

FINDINGS OF THE MOERANE COMMISSION AND ADDENDUM (QUALIFICATIONS) TO THE REPORT

1. Preamble

At a meeting of 7 August 2009, the Council of the Cape Peninsula University of Technology (CPUT) resolved to establish a Commission of Enquiry that would look into student unrest and grievances or complaints underpinning the unrest specifically at Cape Town and Bellville campuses during the period 3 August 2009 to 7 August 2009. Working within parameters defined by a set of Terms of Reference, the Moerane Commission collected evidence through interviewing about 32 people made up of members of Council, staff and students. The Commission also had access to reports and minutes which included Council minutes, Executive Management minutes, Memoranda drawn up by the Central Student Representative Council (CSRC), NUTESA, Provincial and one CPUT branch of NEHAWU, as well as private submissions by individuals.

The Commission started work on 7 October 2010 and had their report tabled at Council on 21 December 2010. Responding to the Report through a press statement released on 22 December Council noted that:¹⁾

- All parties concerned have learnt some lessons from the experience of the strike action. From these lessons, a plan of action to build a stronger university should be formulated.
- While recognizing and acknowledging some of the weaknesses identified in the report regarding certain areas in the university system, there were pertinent omissions, silences and inconsistencies resulting in a skewed report.
- Acknowledged the critical areas that require strengthening, e.g. Security, Judicial Affairs, and Communication , especially with student leadership.
- Acknowledged the possibility of internal and external influences that may have played a role in the conflict.
- Requested the Executive Management to present a plan of action to address the shortcomings identified.
- Acknowledged the role played by Executive Management under difficult circumstances while dealing with the unrest situation.

1. CPUT Council. (2009). Press Release: Cape Peninsula University of Technology, Moerane Commission of Inquiry, 22 December 2009.

In the light of the above, Council accepted the Report with qualification. Council further decided that a list of the qualifications would be drawn up and these would then be appended as an addendum to the Report. Council resolved that “the Report would always be read in conjunction with these qualifications.”

At a meeting of 26 March 2010, CPUT Council resolved to release a document which would include the Findings of the Moerane Commission together with the addendum to the Moerane Report. This document therefore is divided into Part I, the Findings of the Moerane Commission and Part II Addendum to the Moerane Report.

Not included in this document is the Action Plan that EM has drawn up in response to the Moerane Report. EM will be submitting progress reports to Council quarterly.

Part I

2. FINDINGS OF THE MOERANE COMMISSION

2.1 General findings on the performance of Executive Management

1. Executive Management failed to act decisively, notwithstanding the identification and the need thereof to ensure that decisions and recommendations of EM were carried out, including but not limited to:
 - 1.1. The establishment of a contingency plan to deal with resistance by students to fee increase, which need was identified by Executive Management as early as 12 November 2008;
 - 1.2. Responding to the findings of the 2008 climate survey, in particular not developing and implementing strategies to raise the level of confidence in EM;
 - 1.3. The apparent failure to adopt a strategy to deal with disunity and disputes within the Local Cape Town SRC and Central SRC and also with the separate demands of SASCO and PASMA to be heard by management;
 - 1.4. A failure to consider and deal decisively with requests, arising as early as 1 September 2008, for the extension of library hours. This issue was repeated on a number of occasions (Executive Management Minute 29 April 2009, Item 10.9) and again on 24 June 2009, 22 July 2009 and 29 July 2009;
 - 1.5. A failure, commencing as early as January 2009, to deal effectively and decisively with the conduct on campus of Mr Nikani and his alleged incitement of students. This included the failure to

expeditiously pursue criminal charges relating to malicious damage to property and the failure to enforce the High Court interdict once it had been obtained;

- 1.6. A failure to act when staff members failed to perform tasks timeously and in accordance with time limits prescribed by EM, with particular regard to the Judicial Officer;
- 1.7. A failure to deal effectively and timeously with Security Service Providers and the failure of these providers to perform their contractual obligations up to a proper standard so as to ensure the maintenance of security;
- 1.8. A failure to ensure that acts of misconduct allegedly committed by students and reported to EM, were properly and expeditiously investigated and, where, appropriate, offenders were prosecuted and sanctioned;
- 1.9. A failure to ensure that plans were put in place to address issues raised by students and prevent the disturbances of May 2009 from occurring again (Minutes of EM dated 27 May 2009, Item 2.1). This included a failure to establish a plan to pre-empt responses of students to possible sentences arising from disciplinary proceedings;
- 1.10. A failure to put in place and establish a procedure and strategy for dealing with mass demonstrations (which was identified in November 2008 and which was once again identified in the Minute of Executive Management dated 27 May 2009). This issue

had still not been addressed by 29 July 2009, or prior to the commencement of the student protests during the period 3 to 7 August 2009. It had still not been rolled out by 5 November 2009.

- 1.11. A failure to establish a rapid response team for Cape Town campus (Minutes of Executive Management dated 27 May 2009).
2. The Judicial Office consistently failed to perform satisfactorily in administering student discipline and failed to appropriately and in good time undertake instructions received from EM. The office also failed to take the initiative to act in circumstances where it needed to do it pro-actively. Furthermore, in dealing with students, the office failed to maintain the independence and objectivity which is called for.
3. Legal Services failed to maintain and enforce a High Court interdict obtained against Mr M. Nikani on the instructions of EM, and without consultation or authority Advocate Harper actively permitted a breach thereof by Mr M. Nikani, and further instructed security services not to enforce the order. The Commissioners gained the strong impression that the legal advice received from Legal Services, with particular regard to the various disturbances, was weak and ineffective.
4. The University, with the knowledge of Executive Management, imposed suspensions of 17 SRC members without a hearing and without any lawful basis. Thereafter, suspensions were lifted by the Judicial Officer on an individual basis without any considered justification.
5. The Vice-Chancellor expelled students from the University without the students being afforded an opportunity of being heard, and without any basis in law therefore. This step was not corrected by either the Judicial Office or Legal Services.

6. Members of EM in charge of critical portfolios, in particular Operations and Student Affairs, failed to take responsibilities for their portfolios; to ensure that the functions assigned to the portfolio were performed; and to ensure that the instructions of EM relating to their portfolios were carried out. In the case of the Student Affairs, for example, there was a failure to act when the Judicial Office failed to perform its functions. In this regard, EM, including the Dean of Students, conceded at the EM meeting on 12 August 2009, held immediately after the week of protests that the judicial office of CPUT had “*collapsed*” before Council had taken its decision on 7 August 2009.
7. With regard to the appointment of Dr. Tisani as Executive Adviser of the Vice-Chancellor, the Commission finds that Council (as appears from the Minutes of Council dated 20 June 2008) authorised the Vice-Chancellor to appoint an Executive Adviser in her office. Council did not give any instruction with regard to the issue of the salary of the incumbent of this position, nor the grade. The Commission was of the view that the Executive of Council, acting as the Remuneration Committee, ought to have determined the salary and grade for this position.
8. The Commission finds that the Dean of Students, Ms. Cora Njoli-Motale was appointed in post level 4, as appears from her Letter of Appointment. Whilst the Commission was unable to determine whether or not she ought to have been correctly appointed in post level 3, rather than post level 4, the promotion to post level 3 was effected on the instruction of the Vice-Chancellor alone, and not referred to the Selection Committee for Senior Appointments (“SCSA”), to Exco of Council (acting as Remuneration Committee) or to Council for ratification. It is recommended that Council consider this issue in the light of the findings.

9. During the period up to 1 October 2008, Executive Management was considering the *“harmonisation”* or *“alignment”* of the salaries of Deans in Post Grade 4. This was finalised on 1 October 2008. In the document presented to Executive Management on 1 October 2008, Ms. Njoli-Motale’s name does not appear as an employee in Post Grade 4. This harmonisation appears to have been approved by EM on 1 October 2008, and subsequently acted upon. The Commission was unable to find any authority from Exco of Council for this harmonisation, but the Commission may not have been directed to the correct authority of Council in this regard. It is recommended that Council consider this issue in the light of the findings.

10. Subsequent to 1 October 2008, and pursuant to a recommendation to the Vice-Chancellor by Mr Gilbert dated 24 October 2008, an instruction was given by the Vice-Chancellor, dated 3 November 2008, for the *“harmonisation”* or *“alignment”* of salaries of employees in Grade 3, which included the Dean of Students. The Commission was not able to locate any document indicating that this *“harmonisation”* or *“alignment”* was approved by Executive Management, as had been the case of the approval of the Deans’ harmonisation by Executive Management on 1 October 2008, or that the approval of Exco of Council or Council was obtained. It is recommended that Council consider this issue in the light of the findings.

11. During the course of the student protests of 3 to 7 August 2009:
 - 11.1. Executive Management failed to communicate adequately and sufficiently with staff as to the situation and what was required of them;

- 11.2. Executive Management failed to adopt a coherent strategy to engage with students. It ought not to have been left to the Chairman of Council to deal with such matters;
 - 11.3. Executive Management failed to act decisively during the course of the student protests, and adopt a strategy to prevent further damage to property, but rather acted in response to actions taken by students;
 - 11.4. Executive Management relied upon the South African Police Services to resolve confrontational situations, rather than having a plan to deal with such matters internally and only resort to use of the South African Police Services as a last resort;
 - 11.5. Executive Management sought to expel students, to remove them from campus, without any lawful basis therefore;
 - 11.6. The impression was and is created that management and staff are frightened of the students, and will do anything to prevent upsetting students, in circumstances that suggest appeasement.
12. EM failed to exert authority over, and achieve the respect of students, particularly student leadership. It was symptomatic throughout the year, with EM being taken hostage in their offices; offices in the Administration Building (6th floor) being damaged on 9 February 2009 (referred to in the EM Minutes of 11 February 2009) and again during August 2009; and finally the occupation of the Vice-Chancellor's office during November 2009 by students, and the failure of management to have them removed. What is symptomatic of the situation was that a staff member, in the Department of Student Affairs, took food to the students occupying the Vice-Chancellor's office overnight.

13. Staff members undermined the decisions taken by Executive Management. It was furthermore done with impunity, and without disciplinary steps being taken.
14. The level of confidence, as expressed by the various interviewees, indicates that CPUT, insofar as senior management is concerned, is not viewed with confidence by the CPUT community. The Commission also found a climate of fear of reporting the conduct of senior management.

2.2 Student Fees and Fee Increases

1. The policy of CPUT in seeking to “*negotiate*” upfront payments and fee increases with students, as opposed to “*consult*” with student leaders has proved to be a failure for the 2007, 2008 and 2009 years. Whilst it is commendable to seek to consult with student leadership, exchange views and strive to reach consensus, Council is required, in terms of section 8(3)(g) of the Higher Education Act 101 of 1997, to determine student fees, in accordance with the best interests of CPUT and its future sustainability.
2. The process of communicating and consulting with student leadership with regard to upfront payments and fee increases must be improved. By way of example:
 - 2.1 During 2008, the upfront payments were dealt with in a way which created the impression with student leadership that upfront payments had been determined without consultation, and that it was then conveyed that student leadership had agreed to the upfront payments, when they took the view that they had not done so. This led to conflict.

- 2.2. During 2008, by determining that the fee increases were required to be between 12% and 15% for the 2009 academic year, and that “negotiations” were to take place within these parameters, the impression was created that the issue had been decided in advance, and that the level of fee increases was a *fait accompli*. Student leadership then complained that their involvement in fee “negotiations/consultations” was purely “ceremonial”.
- 2.3 EM failed to persuade student leadership, despite authorising a fact-finding mission for students during April 2009, to participate in fee negotiations/consultations during 2009.
- 2.4 Fee negotiations/consultations were hampered by the position adopted by students of a 0% fee increase, which appears to have been a mandate given to students by SASCO on a national level, which had the consequence that the students adopted an intractable and uncompromising position with regard to fees.
- 2.5 Despite an undertaking at the Council meeting on 7 August 2009 to participate in good faith in fee negotiations, student leadership reneged on this agreement, and instead refused to participate in the process pending the report of the Commission’s findings.

2.3 Relationship between Senior Management and the Student Body/Student Representatives

1. A matter repeatedly raised by witnesses was that communication between management and the student body was a major weakness, and failed to convey the strategic issues which had been decided upon, and allay fears in the student body. This was also the view of the Institutional Forum, represented by Mr George Mvalo. He suggested that the responsibility for

communication lay in the Marketing Department, which ought to appropriately communicate Council decisions to the student body. Although there was a quarterly letter from the Vice-Chancellor, this was often overtaken by events before it was published.

2. The consistent observation by the witnesses interviewed by the Commission was the failure of those in charge of portfolios to properly deal with their portfolio at an operational level, and the fact that they required all matters to be referred to the Vice-Chancellor to be dealt with at her level. Operational issues raised (for example, residences) were not dealt with on an operational level, by those holding the appropriate portfolios. This was the view expressed by NEHAWU. The Institutional Forum also stated that it was a failure of those delegated to perform operational functions, to carry them out. When the Vice-Chancellor was absent, the perception was that no steps were taken, and all decisions were required to wait for her return.
3. The delegation of student leaders who made a presentation to the Commission also pointed to the fact that EM was not prepared to take decisions, unless the Vice-Chancellor was present. When the Vice-Chancellor was away, no decisions are taken. They also noted that the

Dean of Students, Ms. Njoli-Motale, did not take decisions on matters, but referred matters for the decision of the Vice-Chancellor. They noted that the previous Dean of Students, Dr. Tshabalala, took decisions about matters (such as student events) without referring each matter to the Vice-Chancellor. They also complained that line managers generally cannot or do not take decisions, and all decisions are referred to the EM, and matters are not dealt with at HOD level. With regard to the appointments, they complained that senior management centred entirely around the Vice-Chancellor, and that it was effectively a *“one woman show”* with senior staffers not taking decisions. In conclusion, the students conveyed their

belief that every decision of importance at CPUT was in fact taken by the Vice-Chancellor, even though the Vice-Chancellor said that she was not taking decisions on operational issues.

4. The Institutional Forum (George Mvalo) was also of the view that there was no proper conflict resolution strategy in place, and that such a strategy might assist in dealing with the issue of communication.
5. A further matter that was brought to the attention of the Commission was concern by the Institutional Forum that although it was appropriate that students have a role in the consideration of tenders for services, students should not have an active role in tender committees in the sense of having the power to decide which tender should be accepted. Problems that had been consistently experienced were a failure of students attending tender committees to maintain the necessary confidentiality required of those of a tender committee. Furthermore, they were of the view that students were induced to make promises to those who tender, and that service providers were on their part tempted to benefit students, in exchange for promises for support.
6. The Commission finds that communication between EM and students leaves much to be desired and that an effort should be made to open lines of communication between management, the SRC and the student body as a whole.
7. The Commission notes that the Student Services Council has not yet been established and this Council could play a useful role in strengthening communication and engagement.
8. The Commission also finds that, in dealing with students, there appears to have been a failure or unwillingness on the part of senior management to

take appropriate decisions, and rather refer matters to the Vice-Chancellor for decision.

9. The Commission acquired the distinct impression that the Vice-Chancellor failed to require senior management to take responsibility and be accountable for their own portfolios and, as a result, appears to micro manage operational matters.
10. The Commission is concerned at the apparent paralysis of the Judicial Office to expeditiously investigate, and prosecute students against whom serious complaints were laid.

2.4 The Conduct of the Students

1. The conduct of the students involved in the student action during the period 3 to 7 August 2009, in particular, with regard to the wanton destruction of CPUT property, was deplorable and unacceptable.
2. There is no evidence which suggests that student leaders did anything to discourage their supporters from resorting to violence and destroying property. There is no evidence that any of the student leaders remonstrated with the protesters when they resorted to violence, looting and destruction. On the contrary, there are, in fact, indications that the looting, violence and destruction of property was actively encouraged by student leaders.
3. A culture of a lack of any respect for those in authority has repeatedly exhibited itself, even after the August 2009 protests, to the extent that it is incompatible with the concept and ethos of a university.

4. During the course of the year, and in particular, during the August protests, some students showed no regard for the rights and human dignity of fellow students and staff. They exhibited a complete lack of Ubuntu.

2.5 **The Meeting at the Sea Point Spur**

1. The Commission finds that Mr Van Gensen met with students at the Sea Point Spur, as Mr Van Gensen has conceded. Mr Van Gensen gave his version to the Commission, being the written version which he wished to submit to Council, and it is annexed hereto as Appendix "A". The version of the meeting given by Mr Van Gensen on the one hand, and by the students on the other, is contradictory and mutually exclusive.
2. The Commission, however, finds that it is neither necessary nor appropriate, for the purpose of this report, to make credibility findings in this regard and has simply recorded the different versions of this meeting.

PART II

3. ADDENDUM TO THE MOERANE COMMISSION REPORT

3.1 Introduction

The Commission was called upon to conduct an enquiry into:

- The events on the Bellville and Cape Town campuses between 30 July and 7 August 2009 and the response of management to the said events; and
- The alleged causes underpinning the said events as set out in the memoranda from the SRC: Bellville and Cape Town campuses; NEHAWU and NUTESA

The Executive Management recognizes and acknowledges some of the weaknesses identified and pointed out in the report regarding certain areas of the institution's system. However, it is regrettable that there are some glaring omissions, silences and inconsistencies that have to be pointed out.

3.2 Climate Survey

In its Report, the Commission has attached an extract from the Climate Survey Report.

It is important to remember that in 2006 a climate survey was commissioned by the Vice Chancellor to assess the state of readiness by the university community to forge a new CPUT culture after the merger. This was to prepare for setting up "Change Management" interventions. It is unfortunate that the report was only made available in 2008.

It is not clear what the relevance of this survey is to the inquiry. The placing of the report without providing any context is problematic especially because the

extract is skewed since it highlights the negative with very little reference to the positive responses given by the respondents.

3.3 Silences on possible external influences on student behavior towards Management

It is again a concern that there was no probing done into the extent some of the students' behaviour could be linked to influences or aspirations for gain through the tender opportunities available at CPU, in spite of there being strong indications of such cases. The termination of leases for residences; the tender for catering; the transport tender to name a few had been particular areas around which direct interest was expressed by some student leaders and which had led to some conflict.

3.4 Silence on possible internal influence on student behaviour

As much as the Report refers to the meeting at the Sea Point Spur between the students and Mr Van Gensen (p167 and 240) it is surprising that the commission did not probe this matter both in terms of student behaviour as well as the non-disclosure by a member of EM of such a meeting. It is the contention of EM that such a meeting may have possibly been used by students to undermine the EM in efforts to bring about stability and order in the institution. It may have been used as a "divide and rule" strategy.

This concern is further informed by the fact that some of the details referred to in the "open letter" had only been discussed at EM meetings. When the VC raised a question as to how the students had possibly sourced the information, Mr Van Gensen suggested that it could have been from Prof Bayat, who however did not sit at EM meetings.

It is also important to note that there are some significant omissions in the written statement (Appendix A) which has been included in the report namely:

- On page 3 of Appendix A paragraph 4 Mr Van Gensen refers to his being of the view that suspensions due to the unruly behaviour at an HIV training workshop “should not have fallen under the umbrella decision of Council”. This is contrary to what transpired at an EM meeting where the Mr Van Gensen challenged the VC for this interpretation to the extent that the VC had to resort to the recording of the Council discussion to resolve the matter.
- In paragraph 5 the statement omits to say that Mr Bici had indicated that they were referred to Mr Van Gensen by Professor Bayat. This he disclosed to the VC in the presence of Dr Louw. He also disclosed that the venue had also been picked by Professor Bayat who had to direct him telephonically to reach the place.
- In paragraphs 5 and 6 of Appendix A Mr Van Gensen omits to list the item of the removal of VC from office as one of the agenda items with the students which he had disclosed to the VC in the presence of Dr Lionel Louw.
- In p.7 there is reference to a file that was to be handed over to the VC. Mr Van Gensen was on approved leave on 17 and 18 August. On Wed 19 he reported to the VC that he had been invited for a week-end away by Prof Bayat at KwaNtu Game Resort and while there had come across some evidence of impropriety associated with Prof Bayat. He indicated that he would provide proof to the VC as soon as it was available. He proposed that matter was serious enough to warrant immediate suspension. On Friday 21 August the VC met with Mr Van Gensen expecting to be furnished with the file, Mr Van Gensen reported that the affidavits had

been handed over to the university lawyers so that charges could be drawn up. The VC then indicated that the matter should then rather serve at the EXCO of Council since this was a senior post level.

3.5 Library hours

The report notes the failure of EM to deal decisively with the request for the extension of the library hours (p.227). It is our view that facts around this matter should have been established before a conclusion was drawn. Prof Staak whose responsibility the library falls under was not even asked to present evidence regarding how this matter was addressed. A thorough investigation into this matter was undertaken, including assessing how the universities in the region operate. Furthermore EM sought confirmation on whether the students' need was actually related to the use of the facility for study purposes or accessing graphic material after hours. The conclusion was that more study spaces were available on campus for study spaces and all electronic databases and catalogue material could be accessed from the IT Center which would be open for 24 hours.

3.6 EM barricaded themselves in the Administration Buildings at Bellville and Cape Town Campuses

The statement on p.222 regarding the response of EM to the unrest is disturbing. Both Prof Staak and Tanga gave accounts on how EM had taken the decision to allocate themselves to cover all sites given the information that the students were to be active on all Campuses. It must be brought to the attention of Council that calling the police in was the last resort after all attempts to stop rioting students from terrorizing staff and other students, had failed.

The Camera footage which was made available to the commission covering all incidents including that of the 03 November 2009 demonstrates the extent of disregard and disrespect with which some students displayed towards

intervening staff. It is true that after the extensive damage incurred on the first day attempts were made to prevent further invasion and damage to property.

3.7 EM members not empowered to take decisions without the Vice Chancellor

The impression created throughout the report that members of EM are reluctant to take decisions and constantly refer matter to the VC has also not been tested. There are many meetings that are presided over by other EM members in the absence of the VC in which important decisions are taken. Very few meetings are rescheduled to accommodate the availability of the VC alone.

3.8 The grade level of the Dean of Students

The report refers to the Grade level of the Dean of Students as having been changed from level 4 to 3. The Council should refer to the Submission of the VC requesting the changing of the level of DVC Student Affairs to a lower level of Dean. In the meeting it was clarified that this would still be at executive level. The VC had not been copied the letter which was generated by Mr Morris referring to the appointment as Executive Dean at Grade level 4. It should be clear that this was a contradiction since all Executive positions are from level 3 upwards. In all intents and purposes CPUT has treated this position as Executive and been reported to DoE as being at Executive Level 3. It is strongly believed that this may have been a genuine typographical error which should be corrected.

3.9 Failure by EM to exert authority to achieve respect

This statement is premised on the assumption that in all the cases where universities encounter strike action and destruction of property it is due to the above issue. A finding by the DHET demonstrates that there is evidence to show that strong external political influences e.g. position by National Student

Structures to protest against fees or exclusions. In fact the officials indicate that in some cases no matter what concessions are made students find another reason to embark on a strike.

The key issue that should be addressed is whether all the governance structures speak with one voice in condemning destruction as a means of expressing dissatisfaction. The EM was defined by some structures as having used excessive measures in quelling the unrest.

3.10 Failure by EM to submit Minutes from 16 September to the end of November 2009

Attorney Aniel Jeaven had approached Mr Ntsababa requesting access to all EM minutes for the period from 16 September. The VC contacted him to establish the topics that were being probed as this would assist in searching for the relevant minutes. He responded that they wanted all the minutes. The VC indicated that this would be problematic since not all matters serving at EM are related to the enquiry and some could contain information relating to staff. The VC also requested to speak directly to Advocate Moerane to discuss the matter further. Mr Jeaven indicated that Advocate Moerane was not available but he would call later. There was no further communication on the matter until the report was released on 04 December. This telephonic discussion should have been included in the report to put things in perspective. Council concurred that the minutes had no implication to the terms of reference of the Commission.

3.11 Acknowledged weaknesses in some institutional systems

- *Weakness in the response time of our Judicial System as well as ensuring disciplinary misconduct by students is dealt with expeditiously.* This matter will be addressed very soon at the start of the new year as capacity issues have been identified.

- *Staff undermining management authority.* The incident of a staff member who provided meals for students who were glaringly seriously criminal behaviour is being pursued.
- *Weakness of the contracted Security Services.* This has been an on-going problem in the system. The position of Manager has now been filled by an incumbent with vast experience. The DVC:Operations has been asked to devise a strategy for monitoring service providers.
- *Lack of strategy for dealing with mass demonstrations.* Student Affairs has embarked on a process to derive a protocol for Strike action by students. There has been an extensive strategic planning process involving all SRCs.
- *The Expulsion of Students without due process being followed.* EM accepts this charge and requests that this be viewed in the context of continuous extreme behaviour. Council need to advise on this matter especially relating to serious criminal behaviour that even poses danger to the CPUT community and its resources.