



Honourable MP Mapulane, MP
Chairperson: Portfolio Committee on Higher Education, Science and Technology
National Assembly
Parliament
Cape Town
8000

Dear Honourable Mapulane,

RE: PARLIAMENTARY INQUIRY INTO APPOINTMENT OF PROFESSOR PETER MBATI AS THE VICE-CHANCELLOR OF THE SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY

The letters of the Chairperson: Portfolio Committee on Higher Education, Science and Technology dated 17 and 23 June 2020 addressed to the Chairperson of the Council of Sefako Makgatho Health Sciences University refer.

In the Portfolio Committee's letter dated 17 June 2020, questions are posed to Council and in this letter Council provide its responses *ad seriatim* to each question. Two paginated bundles of documents are attached to this letter, titled Bundle "A" and "B" respectively. Reference will be made to these bundles in the answers below. Notwithstanding the answers provided in this letter, Council may request to supplement its answers and/or documents, if so required or if proven necessary.

Ad question 1.1.1: The Council should explain to the Committee the process it followed in appointing Professor Mbatl:

1. The University Council was guided by the Higher Education Act 101 of 1997, SMU Statute (2016) and applicable institutional rules pertaining to the appointment of a Vice-Chancellor. The Policy and Procedure: Appointment of the Vice-Chancellor ("Policy") prescribe a specific procedure to be followed for such an appointment (Bundle A pp 12 - 24). A detailed explanation of the process that was followed to

appoint Prof Mbatia is contained in a letter by Council to the Portfolio Committee, dated 13 May 2020 and some of that letter's content is repeated hereunder.

2. The salient features of the requirements of the recruitment procedure, in accordance with the Policy, are as follows:
 - 2.1. When a Vice-Chancellor vacancy arises, the Executive Director: Human Resources, must place an advertisement in the national and international press;
 - 2.2. The members of the Institutional Forum, the Senate, and the Council are invited to submit nominations to the Executive Director;
 - 2.3. The Selection Panel shall convene a meeting as soon as possible after the closing date for applications and nominations, in accordance with the time frame for the implementation and finalisation of the appointment process approved by the Chairperson of Council. The Selection Panel shall consider all the candidates for appointment in accordance with the requirements for the position;
 - 2.4. The Selection Panel shall compile a short list of possible candidates with a view to inviting the short-listed candidates to address a joint meeting of Council, Senate and the Institutional Forum;
 - 2.5. A candidate will be deemed to be suitable for appointment by the Senate or the Institutional Forum if 50% plus 1 (one) of the members of the relevant body present vote in favour of his or her suitability. Voting will be conducted by means of a closed ballot under the supervision of the Registrar;
 - 2.6. A Selection Panel interviews the candidates and after the interviews, the Selection Panel makes a substantiated recommendation to Council regarding the suitability for appointment of the candidates, taking into account the report from Senate and Institutional Forum referred to under 2.5 above;
 - 2.7. Council must be convened as soon as possible to decide on the appointment of the Vice-Chancellor using the Selection Panel report (inclusive of its recommendations) as a basis for its deliberation;
 - 2.8. If the Selection Panel report is accepted after deliberation, Council members vote for the appointment of the Vice Chancellor via secret ballot. 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;

- 2.9. The Executive Director: Human Resources, in consultation with the Chairperson of the Council, is responsible for setting a time frame with a view to the implementation and finalisation of the appointment process.
3. The appointment of Prof Mbatia as the Vice-Chancellor (VC) position was done in accordance with the Policy. A summary of the process to appoint the VC is as follows:
 - 3.1. The former VC had submitted his resignation letter to the Council in April 2019, and it was mutually agreed that he would leave the University at the end of December 2019. The Council immediately set the ball in motion to recruit a new VC. Given the University's context and culture, it was important to ensure that there would be a smooth handover and no vacuum in leadership.
 - 3.2. The position was advertised externally in the Sunday Times newspaper, and internally placed on the SMU website, on 28 April 2019 with a closing date of 17 May 2019. This included an invitation to Senate, Institutional Forum and Council to nominate individuals for the position. The initial shortlisting took place on 12 June 2019, and none of the applicants met the requirements. Council took a decision to appoint an external service provider (recruitment agency) to re-advertise the position and engage in a head-hunting process.
 - 3.3. The former VC's departure on 2 September 2019 made the need to appoint a new VC more urgent. Since then, an acting VC had been steering the managerial and administrative responsibilities of the position.
 - 3.4. The Selection Panel convened on Wednesday, 13 November 2019 to shortlist and one (1) candidate was shortlisted. The Selection Panel requested the recruitment agency to continue with the head-hunting process in order to increase the pool of potential candidates for this position. The Selection Panel re-convened on Thursday, 13 February 2020 and three (3) more candidates were short listed. This resulted in the overall shortlisting of four (4) candidates, with the one (1) candidate from the previous round.
 - 3.5. The four shortlisted candidates were invited to deliver a presentation before the joint sitting of Council, Senate, and Institutional Forum (IF), on Wednesday, 11 March 2020. However, only three candidates presented to the joint meeting referred to above because one of the candidates withdrew

from the process on the eve of the meeting on account of personal reasons. After the three candidates' presentations, Senate and IF convened separately to vote on the suitability of the candidates in a closed ballot and the results were to be presented to the Selection Panel as per clause 2.2.3.2 and 2.2.3.6 respectively. Interviews were to be held on 18 March 2020, however due to declaration of a national disaster and the attendant the social distancing directives on account of the COVID-19 pandemic, the interviews had to be postponed, and were instead held online on 16 April 2020.

- 3.6. The interviews were conducted remotely and eight (8) questions were posed to each candidate, and the Selection Panel could follow-up on any of the questions for further clarity. All the candidates confirmed that the process was fair, and they were treated fairly. The Selection Panel included all constituencies as articulated by the policy, including two (2) highly experienced current Vice-Chancellors, namely Prof Mokgalong (University of Limpopo) and Dr Mabizela (Rhodes University).
- 3.7. In terms of the SMU regulation on appointment of the Vice Chancellor, clause 2.2.4.6 states as follows: *After the interviews with the candidates, the members of the SP must make a substantiated recommendation to Council regarding the suitability for appointment of the candidates. The members of the SP must cast their votes by way of closed ballot. Should the SP be of the opinion that more than one candidate is suitable for appointment in accordance with the advertised requirements these candidates may be rated in order of preference. If the votes are tied between two candidates, the Chairperson in all instances casts the deciding vote. After voting, the Chairperson of the SP announces the results of the ballot to the SP.*
- 3.8. Prior to voting in a closed ballot, the Selection Panel had a comprehensive discussion on each of the candidates that came before them. The Selection Panel deliberated on the appointability and non appointability of all three (3) candidates and indicated their preferences in terms of how these candidates presented themselves before the Selection Panel. The Selection Panel was also presented with the voting results of both the Senate and Institutional Forum, following the candidates' presentations to the joint sitting; these were duly noted and considered. Due to the COVID-19 national lockdown and the subsequent online interviews, the services of an external service provider were procured to administer the closed ballot process. The Selection Panel members voted by means of a closed ballot, voting on the appointability of the candidates and ranked the candidates in order of their preferences. The results were collated and released to the Selection Panel. The Selection Panel accepted the results as correct.

- 3.9. The overall recommendation of the Selection Panel was that two of the candidates were appointable, namely Prof Angina Parekh and Prof Peter Mbatl, but had different strengths to contribute to the position. One candidate was found not to be appointable by the Selection Panel, namely Prof Sandile Songca. Following the deliberations and voting results, the Selection Panel unanimously recommended a preferred candidate for the position of Vice-Chancellor i.e. Prof Mbatl.
- 3.10. In terms of clause 2.2.4.6 the members of the SP must make a substantiated recommendation to Council regarding the suitability for appointment of the candidates. Such document outlining the process undertaken by the SP and their recommendation served before a Council meeting on 24 April 2020. The Selection Panel's report pack (Bundle A pp 1 - 239) was circulated to the Council members prior to the Council meeting on 24 April 2020, when Council was scheduled to deliberate and vote on who to appoint as the new Vice Chancellor.
4. At the meeting of 24 April 2020, Council, in accordance with the Policy and in terms of:
 - 4.1. Clause 2.2.5.2.2 reviewed and confirmed the processes and procedures that had been followed thus far;
 - 4.2. Clause 2.2.5.2.3 considered all the nominations and applications that have been received;
 - 4.3. Clause 2.2.5.2.3 took 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; and
 - 4.4. Clause 2.2.5.3 decided whether to appoint a candidate or not.
5. Council members by way of secret ballot, voted on the matter, and the majority voted to appoint Prof Peter Mbatl. Council mandated a team, consisting of the Chair and Deputy Chair of Council, and the Chair of the Human Resources Committee of Council, to finalise the formulation of the offer to the successful candidate. An offer was accordingly made to Prof Mbatl, who has subsequently accepted the offer, with a starting date of 1 June 2020.

Ad question 1.2.1: Whether the University Human Resource Policies and Procedures require the job applicant / prospective employees to disclose his or her previous employment history, for example, if the applicant involved in allegations of sexual harassment and how they dealt with the matter, any legal cases pending, dismissal from previous job etc.?

(i) If so, at what point of the recruitment process is the disclosure required?

6. Yes.
7. The University made use of a recruitment agency's services in the recruitment process of the new Vice Chancellor. The recruitment agency conducts a background check on candidates. Prof Mbatu disclosed the sexual harassment allegations to the recruitment agency, which formed part of the report that ultimately served at the Selection Panel meeting held on 16 April 2020.
8. During the interviews conducted by the Selection Panel on 16 April 2020, the Selection Panel is required to ask a series of standard questions to each candidate, one crucial question being whether the candidate has anything to adverse disclose that may impact his/her candidature for the position. This question's purpose is to invite a candidate to disclose anything in their personal or employment history that is important for the Selection Panel to know about, like pending court cases or rulings, pending allegations, previous suspensions or dismissals and the like.
9. In addition to the sexual harassment allegations disclosed to the recruitment agency, Prof Mbatu further disclosed the sexual harassment allegations to the Selection Panel during the interview (Bundle **B** p 312 - 314). Prof Mbatu contended that he was cleared of the sexual harassment claims by the Labour Court. He subsequent to the interview provided to the Selection Panel a Labour Court judgement (Bundle **B** pp 278 - 300) and other relevant letters from UNIVEN (Bundle **B** pp 181 - 186).
10. From the documents provided it was evident that the sexual harassment allegations formed part of a Labour Court case wherein judgement was handed down on 7 October 2017. According to the court's judgement, both Prof Mbatu and Prof Phendla testified in the trial. The Judge found Prof Phendla testimony to be unbelievable and contradictory, insofar as the allegations of sexual harassment are concerned. The Judge found that Prof Mbatu did not sexually harass Prof Phendla (Bundle **B** p 292 - 295).
11. Because the Labour Court cleared Prof Mbatu of the sexual harassment allegations, this issue was not a legitimate or rational ground to disqualify Prof Mbatu as a

possible candidate for the position. It should be stressed that South Africa is a constitutional democracy, which means that it is a country which observes human rights principles and is governed by the rule of law. The Constitution is the highest law of the Republic and it sets out the rights and duties of everyone in the country. The rights are inalienable, and they cannot be arbitrarily taken away, although they can be limited in certain instances. Section 34 of the Constitution creates a right to have threats to rights, violations of rights and disputes determined fairly before independent bodies such as courts. Against this background, there was no legal basis to disqualify Prof Mbatlana as a possible candidate for the position.

(ii) What is the recourse in terms of non-disclosure of the critical information that may have influence on whether the job applicant should be considered to continue with the process of recruitment or not?

12. In general, if a candidate is appointed and it is later discovered that such candidate omitted to disclose critical information during an interview, the University will investigate and dependant on the circumstances, seriousness and explanation provided, disciplinary action may be implemented.

Ad question 1.2.2: Whether Council members were aware of the allegations of sexual harassment levelled against Professor Mbatlana?

13. Yes.

Ad question 1.2.2: How were the Council members informed about the allegations?

Ad question 1.2.3: Who informed them?

14. The Selection Panel report pack (Bundle A pp 1 – 239) was presented to the Council meeting of 24 April 2020. The sexual harassment allegations forms part of the Selection Panel report pack (Bundle A p 134). A quote from the reference check on page 134 is as follows: *“In 2011, Prof Mbatlana instituted a forensic investigation into allegations of corruption and fraud in tender processes at Univen following an outcry by the union NEHAWU. The forensic report implicated the then Dean of the School of Education Prof Phendla and recommended that she undergoes a disciplinary*

process. During the hearing she alleged sexual harassment against Prof Mbatia and alleged that the disciplinary hearing was a retaliation from Prof Mbatia. These allegations were tested by a Council approved independent process, and Prof Mbatia was cleared of these allegations. The Labour Court further cleared Prof Mbatia from these allegations. The City Press that published these articles was later instructed by the Press Ombudsman to apologise to Prof Mbatia for their inaccurate reporting.”

Ad question 1.2.4: At what point of the recruitment process were the Council members informed about the allegations?

15. As stated above, the Policy prescribe that the Selection Panel conduct interviews and make recommendations to the Council. The Selection Panel were informed of the allegations by the recruitment agency and by Prof Mbatia during the interview on 16 April 2020. Reference to the sexual harassment allegations is made in the Selection Panel report pack circulated to Council members prior to the Council meeting on 24 April 2020 (Bundle A p 134).

Ad question 1.2.5: How did the Council members deal with the information of the allegations and at what point of the recruitment process was the information deliberated on?

(i) What were the outcomes of the deliberations?

16. The Council members took note of the allegations as referred to on page 134 of the Selection Panel report pack. The above disclosure in Selection Panel report notwithstanding, because the Labour Court had cleared Prof Mbatia of the sexual harassment allegations and there was no sexual allegations cloud hanging over his head, the issue was not deliberated at length the Council meeting on 24 April 2020. Except that one Council member asked the Chairperson in relation to the disclosure by Prof Mbatia on page 134 of the Selection Panel Report as to whether the sexual harassment allegations levelled against Prof Mbatia were cleared. The Chairperson of Council, Ms. Rambauli responded to the effect that a court judgement clearing Prof Mbatia of the allegations had been received.

(ii) Whether there was unanimous support amongst the Council members to support the recommendations of the selection panel recommending that Prof Mbatl continue with the recruitment process or was it a case of the majority rule?

17. In terms of the Policy (Bundle A p 21 par 2.2.5.4) the decision on appointment of the Vice Chancellor is conducted through a secret ballot vote by Council members. The candidate who received the majority votes of Council members present at the meeting, is appointed. The Council members voted and their votes were tallied and audited by Nexia SAB&T auditors. Prof Mbatl received the majority of votes of the members present at the meeting.
18. It bears mentioning that, because the appointment is made by the Council on the basis majority vote (50% plus 1 of the members presented at the meeting), and not by unanimous decision, it is evident that some Council members did not vote for the appointment of Prof Mbatl, and by extension did not support the recommendations of the Selection Panel. This is not uncommon when decisions are taken at Council level.

Ad question 1.2.6: It came to the attention of the Committee that Professor Mbatl applied for a post at the University in 2018 and was declined.

(i) What were the reasons for declining him and whether those reasons did not have any impact on the current position?

19. There are no records indicating that Prof Mbatl applied for a position at SMU in 2018. However, in 2017 Prof Mbatl did apply for the position Director: Institutional Advancement and Internationalisation at SMU. It bears mentioning in terms of the Council's Delegation of Authority and applicable institutional rules, the appointment of Directors falls under the responsibility of the Vice Chancellor, therefore Council was not involved in the appointment process for this position.
20. From the information gathered by Council, Prof Mbatl was interviewed during June 2017. At the time, the Labour Court had not yet pronounced on the sexual harassment allegations and a decision was taken at Management level not to appoint Prof Mbatl. The position was thereafter re-advertised, and filled in 2018.

Ad question 1.3: Poor infrastructure governance at the University of Venda (see the attached Report from the Department of Higher Education and Training, which was presented to the Committee in November 2019 and the Letter to the Portfolio Committee)

21. Council was not aware of the Report of the Department of Higher Education and Training (DHET) or the letter by the DHET to the Portfolio Committee dated 28 May 2020. It may be that such information was not in the public domain at the time. In this regard, Council can unfortunately not provide answers to any of the questions dealing with this issue.
22. Council can at this stage only comment that it does not want to speculate on issues. A proper analysis needs to be conducted to determine all the relevant facts regarding the report and letter from the DHET. Once the accurate facts are determined, then Council would be in a position to comment.

Ad questions: Given the above, 1.2.1 and 1.2.3, is the University Council confident that it has acted in good faith and in the best interest of the University when supporting the recruitment panel recommendations to appoint Professor Mbat? Whether the University Council is confident that it has exercised care of duty, safeguarding the integrity, resources of the University in recommending the appointment of Professor Mbat to the position of Vice Chancellor?

23. Yes.
24. Council has followed the Higher Education Act (101 of 1997 as amended), SMU Statute (2016) and Policy on the appointment process of the Vice Chancellor. Council took all reasonable steps to ensure that the process was fair, transparent and lawful in all respects.
25. Council has put in place additional measures to ensure that the input of the DHET is also obtained as part of the selection process of the Vice Chancellor. The University invited an official of the DHET to form part of the Selection Panel. Unfortunately, in this instance, the DHET declined the invitation to form part of the Selection Panel.

General comments regarding sexual harassment allegations

Council thought it appropriate to put forward general comments regarding the above matter to the Portfolio Committee as supplementary information.

In the Portfolio's Committee's letter dated 23 June 2020, a summary is provided of information and allegations the Committee received from whistle blowers and parties, relating to sexual harassment. Most of the issues mentioned in this summary, also formed part of the Portfolio Committee's media statement that was issued on 3 June 2020 (Bundle **B** pp 303 - 304). Even though specific questions were not asked by the Portfolio Committee about these aspects, Council deems it prudent to briefly respond to the issues mentioned in the media statement to clear up some factual inaccuracies.

Council had sought a legal opinion from senior counsel to consider all the relevant facts and to, amongst others, comment on the accuracy of the factual averments in the media statement. Bundle **B** contains this legal opinion and relevant documents that may assist the Portfolio Committee in understanding the context of the sexual harassment allegations. This legal opinion and documentation are information that Council has on hand and provide it in order for the Committee to make informed decisions when assessing the facts of these matters. Council hereunder respond to these issues, as assessed and advised by senior counsel:

Ad: Pending sexual harassment allegations against Prof Mbatl

26. The legal opinion summarises the chronological events relating to the sexual harassment allegations (Bundle **B** pp 7 - 19). The chronological events serve to provide better context to the allegations.
27. In the chronology of the factual history of the sexual harassment allegations, it is apparent that the allegations of sexual harassment have been finally decided and have been resolved in favour of Prof Mbatl. The Labour Court cleared Prof Mbatl of sexually harassment (Bundle **B** p 294 par 58). The fact that the Labour Appeal Court and the Constitutional Court have rejected Prof Phendla's attempts to appeal the order of the Labour Court means that this issue has finally been decided by the Courts.

28. Once a Court had ruled on a matter, all parties thereto are bound by it, this flows from Section 165 of the Constitution. Therefore, it appears to be factually incorrect that there are pending sexual harassment allegations against Prof Mbatl.

Ad: The University of Venda has not held Professor Mbatl to account on the sexual harassment as alleged by Professor Phendla. University of Venda has not adequately implemented the recommendations of the Commission for Gender Equality

29. The chronology of the facts indicates that UNIVEN, in compliance with the High Court order (Bundle **B** p 166), called for a report from the mediator as envisaged by Clause 5.2.1 of its Sexual Harassment Policy. Such a report exonerated Prof Mbatl of sexual harassment (Bundle **B** p 176 – 180). The University of Venda has therefore given effect to the CGE recommendations (Bundle **B** p 181 - 186), which was incorporated into the order of Court of the Johannesburg High Court by consent (Bundle **B** p 166). Therefore, it appears to be factually incorrect that the Gender Commission report dated 4 December 2014 regarding the allegations of sexual harassment against Prof Mbatl were never implemented by the University of Venda. In any event, the University of Venda will respond comprehensively to these allegations, in part B of the inquiry.

Ad: Professor Mbatl improperly sought to influence the mediator (appointed by the University of Venda to mediate in the sexual harassment dispute between Professor Mbatl by Professor Phendla) to amend his mediation report.

30. In the Portfolio Committee's media statement, it was alleged that Prof Mbatl attempted to bribe the mediator. Senior counsel considered the email exchanges between Prof Mbatl and the mediator (Mr Modise). It should be borne in mind that the mediator had already found that Prof Mbatl was cleared of sexual harassment when the email exchange occurred. Senior counsel found that there was no improper influence and that no bribe was involved (Bundle **B** pp 247 - 250).

Concluding remarks by Council

Council's responses above are provided truthfully and in line with the documents it has on hand. Where additional documents are provided, the intention of Council is to assist the Portfolio Committee in having all the relevant facts at its disposal when reaching

conclusions. Council reaffirms its commitment to appear before the Portfolio Committee and undertake to provide its assistance to explain anything that may still be unclear regarding the process of appointing the new Vice-Chancellor.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ms Maria Mulalo Rambauli". The signature is written in a cursive style with a large initial 'M'.

Ms Maria Mulalo Rambauli
Chairperson: SMU Council
DATE: 29 June 2020