

IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA
PORTFOLIO COMMITTEE ON HIGHER EDUCATION SCIENCE & TECHNOLOGY

OVERSIGHT ENQUIRY INTO THE APPOINTMENT OF PROFESSOR PETER
AMUNGA MBATI AS VICE CHANCELLOR OF SEFAKO MAKGATHO UNIVERSITY

WITNESS STATEMENT

I, the undersigned,

REGINALD SETHOLE LEGOABE

do hereby make oath and say that:-

- 1.1 I am an adult male and the Board Chairperson of the Higher Education Transformation Network (HETN).

- 1.2 I make this affidavit in my capacity as a lawful Director of the Higher Education Transformation Network (HETN) and am duly authorised to depose to this affidavit and to participate in these proceedings on behalf of the Higher Education Transformation Network (HETN).

- 1.3 The facts I state herein, unless the context indicates to the contrary, are within my personal knowledge and to the best of my knowledge both true and correct.

- 1.4 The submissions I make herein, unless the context indicates to the contrary are made on the strength of the legal advice I have obtained from our legal representatives, in the course of preparing for this enquiry.

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2. INTRODUCTION

Honourable Chairperson and Committee members

- 2.1 It gives us great pleasure on behalf of the Higher Education Transformation Network (HETN) to accept the Portfolio Committee's invitation to participate in these proceedings.

3. ABOUT THE HIGHER EDUCATION TRANSFORMATION NETWORK

- 3.1 The Higher Education Transformation Network (HETN) is an independent non-profit network of graduates and alumni from various higher education and further educational institutions in South Africa committed to the transformation of higher education.
- 3.2 The Higher Education Transformation Network (HETN) (NPO Reg No 116-851) is a registered NPO (**Annexure A**) and national independent network of graduates and alumni from various higher education and further educational training institutions across South Africa established on the 11th September 2011.
- 3.3 We are committed to the process of transformation of education to ensure an education system that is more accessible by persistently marginalized groups, the poor in particular, and the elimination of socio-economic disparities wrought through education.
- 3.4 The objectives of the Network are: -
- 3.4.1 To lobby & provide policy advocacy for the transformation of the higher education sector;
- 3.4.2 To promote quality research output & programmes for the transformation of higher education through research
- 3.4.3 To promote increased access to higher education to address socio-economic disparities;
- 3.4.4 Capacity development programme implementation through strategic partnerships;
- 3.4.5 To engage and enlist universities, TVET Colleges, SETA's, Host Employers to empower graduates.

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- 3.4.6 To mobilize resources and stakeholders to support a faster absorption of graduates in the economy.
- 3.4.7 To build a reliable graduate database and tailor make graduate empowerment solutions
- 3.5 It is a major pleasure to participate in these proceedings of the Parliamentary Portfolio Committee on Higher Education, Science & Technology.
- 3.6 On the 16th February 2016, the Network formed part of the stakeholders who delivered oral representations in support of the Higher Education Amendment Bill 36 of 2015 aimed at enforcing transformation in the higher education sector.
- 3.7 Our submissions in 2016 in support of the promulgation of the Higher Education Amendment Bill 36 of 2015 to strengthen the Higher Education Act 101 of 1997 was based on the following considerations:-

- a) *The need to regulate the financial accountability by institutions of higher learning*
- b) *The need for compliance with the Public Finance Management Act 1 of 1999*
- c) *The need for compliance with state transformation policies by the higher education sector*
- d) *The need for the attainment of National Development Plan Vision 2030 targets.*
- e) *The need to bring higher education statutes in line with the Constitution of the Republic of South Africa*

- 3.8 The Network has in the past supported Ministerial interventions in higher education institutions, and believes that such interventions should not only take place in the case of financial mismanagement or loss of statutory Council oversight
- 3.9 We believe that the Minister of Higher Education has the prerogative to also intervene in instances where transformation is not being implemented or is being improperly implemented.
- 3.10 We reiterate the same policy considerations in this Parliamentary enquiry which we commend and support.

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4. BACKGROUND TO THIS AFFIDAVIT

4.1 must indicate that the Board of the Higher Education Transformation Network whom I represent were caught by surprise when, on the evening of the 8th May 2020, a member of the Network alerted us to the public media statement issued on the 7th May 2020 by the Chairperson of the SMU, Ms Maria Rambauli {RAMBAULI} **{Annexure D}**, announcing the appointment of Prof Peter Mbatlana {MBATI} as the new Vice-Chancellor of the Sefako Makgatho University {SMU} amidst a COVID-19 Level 5 lockdown announced by the President of the Republic of South Africa.

4.2 We submit that on the 15th March 2020, the President of the Republic of South Africa and Minister of Cooperative Governance and Traditional Affairs declared a national state of disaster in terms of Section 3 of the Disaster Management Act 57 of 2002 due to the global COVID 19 pandemic. At the time of the above appointment of the new VC by the SMU Council, the entire country was under Level 5 restrictions **{Annexure B}**

OUR LETTER TO SMU COUNCIL

4.3 Upon learning of the above appointment as announced by the SMU Council; as a responsible stakeholder and alumni association in the higher education sector, we promptly directed a letter of concern to the Chairperson of the Council of the Sefako Makgatho University {SMU}, Ms. Maria Rambauli on the 11th May 2020 **{Annexure L}** to kindly request the Council of the SMU to reconsider the above appointment of the new Vice Chancellor or alternatively furnish us with a written undertaking that above resolution will be held in abeyance pending a formal independent inquiry or investigation

INFORMATION REQUEST IN TERMS OF PAIA TO SMU COUNCIL

4.4 On the 11th May 2020, the Network further directed a **PAIA request form (Annexure M)** to SMU Council requesting to be furnished with the records (*meeting attendance registers , minutes*) and curricula vitae of all Candidates who applied for the Vice-Chancellor post in terms of the PAIA Act 2 of 2000 including relevant meetings where critical decisions regarding the impugned administrative action were taken.

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REFUSAL TO FURNISH WRITTEN REASONS FOR ADMINISTRATIVE ACTION

- 4.6 I submit that our reasonable requests to be furnished with records in terms of the PAIA Act 2 of 2000 as well as written reasons for administrative action in terms of Section 5 of the PAJA Act 3 of 2000 were unduly rejected by the SMU Council without any lawful basis.
- 4.7 On the 13th May 2020 the SMU caused delivery of a letter signed by the Registrar of the SMU Council, Dr Jeffrey Mabelebele (**MABELEBELE**) which is hereby annexed as **Annexure N** to this affidavit.
- 4.8 Upon failing to elicit any cooperation from the SMU Council, the Network was left with no further option but to direct a letter of complaint to the Parliamentary Portfolio Committee on Higher Education on the same day as well as to urgently institute legal proceedings in the High Court, Gauteng Division for urgent interdictory relief to stop the SMU Council from proceedings with its administrative action to appoint MBATI and furnish us with requested records.
- 4.9 In the face of the SMU Council's blunt refusal to comply with the laws of the Republic and refusal to furnish us with the requested records, the Board of the Network resolved on the 19th May 2020 to institute an urgent review application as a concerned stakeholder in the higher education sector in the public interest in terms of Section 6 of the PAJA Act 3 of 2000 and in terms of Section 33 of the Constitution of the Republic of South Africa.
- 4.10 The objective of our application for High Court relief was to interdict the SMU Council from proceeding with its unlawful appointment (**PART A**) and further review and set aside (**PART B**) the unlawful appointment of MBATI (cited as Fourth Respondent) as the Vice-Chancellor of the SMU as proclaimed on the 7th May 2020.
- 4.11 The view of the Network's Board at the time was that this being a Constitutional matter entailing unlawful and irregular administrative action and good governance, the looming commencement of the unlawful appointment, the veracity of the unlawful conduct as well as the refusal to comply with the Promotion of Access to Information Act 2 of 2000 and Promotion of Administrative Justice Act (PAJA) Act 3 of 2000 by the SMU

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Council necessitated an urgent application on the urgent roll.

4.12 The High Court relief requested by the Network (as Applicant in above litigation) against the SMU Council (cited as First Respondent) under Case No 22756/2020 is as follows:-

5. HIGH COURT RELIEF REQUESTED BY THE NETWORK (as Applicant)

5.1 "PART A: INTERIM RELIEF

*"Pending the granting of final relief in **PART B** , Applicant prays for interim relief in the following terms:-*

- 5.1.1 *That this application be declared as urgent in terms of Rule 6 (12) of the Uniform Rules of Court;*
- 5.1.2 *Condonation for non-compliance with the forms and service provided for in the Un(form Rules of Court and dispensation with same to the extent necessary;*
- 5.1.3 *That an interim order be granted to interdict the First and Second Respondents from proceeding with the administrative action to appoint Fourth Respondent as a new Vice-Chancellor of the Second Respondent pending the finalisation of **PART B** of this application*
- 5.1.4 *That the appointment of the Fourth Respondent be held in abeyance pending the final determination of **PART B** of the Notice of Motion on the normal roll in terms of Rule 53 of the Honourable Court.*
- 5.1.5 *That the First and Second Respondents be ordered to comply with Section 18(1) of the Promotion of Access to Information (PA/A) Act 2 of 2000 and be compelled to furnish Applicant with the requested records (meeting attendance registers, minutes and curricula vitae of all Candidates).*
- 5.1.6 *That the First and Second Respondents be ordered to comply with Section 5 of the Promotion of Administrative Justice (PAJA) Act 3 of 2000 and be compelled to furnish Applicant with written reasons for administrative action.*
- 5.1.7 *That the First, Second and Fourth Respondents be ordered/ directed to settle the costs of this application in case of opposition thereto.*
- 5.1.8 *Any further or Alternative relief as the above honourable Court deems fit.*

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5.2 "PART B: ALTERNATIVE TO PART A - FINAL RELIEF

Applicant prays for final relief in the following terms:-

- 5.2.1 *That the First and Second Respondent's administrative action to appoint Fourth Respondent as Vice-Chancellor of the Second Respondent with effect from 1 June 2020 be declared unlawful, invalid and be reviewed and set aside in terms of, [Section 6 of the Promotion of Administrative Justice Act (PAJA) Act 3 of 2000 and /or the Common Law.*
- 5.2.2 *That the First and Second Respondent be ordered and/or directed to restart a new process of recruitment, selection and appointment of a new Vice-Chancellor of the Second Respondent.*
- 5.2.3 *That the Honourable Court grants condonation, variation and /or extension of the period of 180 days referred to in terms of Sections 5(1), 5(2), 7(1) and Section 9 of the Promotion of Administrative Justice Act (PAJA) Act 3 of 2000 relating to the date of the launch of this review application.*
- 5.2.4 *That the Respondent be ordered and/or directed to pay the costs of this application.*
- 5.2.5 *Any further /or alternative relief as the above Honourable Court deems fit."*

REMOVAL OF URGENT APPLICATION FROM URGENT ROLL TO OPPOSED ROLL

- 5.3 I submit that the abovementioned application under Case No 22756/2020 was set down for hearing on Tuesday the 26th May 2020 on the urgent roll when out of the blue, the SMU's attorneys and Prof Mbatia's attorneys delivered all requested records which were originally denied us to our attorneys of record at 12:30 pm midday on the 25th May 2020, the day preceding the hearing of our urgent application on the urgent roll on the 26th May 2020.
- 5.4 As a result of the SMU Council's last-minute submission of requested records midday on the eve of the hearing of our urgent application, our attorneys were compelled to duly remove our urgent application from the urgent roll of the High Court for enrolment onto the opposed roll pending exchange of pleadings and set down for hearing.
- 5.5 I submit that it was only through strong legal action by the Network that the SMU Council was compelled to comply with the PAIA and PAJA Acts of the Republic of South Africa by handing over all public records relevant to this complaint in terms of PAIA Act 2 of 2000 as well as giving the necessary written rei n

administrative action in terms of PAJA Act 3 of 2000.

5.6 We hereby annex the following Court affidavits in terms of the abovementioned litigation:-

5.6.1 Notice of Motion & Founding Affidavit deposed to by R Legoabe dated 22nd May 2020

5.6.2 Answering Affidavit by JM Mabelebele dated 25th May 2020 and Annexures

5.6.3 Unsigned Answering Affidavit by PA Mbatl dated 25th May 2020 and Annexures

5.6.4 Replying Affidavit by RS Legoabe dated 5th June 2020 and Annexures

5.6.5 Supplementary Replying Affidavit by AO Olukoga dated June 2020 and Annexures

6. SUBMISSIONS TO PARLIAMENTARY ENQUIRY INTO THE APPOINTMENT OF PROF PETER MBATI.

6.1 The following is the basis of our submissions in this enquiry:-

6.1.1 We submit that the recruitment process that resulted in the appointment of Prof. Mbatl was flawed and subjective.

6.1.2 We submit that Prof Mbatl does not possess the qualities of honesty and integrity and is accordingly not fit and proper for the role of Vice-Chancellor as demanded by the Higher Education Act 101 of 1997 and Section 195 of the Constitution of the Republic of South Africa.

6.1.3 We submit that Prof Mbatl's appointment is not in line with the objectives set by the South African National Development Plan Vision 2030.

7. THE CONSTITUTION OF THE REPUBLIC OF SA

7.1 Section 195 of the Constitution of the Republic states that public administration (*including Higher Education Councils and Vice Chancellors/ Accounting Officers*) must maintain a high standard of professional ethics, promote efficient and effective use of resources; be development-oriented, deliver services impartially, fairly, equitably and without bias, responding to people's needs in an accountable, transparent, manner with good human resource management and career development practices to maximise human potential.

7.2 This implies fairness, honesty, impartiality and transparency in the actions of higher education Councils and Vice-Chancellors (as Accounting Officers) in all

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public decisions that have an effect citizens including the manner in which university management and Councils manage public resources.

- 7.3 Section 195 of the Constitution imposes a duty on the SMU Council and its lawfully delegated officials to act at all times with fairness honesty , impartiality and transparency in the public interest in all decisions.

8 PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 3 OF 2000 (PAJA)

8.1 The Promotion of Administrative Justice Act (PAJA) Act 3 of 2000 emphasizes accountability, transparency and accessibility in public administration and states that all state organs (*including Higher Education Councils such as SMU*) as Administrators must:-

- 8.1.1 Follow fair procedure when making a decision and clearly explain any decisions taken;
- 8.1.2 Allow relevant parties to voice their opinion before making any decision that might affect their rights;
- 8.1.3 Inform people about any redress mechanisms. If there is no internal appeal system, organs of state must tell citizens of their right to ask the courts to review the decision; and
- 8.1.4 Tell people that they have the right to ask for the reasons for any decision taken to be given to them in writing.

8.2 Section 8 of the PAJA Act 3 of 2000 empowers the Honourable Court to grant any order that is just and equitable in terms of Section 6(1) of the PAJA Act 3 of 2000 and allows for the following remedies:-

- a) *"Directing the Administrator to give written reasons or;*
- b) *To act in the manner the court or tribunal requires;*
- c) *Prohibiting the Administrator from acting in a particular manner;*
- d) *Setting aside the Administrative action and-*
- e) *Remitting the matter for reconsideration by the Administrator, with or without directions; or in exceptional cases-*
- f) *Substituting or varying the administrative action or correcting a defect resulting from the administrative action; or*
- g) *Directing the administrator or any other party to the proceedings to pay compensation;*
- h) *Declaring the rights of the parties in respect of any matter to which the administrative action relates;*
- i) *Granting a temporary interdict or other temporary relief, or costs."*

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8.3 Our view is that the administrative action taken by the SMU needs to be reviewed and set aside on the basis that the appointment process followed by the SMU is unlawful and invalid due to procedural irregularities.

9. **DECLARATION OF STATE OF STATE OF DISASTER AND COVID-19 LOCKDOWN REGULATIONS**

9.1 We submit that on the 15th March 2020, the President of the Republic of South Africa and Minister of Cooperative Governance and Traditional Affairs declared a national state of disaster in terms of Section 3 of the Disaster Management Act 57 of 2002 due to the global COVID 19 pandemic. The above-mentioned declaration of a national state of disaster hereby reads as follows:-

·DECLARATION OF A NATIONAL STATE OF DISASTER

Considering the magnitude and severity of the COVD-19 outbreak which has been declared a global pandemic by the World Health Organisation (WHO) and classified as a national disaster by the Head of the National Disaster Management Centre, and taking into account the need to augment the existing measures undertaken by organs of state to deal with the pandemic, I, Dr Nkosazana Dlamini Zuma, the Minister of Cooperative Governance and Traditional Affairs, as designated under Section 3 of the Disaster Management Act No. 57 of 2002"

9.2 A copy of the national state of disaster declaration is hereby annexed to this application as "**Annexure B**"

9.3 On the 25th March 2020, the Minister of Cooperative Governance and Traditional Affairs, Minister Nkosazana Dlamini-Zuma published a set of further regulations under Section 3 of the Disaster Management Act 57 of 2002 declaring Lockdown Level 5 and restrictions on the movement of goods and persons with effect from 25th March 2020 until 15th April 2020.

9.4 In terms of the abovementioned regulations, Section 11(b)(1)(a) of the regulations reads as follows:-

"Restrictions on the Movement of Persons and Goods

11 B. (1)(a) For the period of lockdown-

(i) Every person is,? fined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving, or chronic medical attention;

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- (i) Every gathering as defined in regulation 1 is hereby **prohibited**, except for formal as provided for in subregulation (8);
- (ii) Movement between provinces is prohibited; and
- (iv) Movement between the metropolitan and district areas, is prohibited.
- (v) **All businesses and other entities shall cease operations during the lockdown, save for any business or entity involved in the manufacturing, supply, or provision of an essential good or service.** (emphasis added)

9.5 A copy of the gazetted lockdown regulations published in terms of Section 11(b)(1)(a) of the regulations is hereby annexed to this application as "**Annexure C**"

9.6 We submit that the operations of the SMU Council **were not declared as essential services** in terms of Section 11(b)(1)(a) of the Disaster Management Act 57 of 2002 proclaimed on the 25th March 2020 and there was no emergency to appoint a new Vice-Chancellor in the middle of a national disaster lockdown as an Acting vice-Chancellor was already in charge of the SMU's operations.

10. **THE APPOINTMENT PROCESS FOLLOWED BY SMU IS IRREGULAR, UNLAWFUL AND INVALID**

- 10.1 The primary function of the SMU Council is to exercise its decision-making powers. This involves the exercise of public power and functions as a publicly funded University in terms of the Higher Education Act 101 of 1997.
- 10.2 The SMU Council exercises public power as defined in the PAJA Act 3 of 2000 and is accordingly a public Administrator.
- 10.3 In terms of Sections 1 and 30 of the Higher Education Act 101 of 1997, as amended, the role of Vice-Chancellor or Principal is the Chief Executive and Accounting Officer of the University and is responsible for the management and administration of the University.
- 10.4 We hereby annex the policy and procedures document of the SMU Council titled "**POLICY AND PROCEDURES - APPOINTMENT OF THE VICE-CHANCELLOR**" as "**Annexure E**" to this affidavit.
- 10.5 We submit that the appointment process followed by the SMU Council in appointing Prof Mbatia was not conducted in line with the internal rules and regulations as derived from the Institutional Statutes of the SMU.

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10.6 Paragraph 2.2.3 of the Institutional Regulations of the SMU (**Annexure E**) sets out the procedure for the appointment of the Vice-Chancellor of the SMU Council as follows:-

- 2.2.5** *Consideration by the Council*
- 2.2.5.1 *The Council must be convened as soon as possible to decide on the appointment of the Vice-Chancellor. If the matter cannot be finalised in time to serve at a scheduled meeting an extraordinary meeting of the Council may be convened.*
- 2.2.5.2 *The Council shall at this meeting -*
- 2.2.5.2.1 *take note of the recommendation of the SP with regard to:*
- 2.2.5.2.1.1 *an appropriate alternative process to proceed with the appointment where the SP was of the opinion that none of the applicants and nominees should be short listed in accordance with the advertised requirements for appointment; or*
- 2.2.5.2.1.2 *the appointment of a candidate or the order of preference, if applicable.*
- 2.2.5.2.2 *review and confirm, if appropriate, the processes and procedures that had been followed thusfar;*
- 2.2.5.2.3 *consider all the nominations and applications that have been received;*
- 2.2.5.2.4 *take note of the results of the voting by the Senate and the Institutional Forum on the suitability for appointment of the candidates on the short-list;*
- 2.2.5.2.5 *take note of all information that was at the disposal of the SP (the Chairperson of the SP must, if applicable, give feedback on the competency assessment referred to in clause 2.2.2.5 above in an appropriate manner);*
- 2.2.5.2.6 *take note of the minutes of the meetings of the SP, especially the minutes of the meeting at which the candidates on the short list were interviewed;*
- 2.2.5.3 *The Council must at the meeting referred to in clause 2.2.5.2 and after considering all recommendations and relevant documentation, decide to:*
- proceed with the alternative process referred to in clause 2.2.2.6.2; or*
- appoint a candidate; or*
- after conducting further interviews with the candidates, appoint a candidate; or*
- not make an appointment. In this instance the Council may decide to commence with the appointment process as set out in clause 2 herein de nova as soon as practicable, or to proceed with an appointment by means of an appropriate alternative process, while appropriate transitional measures shall, in accordance with the circumstances, be instituted pending the finalisation of the process and appointment; and*
- determine the term of office of the Vice Chancellor; and*
- determine the conditions of service, privileges, responsibilities of the Vice-Chancellor; and*
- subject to University policy, the academic status and title of the Vice-Chancellor.*
- 2.2.5.4 *The position of Vice-Chancellor will be offered to the candidate who enjoys the support of the majority of Council members present at the meeting.*
- 2.2.5.5 *In the event that no candidate enjoys the support of the majority of the Council members who are present at the meeting during a first or subsequent round of voting, the candidate with the lowest number of votes in a specific round is eliminated.*
- Where there is a tie between two candidates with the lowest number of votes, Council votes in a separate round on which of the candidates proceeds to the next round. The candidate with a simple majority of the votes cast, goes through to the next round. The process is repeated until one candidate enjoys the support of an absolute majority of the Council members present; provided that where only one candidate remains and is unable to obtain an absolute majority of the votes of the Council members present, no appointment will be made and the provisions set out in clause 2.2.5.3 above (fourth bullet) will apply.*
- 2.2.5.6 *If the votes are tied between two candidates, the Chairperson in all instances casts the deciding vote.*

- 2.2.5.7 *Voting takes place by way of a closed ballot. The Registrar is responsible for tallying the votes. In the event that the Registrar is a candidate for the vacancy, the Chairperson appoints an official of the University to tally the votes. Prior to the commencement of the University's external auditors to supervise the voting process should the Registrar or official appointed to tally the votes deem this to be necessary.*
- 2.2.5.8 *Where the preferred candidate does not accept the offer of appointment, no appointment will be made and the provisions set out in clause 2.2.5.3 above (fourth bullet) will apply."*

11. NON-COMPLIANCE WITH PARAGRAPH 2.2.5.7 - NO VOTING BY CLOSED BALLOT

- 11.1 The SMU Council has failed to comply with the provision of Paragraph 2.2.5.7 of its own Institutional Statute (**Annexure E**) and has failed to conduct voting amongst the three selected Candidates for Vice-Chancellor by close ballot.
- 11.2 Instead of compliance with Paragraph 2.2.5.7, the SMU Council has opted to deviate from its regulations by undertaking critical administrative action unlawfully and irregularly using Skype, an unsecure electronic platform that offers no secrecy, privacy and confidentiality of voting by Council members of the SMU Council and is subject to potential external interference manipulation and hacking by third parties.
- 11.3 We submit that the SMU Council has conducted the impugned administrative action unlawfully and has deviated from the statutory processes laid down in its Institutional regulations by deviating from the official voting process in the midst of a Level 5 lockdown when there was no urgency nor any reasonable rationale to justify such deviations.

12. SMU COUNCIL HAS IRREGULARLY ALLOWED SUSPENDED OFFICIAL TO PARTICIPATE IN COUNCIL ACTIVITIES

- 12.1 We submit that on the 30th July 2019, the Director of Procurement of the SMU, a Mr TR Mampana (**MAMPANA**) was lawfully placed under suspension for alleged misconduct by the then Vice-Chancellor of the SMU, Prof Chris de Beer (**DE BEER**).
- 12.2 We submit that one of the conditions of the suspended official's lawful suspension entailed being barred from participating in Council activities of the SMU.

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12.3 The suspension extension letter dated the 10th February 2020 drafted by the Registrar of the SMU, Dr Jeffrey Mabelebele (**MABELEBELE**) as "Ann exure F" to this affidavit which reads as follows:-

"JO February 2020
Mr TR Mampana
Director: Procurement
Sefako Makgatho Health Sciences University

Dear Mr Mampana

CHAIRPERSON OF THE INSTITUTIONAL FORUM

1. It is recorded that the University issued you with a letter extending your suspension dated 30th January 2020, in which you were suspended in terms of the Disciplinary Policy of the University.
2. In the same letter extending your suspension, the following paragraph has been brought to my attention as a Compliance Officer of the University:- "**The same terms and conditions apply as stated in the letter dated 30th July 2019 , on the understanding that permission for access to University premises and involvement in in the University business also includes access to SMU employee in relation to work activities and work requests. According your access to your work you are suspended.** (my own emphasis).
3. You will also appreciate that the prohibition of access to campus and prohibition to be involved in " University business" well as the fact that you have been suspended from all University activities as the meetings of the IF takes place on Campus
4. In light of the above, your Chairpersonship of the IF is hereby suspended pending the finalization of the disciplinary enquiry into allegations of misconduct against you. This position is taken mindful of the need to mitigate any legal risks that may render the decisions of the IF, Senate and Council or their respective Committees where the Chairperson of IF serve invalid, as such decisions may withstand legal challenge, and will in all probability be set aside by a competent Court of law.
5. You will appreciate that your suspension as Chairperson of IF has the effect of simultaneously suspending your participation in Council and Senate, of which you are an ex-officio member by virtue of your Chairpersonship of the IF.
6. It is my view that that during your period of suspension the functions of the Chairperson of the IF will be performed by the Deputy Chairperson of the IF in terms of paragraph 45(4) of the Statute of the University

Yours faithfully
Dr JM Mabelebele
Registrar"

12.4 Notwithstanding the lawful official suspension on paid leave pending disciplinary action as early as the 30th July 2019 by SMU, the suspended official was irregularly allowed by SMU Council to participate in Council activities between 30th July 2019 and 10th February 2020 as Chairperson of the Institutional Forum of the SMU and was irregularly allowed by SMU to participate in recommending the appointment of the new Vice-Chancellor.

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12.5 We hereby further annex an undated letter of correspondence by the Deputy-Registrar of the SMU, Mr HJ Croucamp (**CROUCAMP**) as **Annexure G** to this affidavit which reads as follows:-

"VOTING FOR ACADEMIC AS WELL AS ADMINISTRATIVE AND SUPPORT REPRESENTATIVES TO SERVE ON THE INSTITUTIONAL FORUM

On 22 October 2019 academic staff as well as administrative and support staff were requested to nominate individuals within their respective constituencies to serve on the Institutional Forum (IF). The closing dates for these nominations were on 1 November 2019.

The following nominations were received

ACADEMIC EMPLOYEES NOMINATIONS	
NAME AND SURNAME OF NOMINEE	ACADEMIC DEPARTMENT
1. Dr 55 Gololo	Biochemistry
2. MS Poka	Pharmacy
3. Prof SG Selabe	Virology

ADMINISTRATIVE AND SUPPORT NOMINATIONS	
NAME AND SURNAME OF NOMINEE	DEPARTMENT
1. C Makhubela	Project Manager
2 R Mampana	Procurement
3 TG M ulaudzi	Assests
4 S Mpolaise	Human Resources
5 Dr E Pule	Marketing and Comm unication
6 L Van Der Merwe	Instit utional Support

In accordance with the Institutional Statute section 43 (j) it states that "The Registrar facilitates the processes in terms of which representatives contemplated in paragraph 41 must be appointed or elected by the various constituencies".

You are hereby informed that voting will take place by means of closed ballot and will take place as follow;

- *Date : Tuesday 19 November 2019*
- *Venue : Clinical Pathology Building room 5-S517*
- *Time : 09:00 to 16:00*

Furthermore note that the fo/lowing rules will apply during the voting process;

- 1. Contract and part-time employees are excluded from participating in the election process.*
- 2. Employees need to produce their staff card before a ballot paper will be issued.*
- 3. Employees will only be permitted to vote for a nominee from the same constituency the employee is employed in.*
- 4. Each employee voting may vote for two nominees.*

Yours sincerely
HJ Croucamp"

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12.6 The SMU has irregularly allowed the suspended official to participate in the affairs of its Institutional Forum notwithstanding the official's lawful suspension and barring from Council activities of the SMU Council with effect from 30th July 2019.

12.7 We hereby further annex a public memorandum issued by the Registrar of the SMU Council, **MABELEBELE** dated the 19th November 2019 as "**Annexure H**" to this affidavit which reads as follows:-

"TO: UNIVERSITY COMMUNITY
FROM: DR JM MABELEBELE, REGISTRAR
DATE: 19 NOVEMBER 2019

SUBJECT: RESULTS: ELECTION OF ACADEMIC EMPLOYEES AND ADMINISTRATIVE AND SUPPORT EMPLOYEES TO SERVE ON THE INSTITUTIONAL FORUM OF SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY INSTITUTIONAL FORUM (IF)

Following earlier communication to the University community on the above matter, I hereby wish to confirm that my office has now successfully concluded the election processes for the IF membership within the abovementioned constituencies. The elections were conducted by means of a closed ballot system, and overseen by the Registrar 's Office as well as the Internal Audit colleagues - and declared by both offices to be free and fair.

Academic Employees

In terms of section 41(d) of the Institutional Statute the Institutional Forum shall include " two representatives of the academic employees elected by the academic employees". The results for this membership category are as follows:

Candidate	Total number of Votes received	Spoilt ballot
Dr S Gololo	9	1
MS Poka	5	
Prof SG Selabe	5	

Dr S Gololo is elected as Academic Representative 011 Institutional Forum. Since there is a tie of votes between MS Poka and Prof SG Selabe, the Office of the Registrar will announce a re-election date shortly for the academic employees to vote with MS Poka and Prof SG Selabe as the 011/ycandidates 011 the ballot paper.

Administrative and Support Employees

In terms of section 41 (e) of the Institutional Statute, the institutional Forum shall include "two representatives of administrative and support employees elected by the administrative and support employees". The results for this membership category are as follows:

Candidate	Total number of Votes received	Spoilt ballot
Mr C Makhubela	15	2
MrRMampana	103	
Mr S Mpolaise	20	
Mr TG Mulaudzi	50	
Dr EPule	202	
Ms L Van Der Merwe	101	

R.S. M.T

Flowing from the results above, **Dr Pule and Jlr J\la 111pa11a** are duly elected 111e 111bers of Institutional Forum representing administrative and support employees.

I would like to take this opportunity to thank all the nominees for their willingness to avail their services to the University and wish all the elected candidates best wishes as members of IF. I would also like to thank the voters, who have contributed significantly to the deepening of the democratic project as SA, fU, and the Office of the Registrar and Internal Audit staff respectively for the professionalism and dedication with which they have conducted the election processes.

Yours sincerely

DR JM MABELEBELE
REGISTRAR

(sent electronically and therefore deemed to have been signed)

12.8 The SMU Council has irregularly allowed a suspended official to participate in the affairs of its Institutional Forum as its Chairperson and to irregularly recommend the appointment of the new Vice Chancellor notwithstanding the official's lawful suspension and barring from Council activities from the 30th July 2019.

12.9 We submit that **MABELEBELE**, the Registrar of the SMU Council has admitted in Paragraph 4 of **Annexure F** that the SMU Council has acted negligently and that SMU Council has failed to appreciate the veracity of its statutory responsibilities as Administrator in terms of the PAJA Act 3 of 2000 by allowing a suspended official to irregularly participate in Council activities of the SMU Council including participating in the administrative action on the appointment of the new Vice-Chancellor.

"4 In light of the above, your Chairpersonship of the IF is hereby suspended pending the finalization of the disciplinary enquiry into allegations of misconduct against you. This position is take mindful of the need to mitigate any legal risks that may render the decisions of the IF, Senate and Council or their respective Committees where the Chairperson of IF serve invalid, as such decisions may withstand legal challenge, and will in all probability be set aside by a competent Court of law. (emphasis added)

13. SMU COUNCIL WAS WARNED OF ITS IRREGULAR PROCEEDINGS BY INTERNAL STAKEHOLDERS

13.1 We hereby further annex a joint letter by **NUMSA** and **SAPTU** dated 15th April 2020 from Mr Kabelo Mokoape (**MOKOAPE**), the local NUMSA Branch Chairperson and Mr Monedi Lekabe (**LEKABE**), the local SAPTU Branch Chairperson to Ms MM Rambauli (**RAMBAULI**), Chairperson of the SMU Council as **Annexure I** to this affidavit which reads as follows: ✓

" TO : Chair of Council

CC : Prn/Avo-Yusu/

RE: VC i nterviews

DATE: 15 April 2020

Dear Ms Rambauli

It has come to our attention that the interviews for the VC are going ahead tomorrow (16 April 2020), we have since given the SMU management the cooperative agreement between NUMSA and SAPTU which meant that the two unions meet the threshold set by the Council, in our view we therefore qualify to be part of the inte111ie w.

NUMSAISAPTUSMU would like to raise the following concerns:-

What is the fum y of conducting the interview via Skype?

The university currently has an acting VC and his contract can be extended until after the COVJD-19, to allow all stakeholders to participate in this process. According to the constitution of RSA, this position was supposed to have been gazetted, which in this case it did not follow that process

Going ahead with this process will be violatingthe principle of transparency and fairness

We would like to have a response by end of business today (15 April 2020)

We await your urgent response.

Regards

Kabelo Mokoape
(NUMSA-Chairperson)
Signed e/ectro nically

Monedi Lekabe
(SAPTU- Chairperson)

- 13.2 We submit that the SMU Council willfully proceeded to ignore the pleas, warnings and concerns from its internal stakeholders contained in above **Annexure I** and **Annexure J** and proceeded to constitute the irregular online "meeting" to appoint the new Vice Chancellor contrary to the provisions of the SMU Council's Institutional Statute as annexed as **Annexure E** to this affidavit.
- 13.3 We accordingly submit that the appointment process followed by the SMU Council was hastily conducted without any proper interviews of Candidates during a period of COVID 19 lockdown when university operations should have been suspended.
- 13.4 There existed no urgency justifying deviation from prescribed HRM policies by the SMU Council as an Acting Vice-Chancellor was already responsible for operations.

A.S. - MT.11

1 4. APPOINTMENT OF PROF MBATI IS CONTRARY TO THE ETHOS OF THE EMPLOYMENT EQUITY ACT AND NATIONAL DEVELOPMENT PLAN VISION 2030

- 14.1 We submit that the National Development Plan (NOP) Vision 2030, a key policy document of the Republic of South Africa aims to eliminate poverty and create 11 million jobs by 2030.
- 14.2 As such, the NOP Vision 2030 policy of the Republic is clear about the fact that higher education has a key role to play in "writing a new story for South Africa" (2011: 4).
- 14.3 Higher education is *" more than just an instrument of economic development but is the major driver of the information-knowledge management system, linking it with economic development"*.
- 14.4 The NOP Vision 2030 acknowledges the range of societal benefits derived from higher education and states that *"higher education is the major driver of the information knowledge management system"*, linking it with economic development.
- 14.5 The NOP Vision 2030 recognizes that higher education plays a significant role in contributing, in a profound and catalytic sense, to South Africa's development trajectory. *"Education is important for good citizenship and enriching and diversifying life"* (2011 : 274).

"Universities are key to developing a nation. They play three main functions in society: Firstly, they educate and train people with high-level skills for the employment needs of the public and private sectors. Secondly, universities are the dominant producers of new knowledge, and they critique information and find new local and global applications for existing knowledge. South Africa needs knowledge that equips people for a changing society and economy. Thirdly, given the country's apartheid history, higher education provides opportunities for social mobility. It can strengthen equity, social justice and democracy. In today's knowledge society, higher education is increasingly important for opening up people's opportunities." (NDP Vision 2030, 2011)

- 14.6 The National Development Plan has set a national target for the Republic of South Africa country to increase the outputs of black and female teachers, students and Researchers and ensure progress in reversing gender and racial imbalances in the higher education sector to ensure that African and women make up 50% of the teaching and research staff of universities.

A.S. M.T

14.7 The NDP sets the following targets to be met by 2030 namely:-

14.7.1 To increase the percentage of PhD qualified staff in the higher education sector from the current 34 percent to over 75 percent by 2030;

14.7.2 To produce more than 100 doctoral graduates per million per year by 2030.

14.8 The National Development Plan further states that " *universities should be welcoming for black and female teachers, students and researchers*" to ensure " *significant progress in reversing gender and racial imbalances in the higher education sector to ensure that African and women make up 50% of the teaching and research staff of universities*".

14.9 As a legacy and direct outcome of Prof Mbat's and his then management team's strategic and operational management practices at the UNIVEN for the past 10 years since 2008 -2018, a state funded institution funded by South African taxpayers such as the UNIVEN currently has no less than six (6) out of eight (8) Executive Faculty Deans being foreign nationals and not South Africans.

14.10 As we currently speak, out of the eight (8) key faculties of the University of Venda (UNIVEN), only three faculties are held by senior SA academia and Deans at namely the Faculties of Mathematics and Natural Sciences, Human and Social Sciences and Faculty of Health.

14.11 The following Faculties of the UNIVEN are not staffed by SA Deans academia:-

14.11.1 School of Agriculture

14.11.2 School of Education

14.11.3 School of Environmental studies

14.11.4 School of Management Sciences

14.11.5 School of Law

14.12 We submit that under the leadership of Prof Mbat from 2008 - 2018, a nefarious policy of Internationalisation (*as reflected in terms of Strategic Objective 7: of the University of Vendas Strategic Plan*) was implemented on a wholesale basis at the UNIVEN thus undermining the strategic objectives of the National Development Plan Vision 2030.

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- 14.13 This has resulted in the ranks of a taxpayer funded South African institute such as UNIVEN being composed of an overwhelming non South African staff complement in non-compliance with the strategic objectives of the National Development Plan Vision 2030.
- 14.14 The above-mentioned runs contrary to the ethos of the National Development Plan Vision 2030 and Employment Equity Act of 1998 which emphasizes that black and female South African teaching and lecturing staff should receive priority in the workplace.
- 14.15 Our considered submissions are that an analysis of the track record of Prof Mbat's tenure at the UNIVEN indicates that non-South African academia especially at Professoriate level and Departmental Head level were unduly given priority over South Africans.
- 14.16 It is further our considered view that more senior deserving and experienced South African academia of high integrity should be considered for the role of Vice-Chancellor at the Sefako Makgatho University, which is a South African institution of higher learning funded by the South African taxpayer in line with the prescripts of the NOP Vision 2030.

THE EMPLOYMENT EQUITY ACT OF 1998

- 14.17 Section 15 (2) (d) (i) of the Employment Equity (EEA) Act 55 of 1998 states that all designated employers need to implement affirmative action (AA) to ensure equitable representation of suitably qualified people from all designated groups in all occupational levels in the workforce especially previously disadvantaged citizens of the Republic of South Africa;
- 14.18 In terms of Section 2 (b) of the Employment Equity Act 55 of 1998, the purpose of the Employment Equity Act is to implement affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.
- 14.19 We submit that designated groups in terms of the Employment Equity Act 55 of 1998 are blacks and African females who are citizens of the Republic of South Africa by birth or descent; those who became citizens of the Republic of South Africa by naturalization prior 1994.

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- 14.20 We submit that the appointment of Prof Mbatl does not fall under the category of designated persons in terms of Section 2(b) of the Employment Equity Act 55 of 1998 since the appointee is a Kenyan citizen and naturalized SA citizen who gained citizenship post 1994.
- 14.21 The SMU Council has accordingly failed to comply with the Employment Equity Act of 1998 in its recruitment and selection criteria.

15. PROF MBATI IS NOT FIT AND PROPER FOR THE ROLE OF VICE-CHANCELLOR

- 15.1 Section 195 of the Constitution of the Republic states that public Administrators (such as university Vice-Chancellors and Council members) must maintain a high standard of professional ethics including fairness, honesty, impartiality and transparency.
- 15.2 We submit that Prof Mbatl does not possess the qualities of honesty and integrity and is accordingly not fit and proper for the role of Vice-Chancellor as demanded by the Section 195 of the Constitution of the Republic of South Africa and Higher Education Act 101 of 1997.
- 15.3 We make the abovementioned submissions based on the following:-

ALLEGED PROCUREMENT MISREPRESENTATIONS

- 15.4 We wish to kindly refer to the attached newspaper article published in the public domain by Mr Prega Govender published in the Sunday Times newspaper on the 15th July 2018 titled "**Beds before beauty projects at Venda varsity**"
- 15.5 According to the news article published in 15th July 2018, the former Minister of Higher Education, Science & Technology, Dr Naledi Pander appointed an Internal Assessor to the University of Venda (UNIVEN) to probe apparent fraudulent malfeasances in the infrastructure projects at UNIVEN.
- 15.6 This took place after Prof Peter Mbatl had completed two terms of office at the UNIVEN in January 2018. Prof Jan Crafford was Acting Vice-Chancellor at the time.

R.S - M-T

- 15.7 According to the findings of an Internal Assessor appointed by former Minister Dr Naledi Pandor, Minister Pandor subsequently set aside an infrastructure contract involving a subsidiary of a private infrastructure project management company named Andany Holdings (Pty) Ltd.
- 15.8 According to the published article, upon receiving feedback by the Independent Assessor,
- 'Pandor's spokesman Mr Lunga Ngqengelele confirmed that the former Vice-Chancellor (Mbate) was named as a director in documentation provided by the private company involved in the proposed Univen development.'*
- 15.9 We submit that prior to exiting the UNIVEN in January 2018, Prof Mbati had appointed a private infrastructure project management company named Andany Holdings (Pty) Ltd to implement the university's new infrastructure projects.
- 15.10 We submit that the UNIVEN then under the leadership of Prof Mbati intended to spend R70-million on a staff entertainment centre, R45-million on a multipurpose hall for graduation ceremonies and R15-million on a new administration building.
- 15.11 We submit that this was notwithstanding the fact that there were several abandoned infrastructure projects at the UNIVEN entailing abandoned hostel dormitory buildings abandoned by unpaid Contractors in the midst of major student accommodation problems for 10 000 students who needed student accommodation .
- 15.12 According to the same newspapers source published we submit that Minister Pandor's spokesman Lunga Ngqengelele confirmed that Mbati was named as a Director in documentation provided by Andany Holdings (Pty).
- 15.13 According to information by an anonymous source, it is alleged that the Director and Chairman of Andany Holdings (Pty) Ltd is Mr Lindelani Cibi, the son of a certain Mrs Grace Cibi's son.
- 15.14 According to information given to us by the anonymous source, Mrs Grace Cibi was Prof Mbati's Personal Assistant at the University of Venda (UNIVEN) and still holds a senior administrative position at UNIVEN.

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15.15 According to information given to us by an anonymous source, there are other substantive allegations which might require further probing by the Portfolio Committee that before Prof Peter Mbatlali left the UNIVEN in 2018, a loan totaling R2 billion was secured from the Public Investment Commission (PIC) for the building of hostels at the University of Venda (UNIVEN).

THERE IS A PENDING CRIMINAL INVESTIGATION OF FORGERY FRAUD AND CORRUPTION AGAINST PROF PETER MBATI

- 15.16 On the basis of a signed affidavits and corroborating records supplied to us in confidence by a whistleblower and former senior staff member at the University of Venda, we submit that criminal charges of fraud, forgery and corruption were laid against Prof Peter Mbatlali.
- 15.17 We submit that there is a pending criminal case of forgery, fraud and corruption lodged on the 24th July 2015 by a whistleblower named Prof AO Olukoga at the Thohoyandou South African Police Services (SAPS) under **CAS No 61/08/2015** against Prof Mbatlali. **(Annexure A1)**"
- 15.18 On the basis of detailed affidavits and supporting annexures filed in relation to the abovementioned the Network is further in possession of a signed Supplementary Replying affidavit deposed to by the whistleblower who is a former employee of the University of Venda on the 5th June 2020.
- 15.19 On the basis of the signed affidavit and supporting records by the whistleblower, we submit that on or about the 16 May 2014, a criminal complaint relating to forgery, fraud and corruption against the Prof Mbatlali was laid by the whistleblower
- 15.20 On or about 26 November 2015, a signed confirmatory letter signed by the Minister of Higher Education and Training, Dr BE Ndzimande was received by the whistleblower **(Annexure AO1** to Confirmatory Affidavit by AO Olukoga)
- 15.21 On the basis of the signed affidavit and supporting records by the whistleblower, we submit that on or about 18 August 2016, the whistleblower was informed by Advocate Nnyambeni R. Nekhambele, Senior State Advocate, Directorate of Public Prosecution, Thohoyandou, Limpopo

Province that the Limpopo Provincial Police Commissioner had issued an order that the Case under CAS No **61/08/2015** be investigated by the Anti-Corruption Unit based in Polokwane.

- 15.22 On the basis of the signed affidavit and supporting records filed by the whistleblower, it is alleged that the *above* criminal complaint was split into two i.e. (i) case of forgery being investigated by the South African Police Services (SAPS) and (ii) a case of fraud and corruption being investigated by the Serious Corruption Investigations, Directorate for Priority Crime Investigation, Limpopo.
- 15.23 On the basis of the signed *affidavit* and supporting records filed by the whistleblower, the SAPS officers that were investigating the case of forgery were a Colonel Tshililo Immanuel Dau and Brigadier. SW Mashava, Station Commander, SAPS Thohoyandou, Limpopo.
- 15.24 According to the signed affidavit filed by the whistleblower, the case of forgery was also brought to the attention of the Senior State Advocate, Directorate of Public Prosecution, Thohoyandou (*Adv Nnyambeni R. Nekhambele*) and Director Of Public Prosecutions, Limpopo Division (*Adv. Ivy. Thenga*) .
- 15.25 On or about 13 December 2016, at Sibasa, Limpopo, the whistleblower deposed to an affidavit (**Annexure A02**) with respect to the case of fraud and corruption which affidavit was handed to Captain Victor Maja of the Anti-Corruption Task Team (ACTT), Directorate for Priority Crime Investigation located at 31 Market Street, Moolman Building in Polokwane.
- 15.26 According to the signed affidavit filed by the whistleblower, the Investigating Officers that were investigating the case of fraud and corruption were: Colonel Victor Maja (promoted from Captain), Warrant Officer Magonono and Colonel DC Alexander from the Serious Corruption Investigations , Directorate for Priority Crime Investigation, Limpopo.
- 15.27 According to the signed affidavit filed by the whistleblower, the case of fraud and corruption was subsequently referred to the National Prosecution Authority, Serious Commercial Crimes Unit (SCCU) in Pretoria where fraud and corruption investigations were led by *Adv . Marijke C. de Kock*, Prosecutor based at the SCCU, Pretoria.

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15.28 According to the signed affidavit filed by the whistleblower, on or about the 10th May 2017, the SAPS Officers who were involved with the criminal case of forgery, fraud and corruption expressed concerns for the safety of the whistleblower and his family members due to the ongoing harassment, physical assault, grievous bodily harm and damage to property attacks that took place resulting in the whistleblower's treatment at the Tshilidzini Regional Hospital, Limpopo. (*Criminal charges laid under GAS 384/07/2016*)

15.29 The abovementioned averments including the filed affidavit by the whistleblower containing the above averments were filed in the Court papers in the ongoing litigation instituted against the SMU Council.

15.30 In his filed affidavit dated 5 June 2020, the whistleblower concludes his testimony in Paragraph 29 and 30 and states under oath that:-

"29 *I wish to place on record the concerns of my family and friends for our safety and lives due to the viciousness of the Fourth Respondent, his desperation to avoid answering for his criminal acts against my family and his many attempts to pervert the course of justice.*

"30 *Also, I wish to state that nothing untoward must happen to any member of my family again or else, the Fourth Respondent must be held responsible.*"

ALLEGATIONS OF IMPROPER INFLUENCE BY PROF PETER MBATI

15.31 We submit that Prof Mbatl has been accused of improper influence and bribery by Mr Lavery Modise, an admitted Attorney of the High Court in Court papers filed under **Case No 01412017** in the Limpopo High Court on the 13th March 2017.

15.32 We hereby annex "**ANNEXURE O**" to this affidavit entailing an Explanatory Affidavit deposed to by Mr Lavery Madise (**MODISE**) on the 13th March 2017 under Case No 014/2017, an application initiated in the Limpopo High Court by Prof Mbatl, then acting as Applicant in the abovementioned matter in his then capacity as Vice-Chancellor of the University of Venda (UNIVEN).

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15.33 **MODISE** , (cited as *First Respondent in abovementioned matter*) is an admitted Attorney of the High Court and was the appointed Mediator appointed to mediate in a matter between Prof Mbatl in his then capacity as Vice-Chancellor of the University of Venda (UNIVEN) and Prof Thidziambe Tshivhase-Phendla (cited as *Second Respondent in abovementioned matter*)

15.34 In **Paragraph 33.3** of the aforesaid " **ANNEXURE O**", **MODISE**, attests under oath that:-

"Furthermore, it is noteworthy to state that the Applicant (Prof Mbatl) imp roper ly sought to influence me to amend my report".

15.35 We submit that Prof Mbatl has been accused in Court papers of attempted improper influence and bribery by **MODISE**, an admitted Attorney of the High Court.

15.36 To our knowledge, despite the contents of **MODISE's** affidavit being public knowledge in the public domain , Prof Mbatl has failed to rebut the allegations by **MODISE** which are in the public domain since 13th March 2017 to date.

16. **ALLEGED SALARY INFLATION**

16.1 We submit that on the 10th, 17th and 24th September 2017, Mr Prega Govender of the Sunday Times newspaper published three consecutive newspaper articles in the public domain alleging irregularities with regards to Prof Mbatl's salary of R3.9 million per annum at the UNIVEN.

16.2 The news article alleges irregularities with regards to Prof Mbatl's salary of R3.9 million per annum at the UNIVEN for the management of a small university such as UNIVEN with almost 15 000 students.

16.3 According to the abovementioned news article, the above is a major anomaly and is concerning considering that the highest earning Vice-Chancellor of Stellenbosch University manages at least more than 60 000 students with a salary of R4 million.

R.S. - M.T

17. **VEXATIOUS ABUSE OF UNIVERSITY RESOURCES IN WASTEFUL PERSONAL LITIGATION**

- 17.1 We submit that at a Special Council meeting on the UNIVEN in September 2017, a report showed that approximately **R18 million** of the university budget was utilised by Prof Mbatlana to fight legal battles and pay legal costs and expenses to defend Prof Mbatlana in his personal litigation against Prof Phendla's sexual harassment case.
- 17.2 We hereby attach to this affidavit an alleged spying investigation report allegedly crafted by a Stefanus Petrus Maloney a private investigator of ISS Swartberg in August 2012. allegedly at the instruction of Prof Mbatlana during his tenure at the UNIVEN .
- 17.3 We are concerned that a Vice-Chancellor of a small poor university such as the University of Venda can be allowed to divert critical resources of the Republic of South Africa to fight vexatious personal battles against a charge such as sexual harassment which is outlawed in terms of the Constitution of the Republic of South Africa.

18. **CONCLUSION**

- 18.1 We submit that in terms of Sections 1 and 30 of the Higher Education Act 101 of 1997, as amended, the role of Vice-Chancellor or Principal is the Chief Executive and Accounting Officer of the University and is responsible for the management and administration of the University.
- 18.2 Section 195 of the Constitution of the Republic states that public administrators (*such as Vice-Chancellors and university Councils*) must maintain a high standard of professional ethics, promote efficient and effective use of resources; deliver services impartially, fairly, equitably and without bias, responding to people's needs in an accountable, transparent, manner with good human resource management and career development practices to maximise human potential.

R.S. M.T

- 18.3 Section 195 of the Constitution imposes a duty on the Administrators and key officials such as Vice-Chancellors to act at all times with fairness honesty, impartiality and transparency as public sector officials in all decisions especially in decisions relating to the application of resources of the Republic of South Africa
- 18.4 We submit that the SMU Council exercises public power and is accordingly a public Administrator as defined in the PAJA Act 3 of 2000.
- 18.5 We submit that the appointment of an Accounting Officer or Vice-Chancellor by a public institution entails administrative action which is regulated in terms of Section 6 of the PAJA Act 3 of 2000.
- 18.6 The appointment of a Vice-Chancellor by an Administrator contrary to the public regulations during a national state of disaster evidenced by the COVID-19 pandemic is irregular and unlawful administrative action as defined in terms of the PAJA Act 3 of 2000.
- 18.7 The SMU is a public institution regulated in terms of the Higher Education Act Amendment Act 101 of 1997 and funded through amongst others subsidies from national government and funded through citizen's taxes and must comply with the prescripts of the National Development Plan Vision 2030 and all regulatory laws governing public higher education institutions.
- 18.8 On the 16th February 2016, the Network formed part of the stakeholders who delivered oral representations in support of the Higher Education Amendment Bill 36 of 2015 to strengthen the Higher Education Act 101 of 1997 was based on the following considerations:-
- 18.8.1 *The need to regulate the financial accountability by institutions of higher learning*
- 18.8.2 *The need for compliance with the Public Finance Management Act 1 of 1999*
- 18.8.3 *The need for compliance with state transformation policies by the higher education sector*
- 18.8.4 *The need for the attainment of National Development Plan Vision 2030 targets.*
- 18.8.5 *The need to bring higher education statutes in line with the Constitution of the Republic of South Africa*
- 18.9 We have in the past supported Ministerial interventions in higher education institutions in the case of financial mismanagement or loss of statutory Council oversight

