

RESPONSES TO THE PORTFOLIO COMMITTEE ON HIGHER EDUCATION, SCIENCE AND TECHNOLOGY OVERSIGHT ENQUIRY INTO THE APPOINTMENT OF PROFESSOR PETER MBATI AS VICE CHANCELLOR OF SEFAKO MAKGATHO UNIVERSITY (“SMU”) AND RELATED MATTERS

1. I am required to respond on para 3 of your letter which raised the following allegations: -
 - 1.1. Failure of UNIVEN Management to implement sound financial and supply chain management processes and to properly manage the institution, including various infrastructure projects.
 - 1.2. The improper manner in which the Council of UNIVEN processed a sexual harassment complaint against Prof Mbati by Prof Phendla, a former employee of UNIVEN that he sexually harassed Professor Phendla who was also an employee of the University, and
 - 1.3. The fruitless and wasteful expenditure relating to the use of external service providers and legal consultants.

2. RESPONSE TO PARA 3 (A) OF YOUR LETTER HAS BEEN TABLED AS FOLLOWS (Failure of UNIVEN Management to implement sound financial and supply chain management processes and to properly manage the institution, including various infrastructure projects)

This matter has well been dealt with during my initial submission to the Portfolio Committee as follows: -

- 2.1. The University submit that Management did implement sound Financial and Supply Chain Management processes in that:-**
 - 2.1.1. All financial transactions were done within the limits of the University Management.**
 - 2.1.2. All tendering processes in respect of all infrastructural projects were done in compliance with the University Supply Chain Management Policy, and that the institution was properly managed.**
 - 2.1.3. The University further submit that the University Management did manage various infrastructural projects from the tendering process until the implementation stages.**
- 2.2. The Council was however made aware of certain weaknesses which were raised by the external audit report in respect of which the University appointed a company to investigate the alleged weaknesses relating to procurement processes followed for the identified infrastructure projects.**

2.3. To briefly summaries the facts:

2.3.1.During 2016, Sizwe Ntsaluba Gobodo, the then external Auditors of the University of Venda produced a report entitled projects review report to those charged with governance. In the report, it outlined various weaknesses in the governance of 14 different projects whereby Supply Chain Management processes were not adhered to. The report concluded by recommending that a forensic investigation be conducted on these projects.

2.3.2.The University of Venda then appointed Nexia SAB&T, a forensic investigators company to investigate the affected projects. The primary objectives of investigation were as follows:

2.3.2.1. To determine whether the Supply Chain Management policy has been breached at any stage of each project;

2.3.2.2. Quantify the level of non- compliance;

2.3.2.3. Identify individuals responsible for the non-compliance; and

2.3.2.4. Recommend appropriate corrective action. **See attached forensic report marked FR 01, page 1 to 128.**

- 2.4. The forensic investigation report revealed that Dr. Jannie Zaaiman (Deputy Vice Chancellor, Operations), Richard Ramupudu (Head, Supply Chain Management) and Hulisani Nesane (Director, Facilities) should be held accountable for non-compliance with the Supply Chain Management policy in respect of the 10 (ten) infrastructure projects that were under investigation. **See page 24 item 2 of FR01.** In order to rectify the weaknesses identified with regard to non-compliance with the Supply Chain Management Policy, Nexia SAB&T recommended that disciplinary action should be considered against Dr. Jannie Zaaiman, Richard Ramupudu and Hulisani Nesane.
- 2.5. The University, however, found that the three affected people were no longer employees of the University. A legal opinion (**see attached legal opinion FR 02, pages 1 to 3**) was then sought which provided as follows:
- 2.5.1. The University should not consider disciplinary hearing against Dr. Jannie Zaaiman, Richard Ramupudu and Hulisani Nesane as they were no longer University employees, and hence the University Disciplinary Code for staff members was no longer applicable to them.
- 2.5.2. It was also not possible to open criminal or civil cases against the above-named individuals as they were only held liable for non-compliance with the Supply Chain Management policy with no element of criminal activities or fraud, corruption and no personal gain.

- 2.5.3. In light of the legal opinion, the University then took a decision to close the matter in so far as the consequence management or disciplinary process or criminal/civil cases are concerned.**
- 2.6. In running the tendering process, the University had to rely on the expertise of Quantity Surveyors who were external from the University whose advices were independent. As it relates to the affected service providers who were fingered in the forensic investigation report as those who contributed leading to the abandoned projects, the University implemented the forensic investigation report recommendations by terminating services of the following service providers:
- 2.6.1. Ndidi Quantity Surveyors;
- 2.6.2. Muthakhi/Direct Track JV;
- 2.6.3. Thiko Nevhutali; and
- 2.6.4. Aspire Architects.
- 2.7. On the issue of the abandoned projects, the University did a presentation to DHET furnishing reasons leading to abandonment of projects and the reasons were acceptable and hence DHET continued to fund those projects to their completion.

- 2.8. I want to conclude by indicating that in the entire NEXIA SAB&T forensic report, there is no were the report makes mention of Prof Mbati regarding the allegations of mismanagement of University, improper management of infrastructure projects, acts of misconduct or abusing his power for personal gain.
- 2.9. Whilst still on this issue, during 2018 the University was summoned to appear at the offices of South Africa's Directorate for Priority Crime Investigation Organized Crime, Economic Crime, Corruption, and other serious crime (HAWKS). The University was called upon to submit all documentation relating to all the tenders that were identified by the External Auditors and subjected to forensic investigation, and all such documents were furnished to the HAWKS offices.
- 2.10. It also came to light that the case to HAWKS was reported by some former University of Venda staff members who were dismissed for misconduct and they are also amongst the witnesses who are called by the Portfolio Committee as witnesses.
- 2.11. The projects in question were investigated by the HAWKS and the University was cleared of the allegations by the HAWKS. The matter was dealt with under **Enquiry 05/09/2018**, Polokwane.

2.12. Finally, there was no failure on the part of UNIVEN Management to implement sound financial and supply chain management processes and to properly manage the institution, including various infrastructure projects.

3. **RESPONSE TO PARAGRAPH 3 (b) OF YOUR LETTER HAS BEEN TABLED AS FOLLOWS (Allegations of Sexual Harassment)**

3.1. The matter of Prof Phendla's sexual harassment allegations against Prof Mbati have a long litigious history and had made its way through to our various courts up to the Labour Appeal Court. The Labour Appeal Court ultimately dismissed Prof. Phendla's petition for Leave to Appeal, in 2018.

3.2. To briefly summarize the facts:

3.2.1. NEHAWU UNIVEN branch raised allegations of fraud and corruption against certain University officials relating to an R18 million tender bribe in the appointment of a company called Clean Shop for the provision of cleaning services at the University Campus.

3.2.2. The University then appointed an audit company (Deloitte) to conduct forensic investigations, and the recommendations were that some identified staff members should be subjected to a disciplinary enquiry, and Prof Phendla was one such identified staff member.
See attached report document SH 08 pages 1 to 27.

- 3.2.3. The investigation revealed that Phendla was approached by the Clean Shop (a potential service provider), and that Clean Shop paid her money to influence the University of Venda Council in which she was a member at the time, to award the contract to the service provider (Clean Shop).
- 3.2.4. It is worth reiterating that the investigators fingered Prof Phendla and others for the impropriety and this led to her being charged, disciplined and dismissed on account of misconduct.
- 3.2.5. Prof. Phendla then declared unfair dismissal dispute with the CCMA contending that her dismissal was not motivated by the misconduct she allegedly committed, but it was as result of sexual harassment.
- 3.2.6. The CCMA ruled that the matter is one of automatic dismissal to be referred to the Labour Court. Prof Phendla then escalated the referral to the Labour Court as an automatically unfair dismissal, as Prof. Phendla claimed that she had been unfairly dismissed on the ground of sex. It was also at this stage that she informed the then Chairperson of Council, Ms Mabusela, contending that she was sexually harassed by Prof Peter Mbati, and hence her dismissal. That is when and how Council became aware of Prof. Phendla sexual harassment allegations.

- 3.3. The matter concerning Prof Phendla allegations of sexual harassment was duly considered by the University Council.
- 3.4. During 2011, Council had upon receipt of Prof Phendla's complaint letter addressed to the Chairperson of Council, appointed Lavery Modise (Mediator) to investigate and mediate the matter between Prof Phendla and Prof Mbatlhi. The outcome of the mediation report however only indicated that the mediation had reached the dead end without providing details on the legitimacy or otherwise of Prof Phendla's complaint. **See Lavery Modise report dated 03/11/2011, document SH 05, pages 31-33.**
- 3.5. By that time, Prof Phendla had also reported the matter to the Commission for Gender Equality. She also opened a criminal case of rape against Prof Mbatlhi at Thohoyandou Police Station.
- 3.6. On the Criminal case, the Director of Public Prosecution found that there was no basis to charge and prosecute (*nolle prosequi*) Prof Mbatlhi for rape. ***Nolle prosequi is attached hereto and marked SPPL 4.*** On the other hand, the Commission for Gender Equality did consider the matter and make findings against the University without affording the University an opportunity to present its side of the story. The University took CGE report for review with a view of having it set aside. However, the matter was finally settled by way of a Consent Judgment (**see attached judgement dated 30/05/2016, document SH 05 page 8**), which directed the University to comply with Clause 5.2.1 of the University Policy on Sexual Harassment, which was for the University to call for the

mediation report, Lavery Modise report. **See attached Sexual Harassment Policy, document SH 05 pages 9-18.**

- 3.7. The University Council noted however that, although Lavery Modise report did indicate that he had a view on the legitimacy or otherwise on Prof Phendla's complaint, the report did not provide details on the merits of the complaint, and hence Council took a resolution to give Lavery Modise yet another opportunity to further investigate the matter and put more flesh on his initial findings.
- 3.8. Lavery Modise did provide a detailed report dated 24 June 2016 as per the Council terms of reference. **See Lavery Modise report dated 24 June 2016, document SH 05, on pages 19-22.** Council then sought for a legal opinion from an Attorney Mike Mashego who was a UNIVEN Council member and also the Chairperson of the Appeals Committee. The legal opinion advised Council that there was no basis to charge Prof Mbatu on allegations of sexual harassment, as the relationship between the duo was a consensual one. **See Mashego's legal opinion dated 05 July 2016, document SH 05 pages 24-30.**
- 3.9. At its meeting of the 8 July 2016, Council resolved that in view of the Modise report to the effect that there was no sexual harassment and the legal opinion sought on the matter, there was no basis to pursue the matter against Prof Mbatu as he was cleared of the allegations of sexual harassment. **See attached Council minutes dated 8/07/2016, document SH 05 page 6 and Mashego's legal opinion 05 July 2016, document SH 05 pages 24-30.**

- 3.10. The University Council further resolved that since the matter was already before the Labour Court, Council had to allow courts to make final determination on the matter, and that no further intervention could have taken place with regard to the above matter by the University Council. **See Council minutes dated 08/07/2016, document SH 05 page 6.**
- 3.11. On 12 October 2017, the Labour Court ultimately found that Prof. Phendla was not automatically unfairly dismissed (Prof Phendla was not sexually harassed) and that her dismissal was both substantively and procedurally fair. **See page 41 to 68 of the attached Labour Court judgment marked SH07.**
- 3.12. Aggrieved by the outcome, Prof. Phendla applied for leave to appeal the Labour Court decision to the Labour Appeal Court which was denied. **See Labour Court Judgment delivered on 12/10/2017, document SH 07 pages 41 to 63, and Labour Court judgment on Prof Phendla's leave to appeal delivered on 29/11/2017, document SH 07 pages 67 to 68.**
- 3.13. Nonetheless, in January 2018, Prof Phendla proceeded to petition the Labour Appeal Court for leave to Appeal, which petition was also refused. The Labour Appeal's court confirmed that there were no reasonable prospects of success and no compelling reasons why the matter should be heard. **See Labour Appeal's Court petition ruling dated 15/02/2018, document SH 07 pages 64 to 66.**

3.14. The University Council accepted the Labour Court judgment and Labour Appeal Court rulings and considered the matter as closed.

3.15. In conclusion:

3.15.1. It is important to highlight that the University Council was only required to consider and make determination on the issue of sexual harassment allegation as raised by Prof Phendla to the then chairperson of Council.

3.15.2. As already indicated above, Council had after applying its mind on the findings of Modise's mediation report and Mashego's legal opinion, resolved that Prof. Phendla's allegation of sexual harassment against Prof Mbati had no basis.

3.15.3. Council further resolved to close the matter and allowed the court processes to unfold for a final determination.

3.15.4. Council had comfort that the matter was properly closed following the dismissal of Phendla's petition for leave to appeal by the Labour Appeal's court, as Prof. Phendla never pursued the matter any further.

4. RESPONSE TO PARA 3 (C) OF YOUR LETTER (The fruitless and wasteful expenditure relating to the use of external service providers and legal consultants)

- 4.1. In order to address this question, it is important to first indicate that Fruitless and Wasteful expenditure is an expenditure that is made in vain and would have been avoided had reasonable care been exercised. This type of expenditure is incurred where no value for money is received for expenditure or the use of resources.
- 4.2. The University submit that all external service providers and legal consultants who were appointed by the University, were appointed because there was a need for such services, and they did render the services to the best interest of the University. The conclusion is that there was no fruitless and wasteful expenditure relating to the use of external service providers and legal consultants.
- 4.3. The Supply Chain Management Policy for the University of Venda provides for deviations on the procurement of certain services where the estimated value of the consulting services is below the threshold of R500 000.00. See *a copy of the relevant pages of the policy attached hereto and marked PCH 8*.

- 4.4. Clause 15 states that “*the standard procurement processes will be bypassed, and the University will dispense with the invitation of bids and quotations or bids will be obtained in a manner that is in the best interest of the University, and not limited to suppliers on database*”. See a copy of the relevant pages of the policy attached hereto and marked **PCH 9**.
- 4.5. The records show that the University has a database of firms of attorneys and Advocates with various skills and expertise ranging from Labour and civil matters. These included law firms from both Limpopo and Gauteng Provinces.
- 4.6. On the question of the number of lawyers who were procured through deviation, the records show that the University always select a law firm with necessary skills and expertise from the profiles at its database, and that all firms have been selected and appointed in the same manner.
- 4.7. Furthermore, the appointment of all lawyers who served and those who are serving the University did not exceed the threshold as at the time of their appointment, as the amounts for services could not be ascertained at the time of their appointment. These lawyers are appointed per case and on *adhoc* bases.
- 4.8. For the noting by the Portfolio Committee, the University has already taken a decision to go out on tender with a view to appoint a panel of attorneys.
- 4.9. All costs were within management limits approval.

4.10. On civil matters, University used the services of Booyens du Preez Boshoff Incorporated and Wisani Baloyi Incorporated. The number of lawyers handling civil matters is limited due to the fact that unlike labour matters, civil matters involve many procedures to be followed and the attorney has to run with the matter through various courts and to its finality.

4.11. On labour matters the University used the services of:

- Bowman Gilfillan;
- Sikhitha Daniel and Associates;
- Mr John Siavhe;
- Advocate Ndivhuwo Tshisevhe;
- Advocate Mzungulu Mthombeni;
- Jeff Tshiredo Attorneys;
- Advocate Sikhwivhilu;
- Richard Mathobo Attorneys;
- Maanda Madima Attorneys;
- Advocate Ntshengedzeni Esau Ngwana.