

STATEMENT TO THE PORTFOLIO COMMITTEE ON HIGHER EDUCATION, SCIENCE AND TECHNOLOGY – NATIONAL ASSEMBLY

04 SEPTEMBER 2020

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FORMER DIRECTOR: OFFICE OF THE VICE-CHANCELLOR & PRINCIPAL, UNIVERSITY OF VENDA (FOR THE PERIOD AUGUST 2014 – JUNE 2016)

SECTION A. INTRODUCTION

My name is Nyelisani Clarence Tshitereke. I am a 45-years old South African male citizen. I obtained a Grade 12 Certificate at Tshivhase Secondary School in Sibasa, a Bachelor degree at the University of Cape Town, a Master degree at Stellenbosch University and a Doctoral degree at Queen’s University in Canada. My work experience ranges from having served in government, academia, private sector to non-governmental organisations.

I confirm that the content of this statement is to the best of my knowledge both true and correct.

SECTION B. BACKGROUND

1. I commenced my responsibilities as Director: Office of the Vice-Chancellor and Principal at the University of Venda in August of 2014. I reported directly to the Vice-Chancellor and Principal, Professor Peter Amunga Mbatl – and completed a Performance Agreement with him. Primarily, my responsibilities were to assist the Vice-Chancellor and Principal in running the university. It is fair to say that the relative efficiencies of the University in all its divisions was the constant concern of the Office of the Vice-Chancellor and Principal, and that my responsibilities were tailored to assist him towards achieving this primary objective.
2. As such, in my responsibilities, I worked with other executives: Deputy Vice-Chancellors; the Registrar; other Directors; Deans of Faculties, Senior and Middle Managers. My responsibilities included attending meetings of the University’s Council and its sub-committees as a “resource person” and to also assist in ensuring Council/Sub-committee decisions are implemented effectively and for associated reports to be submitted to the Vice-Chancellor’s Office accordingly. I met with the Vice-Chancellor everyday in the office and we actively discussed any matter pertaining to the University and any assignment that he wanted me to do. Effectively, I had direct access to the Vice-Chancellor and Principal, and could raise any matter that was worth raising.

3. I intend to address two matters in relation to Professor Mbatl's fitness to hold the Office of Vice-Chancellor and Principal, based on my firsthand experience while working directly with him at the University of Venda.
4. The first matter relates to Professor Mbatl's handling of the allegations of sexual harassment against him by Professor Thidziambi Phendla. The second matter is with regard to Professor Mbatl's mismanagement of infrastructure projects at the time. While the first matter took place before my time, I however had conversations with Professor Mbatl, and also had access to various documents on the matter – which are worthy of the Committee's consideration.

SECTION C. SEXUAL HARASSMENT MATTER

5. On 27-28 November 2014, the University of Venda was invited to appear before the Commission for Gender Equality, which was conducting hearings on "Gender Transformation at Higher Education Institutions". I was part of the University's team working on producing a presentation to the Commission on Gender Equality and I subsequently formed part of the University's delegation to the Commission for Gender Equality in Johannesburg. In the course of preparations, my regular updates on the University's submission to the Commission for Gender Equality to Professor Mbatl were met with apprehensions. I could sense his anxieties and reluctance to appear before the Commission for Gender Equality. In fact, he was prepared to delegate one of the Deputy Vice-Chancellors to lead – but I insisted that it was important for him to be there as the Vice-Chancellor.
6. The Office of the Vice-Chancellor and Principal received a report of the Commission for Gender Equality's Investigation on Professor Thidziambi Phendla's complaint in early December 2014 [Annexure A1]. It was my primary responsibility to read/study documents or correspondence received by the Office of the Vice-Chancellor & Principal. Often, I would brief the Vice-Chancellor accordingly. It was only after reading the report that I understood Professor Mbatl's apprehension towards attending the Commission for Gender Equality's hearings. For, the Commission for Gender Equality had interviewed Professor Mbatl about Professor Phendla's complaint – and therefore, at the time of the University of Venda's appearance before the Commission's Hearings on "Gender Transformation at Higher Education Institutions" the previous month [basically 10 days earlier], the Commission's report was pending.
7. After studying the report, I did not discuss it with Professor Mbatl since it read like a personal matter between Professor Mbatl and Professor Phendla, except that the Council and the University of Venda were second and third respondents, respectively. Further, it was clear to me that the Human Resource Directorate will be proceeding with implementation of Clause 5.2 of the University's Sexual Harassment Policy in accordance with the Commission for Gender Equality's recommendation. I however, sought and received the University's Sexual Harassment

Policy [Annexure A2] – which was active at the time of Professor Phendla’s complaint. This was for purposes of understanding the policy itself and what Clause 5.2 implied.

8. In early January 2015, there was adverse media coverage of Professor Mbatl and allegations of sexual harassment by Professor Phendla, which were obviously of concern to the University in terms of its reputation and brand image. By this time, Professor Mbatl was still in Kenya for the Christmas break – but I was in regular contact with him. He either called me or I called him immediately after the media article was published. While the Director for Communications was seized with responding to media enquiries accordingly, I was also receiving calls from journalists seeking comment/clarity directly from Professor Mbatl. In our telephonic discussion while Professor Mbatl was still in Kenya, he indicated that he would brief me on the story – and on Professor Phendla’s allegations upon his return to South Africa.
9. Upon his return from Kenya in early 2015, Professor Mbatl briefed me on Professor Phendla and her “allegations” and gave me two documents in a memory disc. I was meant to read the two documents so that we continue a more focused briefing the following day. The two documents are as follows:

9.1. “Response to Allegations Leveled Against Me by Professor Tshivhase Phendla” – [Annexure A3]

This document was a draft. Professor Mbatl undertook to furnish me with his final submission in response to the “allegations” – which he never did. This document is authentic as it bears his personal handwriting on Pages 3 & 6 [Annexure ???].

9.2. Mr Lavery Modise’s “Report on Outcome of Mediation” [Annexure A4]. Mr Modise was appointed by the University of Venda to mediate alleged sexual harassment by Professor Phendla against Professor Mbatl. When we met the following day, Professor Mbatl gave a long “negative” speech on Professor Phendla, and it was obvious that this matter was bothering him immensely. I engaged Professor Mbatl in his “Response to Allegations Leveled Against Me by Professor Tshivhase Phendla” draft document, in which he literally denies every allegation (even though I had read his responses without the benefit of cross referencing them with the actual allegations. However, the fact that these were allegations of sexual harassment was sufficient). I could sense that he wanted me to be sympathetic to his cause, which I felt was immoral – but I could not do so without clarity on certain aspects of his responses – and to Mr Modise’s report.

10. I pointed it out to Professor Mbatl that if one reads his response document without paying attention to allegations of misconduct and subsequent corruption charges to Professor Phendla, one gets the impression that he [Professor Mbatl] and Professor Phendla had a romantic relationship of one form or another. This was based on the number of occasions in which Professor Phendla visited his official residence (mostly in the evenings) (even though Professor Phendla as Dean of the School of Education never reported directly to Professor Mbatl, but to the Deputy Vice-Chancellor Academic) – and the number of occasions in which both of them were giving each other lifts and driving together. I found the regularity of

Professor Phendla's visits to Professor Mbatl's official residence rather alarming. I also found the narrative that says Professor Phendla invited herself to the Vice-Chancellor's residence at best absurd.

11. Given the reputational damage the matter was inflicting on the University, it was imperative that we resolved the matter, since it remained unresolved more than three years after Professor Phendla was dismissed [November 2011 – January 2015]. Since this was a sensitive matter, I needed clarity from Professor Mbatl on his understanding of the following statement from Mr Modise's report:

“Be that as it may, having had the opportunity to consult broadly with Mbatl and Phendla, I do have a view on the legitimacy or otherwise of Phendla's complaint”.

12. Professor Mbatl confided in me that he did indeed have a romantic relationship with Professor Phendla. Further, he informed me that he also confessed to Mr Modise during their engagement in 2011. I also learned from Professor Mbatl that a financial settlement with Professor Phendla was initially proposed during mediation, but the proposal would have had to be approved by Council since the settlement amount exceeded his approval threshold – this was never pursued further.
13. The fact that Professor Mbatl was prepared to settle the matter with Professor Phendla financially confirmed to me that there was merit in Professor Phendla's complaint. This troubled me as I realized that Professor Mbatl misrepresented the facts on record in his response to Professor Phendla's sexual harassment complaint. I was concerned about the potential costs involved in Professor Mbatl's ongoing “defence processes” [for both Mr Modise as mediator and for the Commission for Gender Equality's investigation] – while he knew he withheld the truth in his response to Professor Phendla's complaint. However, such wastefulness did not seem to bother him.
14. I noted from various documents that Professor Phendla was summarily dismissed two days before Mr Modise submitted his mediation report. In my view, this was an interesting development designed to ensure that Professor Mbatl does not face disciplinary hearing arising from Clause 5.2 of the University of Venda's Sexual Harassment Policy – since Professor Phendla would no longer be an employee of the University. Professor Mbatl knew that the recommendation for Clause 5.2 to be implemented was inevitable, as he was aware that the mediation process did not resolve the matter – and further that the financial settlement had also collapsed. This reality about Professor Mbatl troubled me for the following reasons:
 - 14.1. It revealed the extent to which he could be dishonest [in his formal response to allegations of sexual harassment. While he confided in me, his denials remained on record]. The following are examples:

[A]

In the Labour Court of South Africa Judgement [Annexure A5 – Page 5, Section 11] of in the matter between Professor Mbatlana and Professor Phendla, [12 October 2017], the following is stated:

“He [Professor Mbatlana] strenuously disputed allegations of sexual harassment. . . Following that they had a collegial relationship.”

- But he had conceded to a romantic relationship to Mr Modise in 2011
- He could not explain to the Commission for Gender Equality the reason for telephone calls he made to Professor Phendla late at night and the messages he sent to her [Annexure A1 – Page 17, Section 8.2]
- He had confided in me that there was a romantic relationship in early 2015 after I engaged him on the frequency of her visits to his official residence. However, in his “Response to Allegations Levelled Against Me by Professor Tshivhase Phendla” – [Annexure A3 – Page 5], he wrote the following:

“As a matter of fact I have never harbored any notions of an intimate relationship with her as I do not find her attractive in that sense.”

[B]

Further, in of the Labour Court of South Africa Judgement [Annexure A5 – Page 6, Section 16] in the matter between Professor Mbatlana and Professor Phendla, [12 October 2017], the following is stated:

“He however denied any dinners at his home”

- However, in his “Response to Allegations Levelled Against Me by Professor Tshivhase Phendla” – [Annexure A3 – Page 9-10], he wrote the following:

“I have my dinners at around 19:00 and on one or two occasions I invited her to join me as I was already eating (it would have been against my upbringing to continue eating alone with a guest in the house).”

14.2. It revealed the extent to which he could be malicious [in dismissing Professor Phendla for his “self-saving” purposes].

14.3. It revealed the extent to which he could be mean and nasty [in the manner in which he executed his plan to dismiss Professor Phendla].

- 14.4. While Professor Mbatl was effectively the Chief Executive Officer of the University of Venda, it revealed the extent to which he could go in violating INTEGRITY as one of its values – [while he is supposed to be the embodiment and custodian of such institutional values].
- 14.5. It revealed the extent to which Professor Mbatl could have complete disregard in treating the University’s funds as his “never-ending personal reserve” in pursuing his various defences against the sexual harassment accusation – without disclosing formally on record [either to the University’s Council in his response to sexual harassment allegations OR to our courts of law] that he had a relationship with Professor Phendla – which was unethical for various reasons.
- 14.6. It revealed the University of Venda’s inherent institutional weaknesses in its failure to hold its Vice-Chancellor and Principal to account.
- 14.7. Rules and regulations could be flaunted on whims and the victim would have “no recourse” within the parameters of the institution. The fact that the University of Venda did not, but could have, implemented Section 5.2 reflected the extent to which institutional malaise was embedded. Further, it would have been impossible for the University of Venda’s Human Resources to pursue its presiding Vice-Chancellor & Principal – unless the latter so desired.
15. However, the implementation of Section 5.2 of the University of Venda’s Sexual Harassment Policy would have meant that Professor Mbatl was formally charged for misconduct – and a disciplinary process instituted against him. This would have been embarrassing to Professor Mbatl and to the University Council.
16. There is a ridiculous narrative that says Professor Mbatl was cleared of sexual harassment allegation by the University of Venda Council. Professor Mbatl was an employee of the University of Venda and not an employee of Council. The University of Venda Council neither have rules nor policies, prescripts/guidelines or standard operating procedures for clearing sexual harassment allegations against a Vice-Chancellor. Sexual harassment in the workplace is a labour issue against which Human Resources divisions of institutions are embedded with requisite competencies. The University of Venda Council should be called upon to help Honourable Members understand the process it followed to clear Professor Mbatl of sexual harassment allegation. and the rationale for this to have been “done” outside the scope of Section 5.2 of the University’ Sexual Harassment Policy as recommended by:
- Mr Modise’s Mediation Report of 04 November 2011 [Annexure A4]
 - The Commission for Gender Equality Report of 04 December 2014 [Annexure A1] and;
 - The South Gauteng High Court Order of 30 May 2016 [Annexure A6].
17. There were probative legal costs incurred by the University of Venda and its Council in the course of defending Professor Mbatl against sexual harassment complaint over the last nine years (2011 – 2020). These were personal costs that should have been borne by Professor Mbatl. I submit that the University of Venda and its Council flagrantly spent substantial public resources in legal costs running into multi-millions of rands over the period outlined above. This

expenditure was at the expense of improvements in the teaching and learning environment of a rural university and all its associated challenges.

SECTION D. MANAGING THE UNIVERSITY OF VENDA'S INFRASTRUCTURE PROJECTS: 2014-2015

18. In around March 2015, I was assigned two responsibilities by Professor Mbatl. The first was the responsibility to coordinate and be the contact person between the external team of auditors and the Office of the Vice-Chancellor & Principal. In this responsibility, I attended weekly or bi-weekly meetings that were preparing audit reports – assisting the external auditors where they needed help, clarity or further assistance in accessing certain documents/information. The second was to lead a team coordinating inputs from various divisions, edit and produce a composite draft of the 2014 Annual Report. These responsibilities were running concurrently as they fed into each other.
19. During the same period [from March 2015], I was a member of the Project Management Board, whose responsibility was to oversee infrastructure construction progress. This committee was chaired by the Deputy Vice-Chancellor: Operations – and it was attended by the Directors for Facilities Management and Finance, both of whom reported to the Deputy Vice-Chancellor Operations. I provided timely reports to Professor Mbatl arising from meetings of the infrastructure committee [I was able to find one of my reports to the Vice-Chancellor for 07 September 2015 – Annexure A7].
20. By virtue of being in the Vice-Chancellor's Office, I also received regular infrastructure audit reports from the Director: Internal Audit and Risk – with whom I worked closely as we were both in the Office of the Vice-Chancellor. In one of the reports [Annexure A8] which audited infrastructure projects for the period 01 June 2013 to 31 July 2014 [I received the report from Professor Mbatl two or so weeks after I started in August 2014], it was clear that there were infrastructure management gaps in relation to the following:
 - Procedures for contract management not in place
 - Services were rendered whilst the service level agreement was not signed
 - Commencement of work before contract was signed
 - Weaknesses relating to contract variation orders
 - Budget monitoring not in place
 - University Legal Advisor not involved in contract management
 - Contractor management duties and responsibilities not defined

It is necessary for Honourable Members to note that the Directorate: Internal Audit and Risk was subsequently disbanded in the course of 2017 to get rid of the Director with whom I reported directly to the Vice-Chancellor and Principal.

21. There were exceptional construction delays in most of the infrastructure projects – and such delays were causing excessive cost overruns. There were also projects whose payments exceeded the original contract price – in some instances by significant percentages. Some of these projects were flagged by the external auditor’s report of audit findings from statutory audit of the University of Venda for the year ended 31 December 2014.
22. There was pressure on me from Professor Mbatlali to capture progress on infrastructure projects favourably in the 2014 Annual Report narrative. This was contrary to various reports I received and what I was learning from Project Management Board meetings. It was difficult and frustrating to balance objectivity against competing demands for a glossy reading of infrastructure progress in the course of preparing the 2014 Annual Report.
23. It is worth reproducing an example of a report submitted to me by external auditors on 13 April 2015. For purposes of protecting the contractors, I have withheld their names on this document. However, I have separately submitted original documents as Annexures [A9] from which the information provided is derived. There was a recurrence of costs adjustments to construction projects after bid adjudication.

[extracted verbatim from the audit report – which is attached in its original form as Annexure A9]

Audit finding:

Best practice in procurement and contract management requires entities to implement controls over daily and monthly processing and reconciling of transactions.

The total payments made under the contract up to date exceed the original contract price and no approved extensions or escalations to the contracts were provided for audit purposes. The following are noted examples:

Table 1.: Projects whose payment exceeded original contract price

Tender Number	Date Awarded	Contractor Name	Contract Amount	Paid	Difference
PAPMB/27/08/2013	19-05-2014	Withheld	R1,252,307.38	R2,691,302.59	-R1,438,995.21
SPF/01/07/2013	19-05-2014	Withheld	R6,446,802.60	R8,120,532.56,	-R1,673,729.96
ANA/LAB05/04/2013	17-06-2014	Withheld	R1,375,106.47	R1,904,932.13	-R529,825.66
SECUP/01/2014	23-10-2014	Withheld	R19,779,954.18	R26,216,448.06	-R6,436,494.49
CSR01/05/2012	01-07-2012	Withheld	R5,704,170.48	R6,142,756.11	-R438,585.63
					-R10,517,630.95

24. A final report submitted to the Chair of the Audit Committee of Council by external auditors [Annexure A10 – Pages 25 & 26] on 12 June 2015 confirmed Supply Chain Management Policy Inadequacies, Variation Order Approval of as much as 42.76% of the original contract price without the necessary mandate.
25. The extent of infrastructure construction project irregularities and the values involved, was so overwhelming that on 30 September 2015, the University of Venda management submitted a document to the Joint Bid Adjudication and Finance Committee which sought to review contracts and variation orders and outlined corrective steps [attached as Annexure A11]. The document reflected the extent of poor or non-existent controls in infrastructure construction value chain. What is of interest were the amounts that required Council approval/endorsement above the original contract prices. This happened after the Bid Adjudication Committee had awarded the contract – and the contractors were on site. For instance, it is worth noting the following in summary:

Table 2.: Approved contracts with varying budgets and contracts amount [selected]

Project Description	Budget Amount	Contract Amount	Difference
Swimming Pool [not an Olympic size]	R1, 500,00.00	R4,914,699.00	R3,414,699.00
Sports Court	R1,250,000.00	R3,532,324.00	R2,285,324.00
Construction of Campus Clinic	R10,000,000.00	R14,789,648.41	R4,789,649.41
Fleet Parking Lot	R3,900,000.00	R8,967,351.00	R5,067,351.00
Abattoir, Piggery, Milking Parlour	R10,000,000.00	R17,457,272.00	R7,457,272.00

26. The total amount of money already spent that the University Council was requested to approve was R24,226,592.99. Further, there were additional projects that had been undertaken and paid without the necessary Council approval. These projects were signed by the Director of Facilities Management – who did not have the delegated authority in terms of the approved delegation of authority of the University of Venda. This narrative is difficult to sustain given the values involved against the process through which invoices are processed against budgets. The projects were as follows:

Table 3.: Variation orders exceeding the contract price

Contract	Variation Order Funded
Auditorium Building Ceiling	R2,964,575.00
Sports Field	R2,756,808.00
Natural Sciences Building	R1,194,378.00
Conference Center	R972,703.00
Auditorium Building Ceiling	R348,091.30
Conversion and refurbishment of Life Sciences Empty Shell	R917,532.00
Water Storage Boreholes and Reticulation	R755,790.00
Campus Clinic	R1,325,661.54
Community Training Center	R1,269,624.84
	Total R5,935,389.20

The total amount of irregular/unauthorised expenditure for which management sought the Joint Bid Adjudication and Finance Committee approval was R30,161,982.19. In typical fashion, the items left in BOLD on the table above reflect management’s attempt to split amounts – often to hide actual cost. This makes the total cost for construction of the Campus Clinic to be a combination of amounts reflected on both Table 2 & 3, which amounts to R14,789,648.00 – this does not mean that all costs were disclosed.

27. The management of construction projects was poor, chaotic and wasteful at best. This was rather disconcerting to me at the time given the following matters which I had raised with Professor Mbatia directly:

23.1. None of the male student toilets on campus had either toilet papers, toilet seats or door locks

23.2. Students were attending their classes in lecture halls that were not air-conditioned with temperatures often exceeding 40 degrees Celsius in summer

23.3. There was a total student enrolment of around 14, 000 students in 2015 – while the University Library had a total inventory of 22, 000 books – which worked out to a maximum of 1.5 books per student, even if one includes the reference section that is not loaned out

23.4. The University would often cancel classes due to either water shortage while there were boreholes that were not repaired or electricity/power failure while there were generators that were simply not maintained

SECTION E. CONCLUSION

28. During the period I worked with Professor Mbatl, he seemed oblivious to rampant abuse of resources, with complete disregard to institutional prescripts. This was failure of leadership in an institution which was faced with immense developmental needs. It was painful to helplessly watch the unmeasured infrastructure expenditure in addition to costs associated with defending Professor Mbatl against allegations of sexual harassment. It was painful for me to comprehend Professor Mbatl's defense while I knew he had confided in me that what Professor Phendla's was claiming was in fact true. My engagements with Professor Mbatl over the manner in which these matters were handled fractured our working relationship from January 2015. Following what was increasingly becoming an unbearably toxic workplace, I wrote to the Chairperson of the University of Venda Council requesting his intervention [Annexure 12].
29. Eventually on 22 October 2015 – three months after completing my probation, Professor Mbatl presented me with a deployment offer – out of the Vice-Chancellor's Office to become a Senior Lecture in the School of Human and Social Science with the following conditions [Annexure A13]:
- The offer was valid for 48-hours
 - My remuneration package would be capped until such time that it was at a level commensurate with the salary of a Senior Lecture [this could have taken more than 10 years]
 - The University warrants not to subject me to any disciplinary proceedings it may have been entitled to in respect of any implausible utterances or conduct that may have occurred since the commencement of your employment till acceptance of this deployment
30. I rejected the offer and remained in the Vice-Chancellor's Office for the next six months – October 2015 – April 2016, [the environment was toxic at best].
31. Out of frustration with my refusal to accept the transfer offer, on 18 April 2016 Professor Mbatl pushed the joint structures of the University of Venda to delete my portfolio from the Office of the Vice-Chancellor and Principal [Annexure A14, see Page 6] – without prior discussion with me. I anticipated this desperate move based on my observations of how he abused the power of his position in relation to dismissing staff members.
32. I was charged for writing to the Chair of the Audit Committee raising concerns regarding infrastructure construction project irregularities. While I was charged, my case was not heard. Instead, the University offered a settlement – which I was forced to take.

Clarence Tshitereke, Ph.D.
Date: 04 September 2020