M.P.**

**INVESTIGATION INTO THE TSHWANE UNIVERSITY
OF TECHNOLOGY
AUGUST 2010**

THE CONTEXT

The Independent Assessor was appointed by the Minister in terms of Chapter 6 of the Higher Education Act, 1997 (Act No 101 of 1997) as amended and was mandated in a letter of 15 June 2010 to conduct an investigation into the affairs of the Tshwane University of Technology (TUT). The Terms of Reference supporting this mandate are detailed in Annexure I. The Minister's intervention was initiated after a lack of sufficient action on the part of the institution following the Sithole Commission of Enquiry which was completed in 2009. The Minister responded on 04 June 2010 announcing his intention to appoint an independent assessor in terms of the Higher Education Act 1997 as set out in sections 44 (1) (a), 45 (b) (i) (ii); (c) and (d). He also announced that a team of specialists in the areas of Governance and Management Structures and Efficiencies, and Financial Management Systems would be appointed. Details of the team and the finalised Terms of Reference were provided to the institution on the 15th of June 2010.

The broader context for the investigation is as follows. The mandate of the Sithole Commission was determined by terms of reference requiring recommendations to Council on the following six aspects:

- The root causes of the ongoing strikes on campuses and the nature of the ongoing discontent at TUT;
- Whether the alliance allegedly formed between NEHAWU and the Students' Representative Council (SRC) members with a view to involve students in management/employer disputes is legally permissible within the labour relations sphere;
- Whether it is desirable or otherwise for senior managers of TUT management staff to serve in the executive committees of trade union movements on campus, and to determine whether such participation in unions would not give rise to serious conflict of interest, and whether certain guidelines are not set for certain post levels to qualify senior managers to unionise;
- Whether it is desirable or otherwise for senior management of Student Affairs and Residence Operations (SARO) to get involved in disputes

affecting management and students, and which disputes are not essentially of an employer/employee relationship;

- Whether it is desirable or otherwise for Unions to mobilise the student body against Management/Council in order to convey their demands; and
- Whether or not Council of TUT is capable of resolution of student-staff unrest, and to assume effective control and management over issues of governance, and to determine whether the University Code of Conduct permits senior management to take part in union activities.
- The above list was subsequently extended to cover additional terms of reference such as corruption, mismanagement, abuse of power, lack of proper contract management, etc. as agreed with NUTESA, NEHAWU and the SRC. The list grew to comprise 21 terms of reference, some of which read like grievances and complaints to management.

In July 2009 the Council of the TUT received a report of the Commission of Inquiry chaired by Advocate MNS Sithole SC into the root causes of recurring staff and student strikes and continued discontent at the institution. The Commission's overall finding was that governance and management structures, as well as communication forums at TUT were dysfunctional and appropriate steps should be taken to remedy the situation. The report raised a number of findings and recommendations.

- a. On governance matters, the Commission noted certain irregularities in the operations of Council. The delegation of Council functions to management indicated lack of clarity and certainty and the Commission could not find evidence of written record of delegation nor of regular review of these delegated responsibilities. The Council members do not have a clear understanding of their fiduciary duties, and chose to remain loyal to their constituencies from which they were appointed. The Commission's recommendations focused on the need for clear operational and accountability lines to be in place between Council and the University management, as well as the need to revitalise dysfunctional governance structures such as the Institutional Forum.

- b. On management matters, the Commission noted a number of operational problems, primarily regarding communication with University stakeholders. At TUT there is a serious void between Council, the Senate and the executive management (EMC) on the one hand and the employees and students on the other. This has resulted in constant accusations and counter-accusations, ultimatums, demands and resulting strife within the University. The structures which were created to serve the interest of the employees and students and to assist governance and management to create an operational environment have become dysfunctional. The Commission recommended that all managers from post level 1 to 4 participate in a management assessment intervention and undergo in-depth management and leadership assessment and guidance. It further recommends that policies, strategies and objectives which have been clearly stated in the Institutional Operating Plan (IOP) be put into practice without delay.
- c. On labour matters, the Commission concluded that the protracted merger processes and associated uncertainties of staff had contributed to widespread discontent throughout the University and recommended that Council immediately address all outstanding labour disputes in the appropriate forums. The recommendations on labour matters were substantive and related to human resource policies and procedures, institutional culture considerations, disciplinary procedures and policy, as well as mechanisms for labour relations.
- d. On student matters, the Commission recommended mechanisms to prevent future student unrest, including the proper constitution and operation of a student services council, institution of a student charter and the signing of codes of conduct by SRC members.

The Commission also recommended that Council appoint an independent forensic auditing company to audit all tenders suspected of irregularities raised during the Commission's work and that the procurement policy be reviewed to identify any loopholes with regards to the powers of the executive management committee in the final determination of tender awards. This was

done and the report by KPMG, November 2009 shows no proof of tender irregularities at TUT, although it does raise concerns about the efficacy of procedures. There appeared to be a policy vacuum and Council was urged to ensure that all necessary policies are in place as a matter of priority.

In a letter to the Chairperson of TUT Council, Dr N Mohutsiou-Mathabathe dated 10 May 2010, the Director-General: Prof M Metcalfe requested a meeting with the Executive Committee of Council (EXCO) on 14 May 2010 to discuss the steps that have been taken by the Council to address the issues raised in the Commission's report and the proposed way forward.

On 14 May 2010 the Director-General and Mr J Pampallis (Minister's Special Advisor) met with EXCO. The key purposes and agreements of the meeting were as follows:

- The Ministry is concerned about the ongoing instability at TUT.
- The Department believes that nine months is sufficient time for Council to be in a position to provide a report on the action that was taken in respect of the Sithole Commission of Inquiry.
- Council agreed that by 28 May 2010, it would submit a written report to the Minister regarding its deliberations on the report and the progress made in acting upon the recommendations of the report. The Director-General also requested that Council's response to the forensic report, in particular the need to have clear policy in place as well as copies of the Council or the Executive Committee of Council (EXCO) or subcommittee minutes where decisions were taken in respect of actions in response to the Inquiry, be included in the report.

A general discussion regarding the key issues and underlying causes showed that the recommendations of the Sithole Commission had not been deeply considered or prioritised by Council who had the report for nine months.

The appointment of the independent assessor coincided with the University winter recess and overlapped with the 2010 Soccer World Cup Tournament held in South Africa. These conditions made it practically impossible for the assessor to complete his written report within the stipulated thirty day period.

The Minister granted the assessor an extension to the initial deadline and the final written report was submitted on 31 August 2010. Progress reports were provided to the Department of Higher Education and Training for the period up to the submission of the final written report.

THE INVESTIGATION (APPROACH AND METHODOLOGY)

The Independent Assessor and team were tasked with the responsibility of making recommendations to the Minister of Higher Education and Training on:

- Restoring of effective and proper governance, management, administration and employment relations at the University; and
- Recommending actions, if any, that ought to be taken.

In preparation for the assessment, a briefing was arranged by senior officials in the Department of Higher Education and Training. This was critical in that it highlighted the escalating need for a resolution to the current crisis of management at the institution. Officials from the University Education Branch of the Department of Higher Education and Training provided Secretariat support and any other assistance required. The specialist team was appointed based on specific skills and this report constitutes a shared responsibility for the task. The other members of the team were:

Dr D Swemmer: Governance, Management and Administration

Mr P Slack: Finance

The basis of the assessment was three-fold. In the first place, the Department of Higher Education and Training furnished me with extensive documentation which is available upon request. Secondly, we invited input from the entire University community and stakeholders. Finally, we interviewed a wide section of the University community. I personally interviewed representatives of the SRC (2), Unions (8), Executive Management Committee - EMC (all), Council (7), and Institutional Forum. Except for the Unions, all the interviews were conducted on a one-to-one basis. My two assistants also conducted independent interviews, individually or jointly at times. In most respects,

those interviewed reinforced early impressions I had formed on the basis of going through the documentation afforded to us by the Department.

At the outset, I would like to record our appreciation of the support received from everyone with whom we interacted. The Chairperson of Council and the Acting Vice-Chancellor has set the correct tone of cooperation. Every constituency went out of its way to facilitate the work of the Assessor. The acting-Registrar managed the day-to-day running of the team, and arranged meetings, often at short notice. In all respects, the demeanour of the entire University community was exemplary.

The chairperson indicated early in our meetings that it was her intention to step down from this position. She confided her reasons to me and I believe that disclosing them here would not add any substance to this report. She has, however, generously agreed to facilitate this process to the end, assist the Assessor and give the Minister opportunity to discuss the report with Council, should that be necessary. Once these processes have been concluded, she would step down.

A number of issues struck me very early during the interviews.

- a. There is a strong sense of ownership and healthy protectiveness of the institution from the majority of the community. This can only augur well for the future.
- b. The University has been on the decline for a while but we do not believe that this process is irreversible. Such reversal is, however, not automatic and will require strong intervention to “stop the slide”.
- c. It is disconcerting to note that the overwhelming majority of individual submissions were largely in the area of Human Resources. This function in the University has virtually collapsed. This is a time-bomb and in the absence of immediate intervention, the institution will inevitably implode. *Every word in this paragraph is chosen advisedly.*
- d. There appears to be somewhat of a two-tier problem at TUT. One is the alleged “arrogance” and “incompetence” of the Vice-Chancellor and

his Executive Management Committee (EMC). The other comprises the proven lack of proper fiduciary control exercised by Council. In many respects Council would seem to be rather dysfunctional.

- e. The Executive Management lacks credibility, for whatever reason, in the eyes of the SRC and Unions. The result is that issues that should ordinarily have been managed internally are elevated to Council level. Council has become an extension, rather than an overseer, of Management. Similarly, Council is discredited by some members of EXCO who happen to enjoy a direct line to the Department of Higher Education and Training and the Ministry. The result is that Council and EMC comprise individuals who spend a great deal of time undermining one another. This is unhealthy.
- f. A radical and speedy intervention is required to save the institution.

EXECUTIVE SUMMARY

Governance, Management and Administration

The first purpose of the investigation into the affairs of TUT is to advise the Minister, on the source and nature of the governance, management and administrative issues at the TUT. Second, the requirement is to recommend steps required to institute appropriately good governance, management and administration at TUT.

The transparent reality is that good corporate governance practices have not been followed. There was a time in the past when Council exercised its responsibilities effectively. However, in the more recent past, practices and processes have developed that bring into question the efficacy of the Council. By failing to follow standard meeting practice, the Council has not exercised its responsibilities adequately during meetings, and the Council as a whole has allowed inappropriate processes to be followed. The consequence is that the Council has contributed to the creation of a form of polarization in its own structure and consequently in the operational management practised. This fact is surprising as there are several experienced members of Council, but they have failed to challenge untoward behaviour and procedures.

For Council as whole to be oblivious of these realities, is surprising at best. The fact that a range of complaints have been directed in desperation to the Ministry is indicative of a breakdown in trust within the University. Recent series of events have unfolded over key executive positions, indicating the emerging malaise that threatens the core governance and management of the TUT. The following examples portray this.

- An emerging and continuing practice of exercising self-interest and behaviour by some members of Council that sometimes border on intimidation when such behaviour finds expression within the Council;

- A consequentially well-founded fear exists, of both injustice and acts of deliberate discrimination, in those individuals who are affected by such discussions and decisions;
- The transgression of the individual rights of Council members not present at special meetings of the Council frequently called at short notice;
- Council interventions that might be interpreted as selective actions not informed by underlying facts;
- Excessive use of special or emergency meetings of Council and decisions made at such meetings on matters not reflected on the Agenda;
- The apparent curtailment of two executive staff members' fixed-period contracts without providing the parties with the standard hearings provided for in labour law;
- Acts of suspension of elected members from the Senate to serve on the Council allegedly aimed at silencing those delivering critique of unfolding decisions when so mandated by the core governance constituency that had elected them to serve on the Council;
- Untoward financial control measures and procedures to cope with the unusual, if not questionable, expense claims of some members of Council in a context where the Office of Council is used to coerce acceptance of reimbursement demands without the submission of normally acceptable evidence for such claims;
- Actions which attract allegations of impropriety regarding special celebrations by selected individuals in the governance structures of the Institution at the expense of TUT.

Governance

The Council of the University has fiduciary responsibility for the University and the members of Council collectively and personally are obliged to exercise this responsibility. The King Reports provide excellent guidelines for the

Council and if these guidelines are followed, they ensure that good governance becomes the hallmark of the deliberations of Council. Each Council member has a duty to ensure that as an individual s/he has a good grasp of both her/his statutory obligations and that the governance structures of the University are operating effectively. This means that Council must satisfy itself *each year* that:

- The Institutional Forum is constituted as intended and required in the Higher Education Act (1997 as amended) and the TUT Statute (2007);
- The Institutional Forum is properly exercising its responsibility for advising Council, and as appropriate the Senate through Council, *inter alia* on all matters of race and gender equity, the selection of candidates for senior management appointments, codes of conduct, mediation and dispute resolution procedures, especially in respect of student demonstrations particularly aimed at developing an institutional culture – across all of its campuses - which promotes tolerance and respect for the rights of all members of the Institution, and creates an appropriate environment for teaching, research and learning; until recently this had not been a reality at TUT;
- The University is accountably managing its financial affairs, tax obligations, use of public and private funds, and investments;
- The Council needs to review its own remuneration and cost reimbursement policies and procedures to eliminate the risks associated with untoward and unbudgeted expenditures by its own members;
- The Senate is effectively handling its responsibilities in respect of the academic project by receiving regular reports on matters it is handling and makes recommendations and advice on the efficacy of Council's Admissions Policy and Language Policy and matters of transformation;
- The Council needs to apply its mind to the procedures it intends to follow for annually reviewing the performance of the Vice-Chancellor and Principal, who must in turn annually appraise the members of senior management;

- As the employer of TUT personnel, Council needs to satisfy itself regarding the steps taken to give effect to the Match and Place strategy after the mergers, and the subsequent capping of some individual's salaries; this area of human resources responsibility is a highly neglected focus area.

Council has particular responsibility for establishing that the University complies with critical legislative requirements in respect particularly to those governing the minimum conditions of employment and applying these requirements consistently and without creating any question of deviations from them. It is also Council's responsibility to ensure that full and appropriate records are maintained for the purposes of meeting statutory reporting obligations.

Given the peculiar reimbursement of expenditure practices that have already begun to emerge in respect of some members of Council, the failure to review these in Council and make them public so as to ensure transparency, appears to be problematic.

A particular responsibility of Council is to ensure that the University has identified the greatest risks to its reputation, academic quality and fiscal good practices. More especially Council needs to monitor the implementation of actions that contain, reduce, eliminate and quality assure against these risks. This process of monitoring must also stretch to include elected members of Council.

Where these responsibilities are correctly delegated, Council must institute monitoring mechanisms that enable it to gauge sufficient compliance. The Delegation of Authority document recommended by the Commission of Enquiry requires early approval and implementation.

The essential actions that need to be implemented by the Council if the TUT is to be transparent and correct in the performance of good governance are:

- Setting Mission and Purpose
- Appointing the VC and other Senior Management based on agreed principles of defined prerequisites and advertised criteria, after advice

from the Institutional Forum, usually on performance-based fixed-term contracts

- Evaluating and supporting the VC
- Ensuring good management
- Being accountable for financial resources and institutional assets
- Ensuring that there is a strategic plan and that this plan is periodically reviewed
- Monitoring the transformation process
- Monitoring human resources strategies particularly those aimed at successfully redressing the package discrepancies resulting from the mergers
- Approving the TUT Admissions Policy and Language Policy, and monitoring its implementation
- Ensuring student access and success
- Being responsible through management for ensuring good order and a safe campus environment, particularly on the Soshanguve campus
- Setting up and serving on necessary Council committees
- Taking stock annually of the Council's own performance.

At TUT several things have occurred which have contributed to the current situation. They lie at the core of good governance and accepted managerial practice and this hence creates risk when the above requirements are not appropriately operational:

- a) In January 2009, the Council deemed it necessary to appoint a Commission of Enquiry to address the ongoing issues that were complicating the smooth operation of the Institution, but the process that unfolded in determining the terms of reference on the Commission was itself indicative of the incapacity of the Council itself (intended as the properly representative governing structure) to do its work: constituencies within the Council were permitted to alter the terms of reference independently of the Council itself (see section 1.5 pp 7-8);

- b) The thorough work undertaken by the Commission of Enquiry highlights the extent to which the Council is hampered by self-interest; despite highlighting the problems, and Council responding to the recommendations by running workshops aimed at responding to the recommendations of the Commission of Enquiry and training Council members in their roles as members of this governance structure, there still appears a tendency by interested parties in a point of discussion not to declare their conflict of interest, state their view on the matter before the Council and then excuse themselves or else to be recused by the Chairperson of Council;
- c) There is substantial evidence contained in the report of the Commission of Enquiry of inadequate progress of the Institution's Operational Plan (IOP) and of problematic human resources issues; yet there are entries in minutes of Council meetings accepting the fact of no progress reporting despite ongoing volatility regarding staffing issues; furthermore, despite the weakness in this area, the Council turns to the office bearer responsible for these issues, when the current problem surrounding the contract of the Vice-Chancellor led to the current leadership divisions in TUT; the question of Council failing to exercise its monitoring and governance responsibilities properly, in the critical areas of human resources and the IOP, is of fundamental concern;
- d) Were Council reviewing committee membership annually and, every three to five years, assessing the validity of each committee's remit, Council would be better placed to ensure both good governance and management of the University; there is little evidence of this practice in the minutes of Council perhaps because the Statute is prescriptive rather than enabling;
- e) The fact that many of the committees of the Institution are listed in the Statute dictates that those statutorily created committees named must operate with the laid down membership: the validity of some of the membership structures of key bodies, notably that of the Senate (see Section 35), is questionable – the fact that members of the professoriate are not in the majority is peculiar and ought to be rectified; other

- committees are often excessively reliant upon the same cluster of office bearers;
- f) The recent practice of seeking the completion of declarations of conflict of interest, by members of Council, is laudable, but there is a managerial requirement that these declarations are subjected to a process of confirmation: it does not appear that such checks are carried out and reported to the Executive Committee of Council;
 - g) Good governance dictates that an individual who has demonstrated his/her failings in respect of exercising personal fiduciary obligations should not be serving on the Council, and at the very least should have declared his/her history when declining rather than accepting an approach to agree to nomination or appointment: failure to do so is unacceptable and presents the institution with inherent reputational risk; when such a person further accepts nomination to the office of Councillor , and again fails to declare the historic impropriety, the risk is compounded;
 - h) The practice of remunerating Council members is unfortunate: while it is apposite to refund external Council members for genuine out-of-pocket expenditures, the hourly remuneration scales are difficult to comprehend in a publicly-funded, not-for-profit institution; the extension of the practice to include remunerating internal members of the Council, who are fully employed as members of staff, and even student members, is bizarre;
 - i) The repeated use of Special/Emergency meetings of Council might be understandable for TUT given its ongoing tensions between the major constituencies, but when there is also the question of monetary reward associated with every such meeting, the legitimacy of the real and pressing need for each of them comes into question;
 - j) Evidence was led that at Special meetings of the Council, some constituent members stringently insist on adding items to the agenda: this practice is a transgression of the common law of meetings and good practice as it denies knowledge of discussion items to those who are not present and represents a failure of enforcement of good meeting procedure; the practice is furthermore in contravention of specific

provisions in the TUT Statute for both special meetings (Section 28(6)) and emergency meetings (Section 28(9)); a comparison of agendas with minutes reveals the validity of the allegation – on 12 April 2010, for example, there was no provision for EXCO at its special meeting to receive a report from the Remuneration Committee (REMCOM), which had met earlier in the day, but one matter from REMCOM was recommended to the EXCO and approved, notably that the Chairperson of Council and the Vice-Chancellor should travel in Business Class rather than Economy Class on flights – a regrettable departure from the earlier practice; the question of a Declaration of Interest in this matter is not reflected in the minutes, nor challenged; the Council approved this isolated recommendation, but recorded that the office-bearers in question might decline to exercise this privilege;

- k) Good governance dictates that when a deviation from the published agenda occurs, the minutes should reflect the fact of the addition/s and demonstrate the imperative need for the inclusion of the item, and when the minutes serve before the next ordinary meeting one would expect seasoned Council members to challenge the failure to follow only the published agenda: the fact that this does not occur highlights the incapacity of the Council to perform within standard practice – it also transgresses the requirements of the Institution's Statute (see paragraph (j) above);
- l) The adjustments made to the Rules governing the composition of the committee charged with making senior appointments at the 15/16 April Meeting of the Council were also not on the Agenda, yet adjustments were approved to alter the membership of certain constituent categories from being "nominated" for appointment to instead become "representatives" of the constituency; again there were no recusals when the matter was determined; the logic of the recommendation does not appear to have been considered either;
- m) When the Vice-Chancellor was excused from the 25 March 2010 EXCO meeting, the matters before the Committee required his input (other than in respect of his own appointment) yet he was not required to be present or make representations in those discussions not affecting him directly;

- n) The inclusion of the agenda item “urgent matters”, which are not specified in advance, for meetings of the Financial Planning and Resources Committee, is similarly inappropriate.

STATUTE OF TUT

The Statute of the TUT (published in Gazette No 30131 of 1 August 2007) can be tightened to eliminate matters that are not handled consistently. It contains useful provisions in some sections that also need to be included in other sections.

There are errors of language usage in the gazetted version in Section 3(1) where the phrase “these Statute” is used twice. There are several other comparable errors contained in the Statute, such as Section 45(1) (f) which refers to a “leaning” rather than a “learning” site.

Section 22(i) defines the suspension of staff as occurring “in the manner set out in the disciplinary rules”, yet the Council has created *ad hoc* procedures for handling the suspension it has imposed on two Senate appointees to Council; such interventions raise questions of governance and good practice.

Section 23(3) requires members of Council to have “knowledge and experience relevant to the objects and governance of the University”. The practices of Council highlighted earlier bring compliance with this prerequisite into question as the members appear not to follow meeting protocols.

The provisions and procedures laid down for the calling of Special and Emergency Meetings of the Council require tightening. Similarly there are other provisions that ought to be beneficially amended and expanded to eliminate recent points of tension that have arisen.

The composition of Senate needs to be reviewed and balanced to ensure that the professorial members form a majority in the Senate.

Management

Executive management is fundamentally in disarray. The greatest fault-line appears to lie in the human resources portfolio, where there has been a turnover of staff and this year the loss of the head of the unit. This occurs at a time when the questions arising about the follow-through of the Match and Place strategy and issues of the implementation of the developmental strategies adopted for some appointees require specific attention. Matters of

human resources underpin many of the areas of conflict that have bedevilled the smooth functioning of the TUT.

The decision, to terminate the contracts of both the Vice-Chancellor and the Registrar, has resulted in the appointment of acting office-bearers. The process relating to the advertisement of the position of the Vice-Chancellor resulted in an internal dispute and led to a second advertisement of clarification regarding the prerequisites for appointment. An allegation persists that the advertisement has been created to favour a particular internal candidate and the fact that a second advertisement proved necessary highlights the fact that the way in which the process was instituted may have been precipitate.

Council's decisions to "suspend" a Vice-Rector from being in attendance at meetings and the suspension of Senate's elected representatives on the Council appear further to undermine good management practice. Resorting to ad hoc arrangements to handle such suspension is also strange if not untoward.

The pending natural termination of contracts in parallel of vice-rectors is an unfortunate reality. There is a need to normalize the role of the VC/CEO before the process for selecting the deputies should occur.

Administration

The fact that the TUT operates relatively smoothly, under normal circumstances, is indicative of largely sound administrative practices that have existed for some time and are generally highly functional.

The documentation with which the Independent Assessor was supplied was generally what was requested and it was efficiently supplied. The appointments required were efficiently arranged and the logistical support was professional.

Before mapping the suggested way-forward, I would like to give some flesh to specific constituencies and how they impact on issues under investigation.

COUNCIL

A point has already been made that there is a lack of proper fiduciary control exercised by Council and that; consequently, Council would seem to be rather dysfunctional. In general, Council makes decisions, instructs EMC and EMC fails to implement. This has resulted in Council attempting to micro manage various issues. Given an allegation repeatedly made, that Unions "control" Council to some extent, results in a very unhealthy situation.

Very few Councillors have ever served on a Board. Quality of debate is poor and there is an undercurrent of hopes and expectations. There are too many political undercurrents in Council and many of the Councillors serve two masters. Reading the minutes for the last three years, one notices that very few strategic management issues have been discussed. The amounts of time spent debating Council remuneration, for example, is astonishing. In one set of minutes there are 4 full pages on Council remuneration and still no decision was reached. This same item appeared regularly in minutes thereafter. Likewise, the number of times the issue of self assessment appeared in minutes was astonishing. The choice is stark and unproblematic "either you adopt King or you don't." King requires self assessment and there should be little debate here. Similarly, an inordinate amount of time is spent on discussing the role of the Institutional Forum. This is an issue that is well documented, but the amount of effort invested into this fruitless discussion is worrying.

A critical question remaining is the payment of internal members of Council which is an irregular practice.

EXECUTIVE MANAGEMENT COMMITTEE

The people currently in management generally come from the smallest parts of the organisation or from outside TUT. The negativity around the "forced marriage" (merger) resulted in people wanting to change everything from the way it was previously done at the former Pretoria Technikon.

According to the SRC and Unions, the EMC has perfected the art of giving filtered and often incorrect information. There is little conflict management skill within the EMC. Often policies are relaxed when students strike, only to be re-instated the following year without consultation. In some cases, there were references to historic connections or relationships between the former Vice-Chancellor and certain members of EMC. Suspicion, bordering on evidence of cronyism on EMC is unfortunately very strong.

All the issues raised by the Commission of Enquiry, and repeated by various constituencies is that problematic areas were evident largely in the area of Human Resources. A notable example is the HR fiasco to which I have already referred. Worse still, it appears that there is no specific professional HR input to the EMC.

The DVC in charge of finance has a huge patch and appears to give finance very little attention. She has admitted that she leaves the finance to the Senior Director, but she is the one required to speak to these issues at EMC and Council – this could be risky. The full name of the Finance Committee at TUT is the Finance, Planning and Resources Committee, but the only matter which is discussed at this committee is Finance. There is never discussion of a maintenance plan, a capital replacement plan or an IT plan and, as a consequence, real issues of importance to these sections are ignored.

According to some senior sources, management is a divided house, whilst it is the second tier that gets any work done. Sadly, this second tier appears to be rapidly diminishing. There is a theory postulated that the unions have been allowed to "become the executive" – "Council are intimidated by the students and unions".

There is no structured forum for dealing with issues affecting staff and students. Although management claims an open door policy, students

complain that it was difficult to see the Vice-Chancellor or EMC members, who appear to be always too busy. Students are sent from manager to manager and no-body takes a decision which leads to somewhat drastic action. Procrastination is the order of the day.

SENATE

TUT has an unusual practice where full professors are not all automatically members of Senate. The implication is that they do not have say on academic matters – whilst the unions, for example, are members. This means that some union members may well have a say on matters which they know very little about, while the real players are left out.

UNIONS AND STUDENTS

A recurrent theme throughout the interviews was that unions and students have taken over Council and are using it to discuss management issues that should have been resolved. In addition, it is alleged that both constituencies have failed to appreciate their fiduciary role on Council which they see as another forum for them to pursue their sectoral interests. One union member in particular was said to be dominating Council debates and spoke disproportionately more often than others. Both students and unions are alleged to rely on violence and intimidation if they cannot achieve their desired outcomes through the EMC. The SRC was unambiguous on some of the allegations:

“SRC members are shop-stewards”; “We do not always trust them (EMC) and we suspect that there are certain things that are hidden from us and we only hear of them in Council”. “We had a problem with the previous management; the doors were not open for us to raise issues”.

Both constituencies deny any employment of violence and coercive measures. Such denial is, however, disingenuous and flies in the face of reality. The allegedly domineering, if not disruptive conduct of unions in meetings, however, may be indicative of the fact often made that Council meetings and proceedings are generally poorly managed. In addition, this

underlines the need for the EMC and these constituencies to develop mutual respect and jointly establish credible forums where they can address operational issues without clouding council meetings with issues best addressed by the EMC.

It appears, on balance, that what is needed at the helm of the University administration is statesmanship with a strong leader being able to make the unpleasant decisions and to do it in such a way that the unions and students agree or at least accept the need for the decision. This will require extensive consultation and transparent communication. However, all the while, the real work of the institution has to continue – and the people are rather thin on the ground. My assessment is that things are very close to imploding. Due to the fact that so many HR people have left, and vacancies are not being filled, kneejerk reactions are the order of the day and often when positions are filled, the wrong candidates are employed for the wrong reasons and the situation is no closer to a solution.

Again, due to lack of suitably qualified staff and open and honest communication, contracts which expire can take up to a year or longer for the tender process to run. There are queries and stumbling blocks placed in the process resulting in huge delays – one wonders what hidden agendas give rise to these queries in the first place. For example, the computer tender has been going for more than a year with repeated blockages. This has resulted in students only learning on outdated technology – this is the core business of the University and it is being held to ransom by internal politics.

And with the impending retirement of so many senior staff, the trend is exponentially downward. There is so much institutional memory that has left the University that one wonders whether the situation is redeemable.

All of this is indicative of a breakdown in proper management and accountability of managers.

WAY FORWARD

Generally speaking I found a complete contradiction amongst the people whom I interviewed in private. On the one end of the scale are the people who spoke highly of the former Vice-Chancellor and the operation of Council, whilst on the other end, the Vice-Chancellor could virtually do nothing right.

It is difficult to reconcile these two positions and they are so diametrically opposed that there seems to be no middle position.

Similarly, and most importantly, the former Vice-Chancellor is now out of the scene and this issue need not detain us. The point of raising it is to support the position I will propose as an interim way forward.

I have already alluded to the need for urgent intervention to save the institution. In many ways I reached this decision after a thorough desk top study of documentation submitted, especially the findings of the Sithole Commission. There were also submissions to the Department by certain members of the EMC. They portrayed a disturbing image of the institution. Because some of these submissions were largely one-side and unbalanced, I did not rely heavily on them although I followed up the issues they raised. It was the Sithole Commission report that suggested to me that, contrary to the recommendation of the Commission, there was no need for an administrator to take over the roles of Council and Management.

I spent considerable time considering this option and discussed it with each member of the EMC and Council in private, on a one-to-one basis. Only two members of the EMC supported the introduction of an Administrator: "amputate Council and replace it with an administrator... Clean and sort out statutes". The rest of the University community, without fail, counselled against this approach. Ironically, this was one of the few areas of consensus within the campus where everything else was contested. People coming from fundamentally opposed positions on campus, agreed on this issue.

Despite my earlier misgivings, I have concluded that this sentiment across the institution should be respected and that, at least for the moment, an administrator should not be appointed.

What were the considerations that led to this conclusion?

In the first place, I was impressed with the candour and honesty with which everyone admitted that things could be better in the institution. Despite minor denials here and there, there was a general admission across the board that things were not right.

Secondly, there was a sense that the University was beginning to turn the corner. Unions and students in particular, pointed out that for the first time there was a relationship of trust and respect emerging between them and management. A senior member of Council quipped "The Administrator should have come a year earlier – it is too late now and the atmosphere on campus is improving". He pointed to the issue highlighted by everyone else, namely, that for the first time this year there was no strike on campus.

Thirdly, all pointed out that Council was aware of the problems and that it had actually demonstrated the will to deal with these. It was Council, on its own accord that appointed the Sithole Commission. Council has also started to implement the Commission recommendations, especially on the forensic audit. The pace may have been slow perhaps but the movement was forward. "The Council has problems; it is not a perfect body, but it is functional though..." remarked one Councillor.

I arrived at the conclusion that the above sentiment should not be ignored, especially coming, as it does, from a wide variety of constituencies, including those who take the University mandate seriously. I have also identified within Council, a core of serious professionals who understand and take their mandate seriously. There are a number of low lying fruit that Council could pick immediately. These include regularizing Council payment, addressing the question of long and tedious Council meetings, sorting out strategy and vision.

Instead of bringing in an administrator, Council should be given until December 2010 to sort out the key remaining issues emanating from both the Sithole Commission and this report. In the event of failure to meet this deadline, it would be imperative to bring in an administrator.

KEY RECOMMENDATIONS

1) Council

- a) Re-form Council. Build a strong Council around people who are professional and understand the concept of fiduciary responsibility.
- b) Ensure that the quality of debate in Council is vastly improved and that the agenda centres on University issues and not how much Council is to be paid
- c) Evaluate duration of membership of any one individual
- d) Resolve to not pay internal members of Council
- e) Ensure proper evaluation is conducted annually in accordance with the provisions of the King Codes of Good Corporate Governance
- f) Allow only one representative from each union on Council
- g) Re-write the statute. As part of the re-write consider the proper membership of Senate
- h) Re-visit the delegation of authority document and revise it in accordance with the guidelines espoused in the King Codes of Good Corporate Governance. Particular care must be exercised to ensure that the management of tenders and large expenditures, or appointment of staff is conducted in an open and transparent manner so that there can be no suspicion of favour. By the same token Council should not be seen to be micro-managing the institution.
- i) Reconstitute the IF and allow it to operate as expected of Higher Education institutions

- j) Implement the recommendations of the Sithole Commission – and any other prior forensic audits
- k) Council needs to acknowledge and accept that some of the biggest problems at the University emanate from the Human Resources portfolio and the members need to address this
- l) Immediately conduct a CIPRO review based on ID numbers of direct interests of all Councillors and senior management down to grade 5.
- m) Address the fact that a high percentage of senior staff will be retiring in the next 12 months and there seem to be little planning for this (schedule available)

2) Executive Management

- a) Develop a sensible structure which, in my opinion, should include the Finance and HR function on the Executive
- b) Evaluate whether there is a need for a DVC Admin/Operations. If so, then this function should preferably not include Finance and HR which should be separate
- c) Establish a credible forum of interaction involving management, students and Council. It is not right that students and union leaders should see Council as a forum for these areas.

3) Human Resources

Immediately find a strong, suitable leader for this function. Specific criteria would be Higher Education experience and proven IR skills. Having handled a merger would be a huge plus. Early deliverables for this person would be:

- Resolve the staffing crisis in the HR department
- Resolve the many outstanding IR issues
- Resolve the harmonisation issues across campuses – especially conditions of service
- Form a professional rapport with the unions
- Form a consultative forum which is representative and effective, where HR issues can be debated and considered
 - a) Capacitate the HR department by evaluating the establishment to perform the HR function correctly and effectively. Then fill the vacancies
 - b) Put a process in place to resolve all outstanding HR issues; especially the harmonisation of all employment benefits including, but not limited to, leave accruals, post employment retirement and medical benefits, group life and retirement fund contributions etc.
[Note: there is a contravention of existing tax law in the current group life dispensation.]
 - c) Check why so many people are still on contract as opposed to permanent appointment (over 300)
[NOTE: This may include the temporary measure of having a consultant or an HR firm handling immediate issues – but some of these issues just cannot be handled by outsiders]
 - d) There is a high percentage of capable staff due to retire in the next 12 to 18 months which could seriously undermine the institution. Council need to pay urgent attention to this
 - e) Review all appointments and promotion over the last 2 years and establish whether, in fact, the most suitable candidate available was

selected for the post. If not, develop a plan of what to do and what will be in the best interest of the University

4) Procurement

- a) Ensure all expenditure, including the IOP, falls under the procurement and tender policies, within the institutional delegations of authority
- b) Form a tender committee with suitable representation to deal with procurement that require it to go out to tender as per the delegation document [an option is to outsource some or all of the tender process to an external panel – especially sensitive appointments]
- c) It should not be possible for management to override the decision of the tender committee without well-documented rationale and documentary evidence therefor. Currently there is huge suspicion every time such intervention by management occurs.
- d) Finalise long-outstanding tenders, especially computers, security and transport.
- e) As an aside, it is apparent that some serious decisions need to be made around the IT infrastructure. Someone (Council for now), using external expert advice, should decide on standardisation of computer hardware, including photocopiers and printers. The IT entity has been allowed to be a law unto themselves.
- f) Immediately revisit the decision to install security cameras at a cost of R134 million. The viability of this project, financial and otherwise, should be proven.

5) Internal audit

- a) Assess the effectiveness of the current internal audit function
- b) Determine the correct reporting line of the internal audit function in accordance with the recommendations of the King Codes on Good Corporate Governance.
- c) Conduct a proper risk assessment and design internal control procedures to mitigate these risks effectively at minimum cost.
- d) Ensure that the programme of internal audits is designed in such a way as to provide assurance that the internal controls in (c) above are effective and operative.
- e) Assess whether the internal people are suitably qualified.

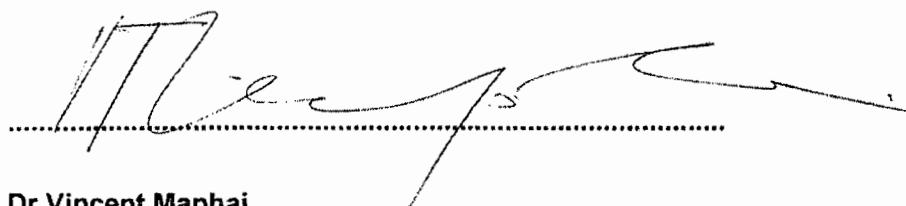
6) Financial

- a) The concept of "discretionary funds" which can be utilised at the whim of any one person without approval should be discouraged.
- b) Consider the financial effects of any employment benefits harmonisation.
- c) Appoint an external provider to review the utilisation of all major assets, especially the buildings in the centre of Pretoria.

7) Academic

- a) Council need to consider whether the "One faculty, one campus" has had the desired effect. There is a strong body of opinion which suggests that it may have been a major factor in the

recent brain drain of academics – especially in accounting and IT academic departments.

A handwritten signature in black ink, appearing to read "Dr Vincent Maphai". The signature is fluid and cursive, with a prominent 'D' at the beginning.

Dr Vincent Maphai
Independent Assessor

ACKNOWLEDGEMENTS

First a sincere word of appreciation addressed to the Minister of Higher Education and Training, the Honourable Blade Nzimande, MP for the confidence he demonstrated in assigning this task to me. The Acting Vice-Chancellor and Acting Registrar of the Tshwane University of Technology provided ample hospitality and practical assistance in the all arrangements for meetings at the University. The Chairperson, all the members of Council and the University community who sacrificed their time to participate in the investigation need to be thanked. Thank you to the two specialists, Dr Swemmer and Mr Slack, who assisted the Independent Assessor. Members of the Department of Higher Education and Training and in particular Ms Kirti Menon, Mr Jody Cedras and his team need to be thanked for the logistical and management support provided to the Independent Assessor and his team.