
GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. 1055

20 October 2006

HIGHER EDUCATION ACT, 1997 (ACT No. 101 OF 1997)

REPORT OF THE INDEPENDENT ASSESSOR,
PROF.N.CHABANI MANGANYI
TO THE HONOURABLE MINISTER OF EDUCATION
NALEDI PANDOR, M.P.

INVESTIGATION INTO THE DURBAN UNIVERSITY OF TECHNOLOGY

JULY 2006

1. CONTEXT

The Independent Assessor was appointed by the Minister in terms of Chapter 6 of the Higher Education Act, 1997 (Act No 101 of 1997) as amended and was mandated in a letter of 20 May 2006 to conduct an investigation into the affairs of the Durban University of Technology. The terms of reference supporting this mandate are detailed in Annexure 1.

The Minister's intervention followed longstanding and recent developments at the Durban University of Technology, which left her in no doubt that "current circumstances at Durban University of Technology...suggest that there are serious problems in the governance and management of the University, which may be impacting on the functioning of the University." (Annexure 1)

The broader context for the current investigation is briefly as follows.

It is important to note at the outset that the Durban University of Technology pioneered the merger of two higher education institutions (Natal Technikon and ML Sultan Technikon) in 2002. The University is one of the recently established universities of technology in our country with a potential to be a significant regional and national player in higher education. The current Vice Chancellor, Prof. B Goba took over the reigns from Prof. D Ncayiyana in April 2005. Some of the current difficulties such as the pervasive lack of collegial trust indicate that the shadow of the merger since 2002 over the University has not receded.

The first semester of 2006 was to witness a frenzy of activities and representations to the Minister and the Department of Education. The Minister and members of the Department of Education's Merger Unit held meetings in early May 2006 with a range of Durban University of Technology leaders, including both Council and Executive Management. Members of the Merger Unit held meetings on 23 and 24 May.

One of the most important developments, which predated the intervention of the Minister and the Department in May 2006, was the Durban University of Technology Council meeting of 2 April 2006. Five members of Council requested the convening of a special meeting of the University Council to discuss what they saw as a deteriorating relationship between the Vice Chancellor and the Chair of Council coupled with an assessment that the Council was increasingly becoming dysfunctional and needed to be disbanded. The Merger Unit conducted an investigation and found much to be concerned about at the Durban University of Technology. Their findings were reported to the Minister. The report of the Merger Unit had a mixed reception within the Council as reflected in the preamble of the resolutions of the Council meeting of 8 June 2006. Despite a vote in favour of the immediate dissolution of Council by a majority of one, no action was taken by the Council to deal with the crisis. This then is the context within which the current Assessor was appointed by the Minister to conduct an investigation into the affairs of the Durban University of Technology.

2. THE INVESTIGATION

The Assessor was mandated to investigate the situation at Durban University of Technology with a view to arriving at some findings with respect to the following matters. On a broad front to (a) advise on the dimensions of the discontent at Durban University of Technology, (b) recommend measures required to ensure proper management and governance at the University. The Assessor must report on the possible factors, which may account for the "deterioration" in relationships amongst members of Council, more specifically, between the Vice Chancellor and the Chair of Council. The Assessor is also required to report on the possible reasons for the absence of confidence in the governance structures, including the Council's failure to deal effectively with a number of specific issues listed in the terms of reference. The findings of the investigation must be accompanied by meaningful recommendations.

Given the importance of the assignment and its complexity, it is essential that the clearest possible indication should be given of the strategies, which were adopted in the conduct of the investigation. In doing so, proper regard needs to be given to the constraints imposed by tight time lines and the unmistakable urgency of the need to find a way forward for the Durban University of Technology. Briefly, once the assignment had been accepted, the first step was a briefing session which was held at the Department of Education. The briefing, a compact familiarization with developments at Durban University of Technology (including the most recent reports) was given by Professor Angina Parekh of the Merger Unit of the Department of Education. Mr. Craig Lyall-Watson was given the task of providing logistical support to the Investigator. The information gathering strategy was two pronged. As many face-to-face interviews were to be conducted as could be arranged within the time limits set by the Minister's mandate. The second strategy entailed the scrutiny of various kinds of documents (especially minutes and agendas) as well as documents generated by participants in the course of the investigation. The face-to-face "evidence" was recorded live and as close to verbatim as possible. This record is presented as a stand-alone document. Most of the documents were studied following the completion of the interviews. These and the briefing documents, which were provided by the Merger Unit, are listed in Annexure 2. The list of interviewees, the place and date of interview are as reflected in Annexure 3. An interview protocol consisting of themes and possible questions was developed in advance of the interviews. The Assessor saw the interviews as opportunities for the generation of "evidence" and dialogue on important issues facing the Durban University of Technology.

Following the end of information gathering, both documentary and interview records were examined by the Assessor in search of dominant themes and indicators of patterns of work and interaction amongst management and governance entities within the institutional culture of the University.

3. FORMAL RECORDS

An extensive review of agendas (Council) and minutes specifically of the meetings of Executive Management, the Executive Committee of Council and the University Council was undertaken. Documents were helpful in establishing questions of fact, The period documents which were examined enabled one to examine attitudes to work, patterns of interaction, that is, how decisions or the lack thereof influenced work in other parts of the institution. The sharing and uses of management information (decisions and their implementation) amongst people in the three levels was closely examined. The review of documents covered the period beginning January 2005 to May 2006. One crucial reason for examining the decision making exchanges amongst the three level was to examine the claim which appears to have gained some currency at the University that Executive Management pushes most operational matters upstairs: to the Council of the University. In other words, could it be that it is the management practices of Executive Management through its committee that is contributing to the blurring of management and governance boundaries? Documents were examined for formal consistency in respect of committee areas of work and decision-making during the period beginning January 2005 to May 2006. It was important in examining documents to assess leadership styles and contributions to problem solving, particularly, in respect of key figures such as the Vice Chancellor and the Chair of Council as well as the extent to which information provided in face-to-face interviews is elaborated, undermined or corroborated by documentary evidence. For example, the Executive Management record shows the Vice Chancellor at work asking questions and providing leadership to his colleagues.

3.1 Executive Management

The Executive Management Committee at the Durban University of Technology is made up of the Vice Chancellor, two Deputy Vice Chancellors (one of whom has been acting), four Deans of Faculty, the Pietermaritzburg Campus curator, the Directors and a few people attending upon invitation. The minutes indicate that the Executive Management met regularly throughout the year. Attendance (including that of the Vice Chancellor) was impressive. The minutes of the meetings give a clear pointer to matters such as the level of structuring of the agenda, regular indications of decisions taken, including instances in which matters are referred to subcommittees of Council. A random example from the meeting of 25 July 2005 reads: "refer urgency of security situation to Council Procurement Committee" in respect of finalisation of a security tender. The Executive Management Committee dealt at different times with matters that were referred to it by academic structures, such as the Centre for Higher Education Development, the Interim Senate and the Senate Executive Committee, amongst others. The executive group received matters from committees of Council such as the Audit and Finance subcommittees. Opportunities were created in the agenda of the management group for academic and other groups to make formal presentations. For example, during the meeting of 25 July 2005 a presentation on academic

development in South Africa and at the Durban University of Technology was made. On occasion, some matters were referred to the Executive Committee of Council (meeting of 1 September 2005). The records also show that the Vice Chancellor reported regularly to members of the executive group. Items reported on from the Council meeting of 15 September 2005 included: (a) faculty restructuring (b) third stream income generating activities (c) the DIT name change and (d) the Scorpions investigation.

The Executive Management Committee meeting of 3 October 2005 is instructive in respect of the Vice Chancellor's role within this management group. The day could be called budget day for it was the occasion on which the draft budget (circulated beforehand) was discussed. Indications from the record are that the budget proposals were debated widely. On that occasion, Prof. Goba raised the difficult questions about budget allocations [securing more funds from the Skills Development Fund, the R8m for cleaning services, amounts to be revised downwards (functions and entertainment), the budget for the Performance Management System]. For a final example one can refer to the meeting of 9 March 2006. On this occasion, several decisions were made, namely to refer the decisions of the group to the appropriate committees: the Audit Committee, the Finance Committee and the Institutional Forum before referral to Council. The matters in question were: final proposed Policy on Income Generating Activities, the budget for outsourced residences, and an appeal to Council for an R8.8m student subsistence allowance.

There were two standing items on the agenda of the meetings of the executive group worthy of special mention. The first regular agenda item covers approval (at every meeting) of payments to various suppliers of services to the institution. The second item is an "action list" on the agenda of all meetings of the group. During the meeting of the 27 May 2005, for example, there were 28 items on the action list.

On the face of it, records of the transactions of the management group reflect order and purposefulness. The work of the group is conducted within the ambit of established rules of practice within higher education institutions which recognize the different roles of senate committees (academic) and council committees. The management was transacting with other decision makers within the institution in a manner which should have promoted management and governance efficiency in related structures at the Durban University of Technology. However, their contribution to the work of the University was always going to be contingent on the work and cooperation of structures such as the Executive Committee of Council, the Council subcommittees and the Council.

The Assessor is of the view that Executive Management used the standard procedures and systems to conduct their meetings and execute their management responsibilities. They took on board a range of institutional tasks, which are part of their management responsibility. The "action list" shows that there was a management intention to implement decisions. However, there was a significant tardiness in the implementation of decisions resulting in inordinately long lists for follow-up actions. The inability of the

management to secure the permanent appointment of a Deputy Vice Chancellor: Academic and the availability of senior human resources management capacity must be recognized in this context.

3.2 Executive Committee of Council

The Executive Committee of the Council of the Durban University of Technology is made up of seven people. Amongst them is the Chair and Vice Chair of Council, the Vice Chancellor, the Chair of the Finance Committee, a Council representative, a Senate Representative and a representative of the Students Representative Council. The office of the Secretary provides administrative and secretarial services to the Executive Committee of Council. The activities of the Executive Committee that were examined are reflected in the minutes of meetings which took place between the 4 February 2005 and 26 April 2006. The Chairperson of the Committee was Mrs. V L M Leo with Ms Ellen Tshabalala as Vice Chairperson. The Committee held seven special meetings and five ordinary meetings during the period under review.

One of the important tasks of the Executive Committee of Council early in 2005 (the meeting of 23 February 2005) was consideration of documents relating to what is described as the performance contract of the future Vice Chancellor. The incoming Vice Chancellor was expected to develop a vision for the institution. Another important task was an assignment from the Council meeting of 29 March 2005 directing the committee to define the terms of reference for a forensic audit. Indeed, the committee supported the need for an "independent audit" covering matters such as finances, procurement and human resources. Prof. Goba subsequently tabled a document "outlining the terms of reference for an independent audit into the affairs of the institution." The then Vice Chair of the committee, Ms Tshabalala requested, and the request was granted: that she joins Prof. Goba during the meeting with the auditors.

Early in his tenure Prof. Goba presented, following a directive by the committee, a vision document for the Durban University of Technology. After he had taken the committee through the document, the committee acknowledged the Vice Chancellor's "drive", his "consultative and participative approach" and "expressed confidence that such vigour and energy by the Vice Chancellor would go a long way in breaching the gap between Executive Management and staff and in taking the institution forward. It was suggested that his report be presented to Council on 31 May 2005." (Meeting of 25 May 2005). The audit was discussed once more. Of importance in the light of contested signing power between the Vice Chancellor (CEO) and the Chair of Council in recent months is the following decision of the committee during the above meeting dubbed "Resolution of the DIT". It reads as follows:

"The committee noted that in terms of the Financial Intelligence Centre Act (FICA) the institution was required to authorize persons to sign, endorse and execute documents on behalf of the Technikon. The Executive Committee resolved therefore that M Madanjit, BC Goba and DA Kumar "are hereby

authorized to sign, endorse and execute documents for and on behalf of the Durban Institute of Technology.”

The above details are illustrative of the work of the Executive Committee. The Vice Chancellor continued to bring matters from Executive Management, including proposals on the executive structure of the University (meeting of 29 August 2005). The audit was brought up for discussion once more during the meeting of 9 November 2005, which also concerned itself with the University's revised budget. During the committee meeting of 9 November, Ms E Tshabalala took over the stewardship of the committee as Acting Chairperson.

By early this year Ms Tshabalala had become Chairperson of both Council and the Executive Committee of Council as well as membership of other Standing Committees of Council. The minutes of the meetings of the Council Executive Committee of 26 January 2006 and 26 April 2006 are instructive. Both meetings were special meetings probably on account of simmering problems on the student front at that time. The Assessor noted a significant shift in the overall tone of meetings of the Council Executive Committee. Understandably, student issues were at the top of the agenda. Until this point, the boundary between management and governance in the deliberations of the Executive Committee, at least on paper, had remained firm. The Assessor took note of the following examples of how business was going to be conducted from this time onwards. First: the record of the meeting of 26 January 2006 reads as follows:

“ It was noted that the Chairperson in the company of Adv. Govender, Ms Seedat and Dr Thabede had met with the Heads of Department and the Acting Dean of the Faculty of Engineering, Science and the Built Environment and addressed their concerns regarding Council's decision on acting appointments. The Chairperson reported that from the aforesaid it was noted that staff members were disgruntled with many issues at the DIT” and “that the Chairperson together with Vice Chancellor formulate a plan to address these concerns.”

It should have been self-evident that unless the Vice Chancellor and his executive colleagues had appealed for help from the Chair and the Executive Committee, this was the first blatant crossing into the domain of the Vice Chancellor. The applicable practice in higher education is that the council is the call of last resort. The Chairperson should have told the Vice Chancellor to get on with the job rather than formulate plans with him.

During the meeting of the 26 of January 2006, nine students (including the president who is a member of the Committee) were in attendance. It may have been that the meeting was largely about SRC concerns. Nevertheless, this development presented a new face of the Executive Committee of Council. Once again, the tone of the decisions and the mandates for their execution were not anywhere near where the former committee would have ventured in the past. The record reads as follows:

“agreed: that a working meeting be held between Executive Management, SRC and available Executive Committee members on Monday to interrogate Executive Management’s response following which a special meeting of the Executive Committee would be held to decide on the way forward...The Chairperson undertook to engage with the Chairperson of the Finance Committee in terms of obtaining Finance Committee’s approval for funding in order to implement some of the decisions to be taken by the Executive Committee.”

Here too, the directive should have been given to the Vice Chancellor to deal with the matter and report back to the Council Executive Committee. It could not be established whether the Vice Chancellor and his colleagues were alarmed by the signals briefly alluded to above. This shift in role definition by the Chair of Council is even more noticeable when considered in the light of previous positions she is reported to have taken on the role of the Vice Chancellor at Durban University of Technology. At the Council meeting of 15 September 2005, the Vice Chancellor reported on the matter of the Scorpions investigation and Ms Tshabalala’s response is recorded as follows:

“Ms Tshabalala expressed concern that an individual staff member had initiated the Scorpions investigation and requested that in future such matters must be dealt with and agreed to by the Vice Chancellor who is the ultimate executive of the institution.”

In those days the present Chair of Council recognized the separation of roles and powers. 2005 appears from the minutes of the Executive Committee of Council to have been a year without major disputes either among its members or in working relations with Executive Management, the rest of Council and/or its sub-committees of which there are many.

The visible signs of the blurring of boundaries between management and Council started to show in the records by the beginning of 2006. It is also clear from the records that the Executive Committee of Council appears to have been overwhelmed by matters that were regularly on its table throughout 2005 into 2006. Work was being done in accordance with expectations from a system and procedural point of view. Yet there were endless special meetings (7 special and 5 ordinary), The Executive Committee of Council depended on the full Council for some decisions, which it would have been legitimate for it to make. In this regard, it failed to discharge its legitimate role amongst the Council structures of the University. Important decisions, which were not being finalized by Council often due to pending litigation and so forth, kept finding their way back onto the agenda of the Executive Committee. On the whole, the Executive Committee provided the Vice Chancellor with enough recognition of his management role as Chief Executive Officer of the University during the course of 2005. He was given opportunities to present his reports and his plans and in the beginning he was even rewarded with admiration from some members of the committee. Assignments given to the Vice Chancellor by the Executive Committee are recorded as having been met. One view of the performance of the Vice Chancellor during this period is

provided by NUTESA (National Union of Tertiary Employees of South Africa) in a letter to the Minister of Education dated 7 May 2006 in which they wrote:

“It would appear that the present Vice-Chancellor is not being given the proper mandate to manage DUT, and Council appears to be marginalizing the Vice-Chancellor by its actions and intent on managing the functioning of the institution. Council seems intent on managing DUT and not governing it which is a function and responsibility of a Council.” They go on to point out that the Vice Chancellor had just completed the first year of his term and was not receiving the support required because “Council continues to procrastinate” over the appointment of senior executive staff. In their view: “In the year that the Vice-Chancellor has been at DUT significant normalization of the campus and other improvements have taken place. To mention just one area of improvement, relations with labour have been significantly improved and the Vice Chancellor has managed to pass through Council a set of Conditions of Service which the previous Management failed to achieve and which caused much friction with organized labour”.

3.3 Council

The most significant feature of the Durban University of Technology Council is that 14 out of 27 current serving members are relatively new appointees having assumed office in October and November 2005. Three of the founding Council members of 2002 are still active in the affairs of Council. Four other members were appointed in 2004. To a degree this must mean that the base of experience on University governance of the current Council has been significantly depleted. The Assessor noted the informative assessment of Council activities during the period under review contained in the documents of the Merger Unit and decided not to revisit the details, which have been provided in that report.

In the current report, the transactions of Council are examined largely from the perspective of their bearing on the work of the Executive Committee, Executive Management, other Council subcommittees as well as the Council's broad oversight over the University resources and the institution's core business of teaching, learning, research and community engagement. These matters are taken up more fully following the examination of the interview record below.

In the light of the pronounced inefficiencies in the management of Council meetings at the University the Assessor wishes to draw attention to the fact that members of Council would from time to time draw attention to this problem. For example, at the Council meeting of 31 May 2005 the prevailing tendency of rescinding decisions was debated. Amendments to Council procedure were proposed including the possible use of “action lists”. No evidence was found reflecting implementation of improvements in the overall management of Council meetings following this and other similar interventions at different times.

Council records indicate that there were a number of matters, which had been on the agenda of the Council for some time. One of these was the proposed audit of the affairs of the Durban University of Technology. The planned audit existed almost back-to-back with the outstanding investigation by the Scorpions initiated before the life of the present Council. The records of both the Executive Committee of Council and Council confirm that early in Prof. Goba's tenure at Durban University of Technology, the task of developing the terms of reference and finding a firm to undertake the audit was on his hands. This was after Council (meeting of 29 March 2005) had requested the Executive Committee to develop terms of reference for a forensic audit. It is difficult to avoid the impression after examining the records of the three structures that there was a great deal of moving back and forth on the issue of the forensic audit. Under those circumstances little if any progress could be made. And so, once again during the crucial meeting of 15 September 2005 yet another decision was made to support previous decisions on the matter. The first terms of reference were initially presented by the Vice Chancellor during a meeting of the Executive Committee of Council on 22 April 2005. On 15 September 2005 a task team made up of the Vice Chancellor (Chair), Mr. Moodley, Dr JN Thabede and the Chair of Council, Ms E Tshabalala was appointed. The task team was empowered to make the decision on whether to proceed with the audit following "due diligence" to be initiated by the Vice Chancellor following a determination by the task team "that there is sufficient evidence for such an investigation."

During the Council meeting of 13 October 2005 the terms of reference covering three broad areas were presented by the task team. Council "endorsed the aforesaid terms of reference". Council also agreed that: (a) the task team "may institute a forensic audit provided the subcommittee is satisfied that there is sufficient evidence to warrant taking the matter forward in this way, (b) "must decide on the company to be appointed to do the forensic audit without the need to follow DIT's tender process, in view of the sensitivity and confidentiality of this matter". The October meeting was followed closely by the Council meetings of 23 November 2005 and the meeting of 12 December 2005. It was at the latter meeting that Council took the important step of approving the appointment of KPMG and Ama-FACE as the consortium that would conduct the "forensic audit". Council was holding monthly meetings by this time!

Most of the unrecorded transactions by members of the task team between the Council meetings of 28 February, 22 March and the special meeting of 2 April 2006 came to a head during the April meeting. Five members of Council, which included the Vice Chancellor, Professor Goba, requested the meeting. There were two items on the agenda, namely: (a) "to urgently discuss problems in relation to the functioning of Council" and (b) "the management of the forensic audit that was of concern". It was to turn out to have been a pivotal meeting because it brought to the fore the contestation about the institutional boundaries between the oversight and governance functions of Council and the management and accountability of Executive Management, especially that of the Vice Chancellor. Within a relatively short period of time following the meeting of 2 April and the chairpersonship of Council by Ms

Tshabalala, the contestation took the shape of a war of words (correspondence) between the two most senior people in Council and in the University as a whole: Prof Goba and Ms Tshabalala. Also of great importance was the precedent, which Council had recently established, by the sidelining of two statutory committees of Council, namely, the audit committee and the finance committee with regard to preparations for the audit investigation. Council had gone out of its way to constitute a task team with limited administrative and no statutory standing to manage a very important and complex task and in this way disregarded the standing of some of its most important committees.

When the work of the Council is examined in terms of the record of its transactions amongst its members, across organizational boundaries in relation to its own Executive Committee, other subcommittees and Executive Management, the following picture emerges. First: during the course of 2005 under the leadership of Mrs. Leo and before the entry into the scene of new members during October and November, the Council worked in a manner that recognized functional boundaries. The Vice Chancellor's position as the executive head of the University appears to have been adequately recognized. As we have seen, an important matter such as the audit was assigned to him as chief executive of the institution. Sitting at the top of the institutional pyramid, the Council, which over time had become grossly inefficient, unintentionally assumed the role of a bottleneck, which retarded the timely implementation of important decisions. In time, a Council with four scheduled meetings for the year 2005 added numerous special meetings and "continuation" meetings. Important operational matters that are at the heart of the institution such as the finalisation of the employment of a Deputy Vice Chancellor: Academic to support the Vice Chancellor and the core business of the University could not be concluded for well over a year!

Note is also taken in this context of the helpful "analysis of council meetings" which was reported by the Merger Unit. They arrived at the remarkable conclusion that after five full meetings and four special meetings conducted between 11 February 2005 and 2 April 2006 (lasting several hours in each case), only six substantive decisions could be identified as the outcome of those deliberations.

Without doubt this was a regrettable and costly level of performance. The situation was aggravated by similar tendencies in the productivity profile of the Executive Committee of Council reported earlier. The consequences for an institution of an ineffective executive committee are serious. The name "executive committee" is intended to mean what it says. In the normal course of events an executive committee should be the crucible not only of decision-making in between meetings of council, but also the organ, which mediates the traffic of actions and decisions emanating from management and other subcommittees of council. In fact, it is not unusual for council to delegate some of its powers to the executive committee in the interests of effective governance of institutions. A recommendation relating to this matter is made later in this report. It is the executive committee, which should have been working closely with the executive management to ensure implementation of

Council decisions. In the case of Durban University of Technology, the Council appropriated the roles of executive management, the executive committee of Council as well as that of its most important committees: the audit and finance committees.

4. INTERVIEWS

The process of securing non-documentary information from members of the DUT council and other stakeholders involved the soliciting of assessments of the situation at the University through the use of semi-structured interviews lasting one hour to an hour-and-a-half in some instances. Although the conversations were largely open-ended, there was a deliberate focus on a limited number of themes (problem areas) in line with both the Ministerial mandate and the recent findings of the Merger Unit investigation. The record of this part of the investigation is contained in the companion document of this report. Out of the variety of themes, which were covered during the interviews, the following have been identified as the most salient, that is weighty and deserving of special consideration. The themes are: consummation of the merger, council and the governance of the University, management, the forensic audit and solutions to overcome the present impasse. The outcomes of this part of the inquiry are briefly outlined below.

4.1 Consummation of the merger

The backdrop of the contemporary situation at the Durban University of Technology must to some extent be the 2002 formal merger of two former technikons; ML Sultan and Natal Technikon. Some of the rhetoric which prevailed in the course of the present investigation provides strong signals that people who chose to deal with this theme believe that there is a great deal of unfinished business on the merger front. Significantly, the Vice Chancellor was part of this chorus. The most common assessment was that in some respects the merger has not been consummated. The majority of participants were especially vocal about this issue. People used phrases such as "not yet happened", "joined but not merged" "still two separate institutions" and so forth. Internal stakeholders, that is, members of the University community appeared to be much more aware and concerned about what they experienced as a continuing failure of a major academic and organizational restructuring. External members of Council had virtually nothing to say on this issue. This is not surprising when one considers that the merger appears from the available documentary evidence to have been substantially off the agenda of all decision makers within the University.

4.2 Governance

The two most senior leaders of the University, the Vice Chancellor, Prof. Goba and the Chairperson of Council, Ms Tshabalala could not help bringing each other's roles into their assessments. The Vice Chancellor did not see the Chair of Council and the Council as a whole as partners with whom he and his colleagues could carry out the work of the University. He bemoaned what he experiences as interference by the Chair and some members of Council in

matters involving the day-to-day management of the University. The matters which appeared to concern him most with regard to governance were the following: (a) the neglect of "core issues" such as academic matters, (b) the marginalisation of council subcommittees, (c) long council meetings and (d) contracting without the authority of the Vice Chancellor.

Ms Tshabalala had limited concerns about governance at the University. She was concerned about the length of Council meetings but felt that this was due to the many unresolved issues from the past. There were people, she asserted, who are against having an African chair of council.

The profile of the Council at the Durban University of Technology which emerged from the assessments of the overwhelming majority of participants is as characterized below:

- e The Council engages in the micromanagement of the University;
- It maintains no focus on the core business of the University;
- e The Council maintains inefficient working relations with its subcommittees;
- It makes no decisions on consensus. Everything has to be voted upon;
- e The Council is inefficient in the conduct of its business;
- e It procrastinates, engages in bickering, entertains personal agendas;
- Its work habits have hampered the employment of crucial senior staff;
- Council has disempowered the Senate of the university by disregarding the core business of the University;
- e The executive committee of Council has been rendered dysfunctional. It does not take decisions;
- e Council pays little attention to student welfare including the transformation of the institution;
- Council puts stumbling blocks in the path of the Vice Chancellor. Senior management appointments have not been made until now;
- e The Council is undermined by mistrust amongst members and the breakdown in relations between the Vice Chancellor and the Chair of Council;
- e It is a Council in which some people are allowed to gang up against the Vice Chancellor;
- e It is a Council which has failed to support the Vice Chancellor and the management of the University;
- e Costs incurred by some Council members are high.

The overall picture is of a Council, which has been dysfunctional over a long period of time. It is a Council, which is believed to have lost focus on its policy-making and institutional oversight responsibilities. Participants believe that there are real and deep divisions amongst members of Council. The overarching sense appears to be one of disenchantment and feelings of helplessness.

4.3 Management

Two scenarios were brought to light during the interviews concerning the perceived profile of the University's Management. It was repeatedly pointed out that the Council had frustrated plans for the appointment of senior staff including that of the Deputy Vice Chancellor: Academic. The second scenario reported is that this group of employees received no salary increments for the year 2006. It was pointed out that the University's Management capacity was undermined significantly by the fact that they were not operating at full strength.

The Management was found wanting (in a minority view) because of the following reasons:

- Reports to Council often rejected because they are "simply useless";
- The Management disregards procedures, ignores Council instructions;
- The Vice Chancellor undermines the audit. There are many outstanding issues.
- Management is undermined by the prevailing rift between the Chair of Council and the Vice Chancellor;
- A section of labour say the Vice Chancellor (they did not support at first) is deserving of support and should be given a chance to prove himself;
- The Vice Chancellor is seen as being not strong enough to handle conflict;
- Management lacks a strategic plan for the University, is failing to deliver and implement decisions;
- The Vice Chancellor has not delivered reports to Council and has not acted on them;
- The Vice Chancellor has done very well in the circumstances.

The assessment of the Vice Chancellor is understandably closely tied up with that of the management group as a whole. In both cases, the assessment is mixed in part as a result of the fact that the appointment of additional executive staff has not been realized in well over a year and a half.

The Chair of Council expressed some views on the state of management at the University. It is her assessment that operational matters land up in Council on account of the fact that the Management mismanages the University. She is also of the view that "what the Vice Chancellor says to one" may not be the same thing that he says to others. The information he brings to Council is incorrect. It is also her assessment that the head of finance at the University places obstacles in the way of the forensic audit.

4.4 The Audit

The Assessor held two meetings with representatives of the auditing firms KPMG and Ama-FACE on 27 June in Durban and on 7 July 2006 in Pretoria. It had become evident during the meetings with various people during the **early** part of the investigation that "the forensic audit" had taken center stage

in the goings on in both the Council and the increasingly tense relationship between the Vice Chancellor, the Audit Task Team and Chairperson of Council. Despite allegations to the contrary, no one interviewed by the Assessor expressed herself or himself as being against the audit of the University. All participants in the investigation strongly supported the need for such an intervention. The meetings with the auditors provided an account (for which there appear to be no other institutional record) of developments between the auditors, the Task Team and the recent acrimonious correspondence between the Vice Chancellor and Chair of Council. An account provided by Mr. Roy Muller during the meeting of 27 July was recorded in part as follows (Annexure 4):

“ On 7 February 2006 we sent mandate letters to the Chair who signed on behalf of the institution. Computers were uplifted between 24 March 2006 and 27 March 2006. A letter from the VC was sent to the Managing Partner requesting that he kindly “suspend any further investigation”. On 28 March 2006 a meeting was held between the Chair of Council, the VC and KPMG. Prof. Goba explained that he meant suspend any further action relating to computers and not suspend the audit. We explained how we did what we did as a result of complaints from staff members. A letter was sent from KPMG to Prof. Goba apologizing. On 11 May 2006 a letter was received by KPMG from Prof. Goba stating that he could not process payments because of a lack of detail. On 15 May we met with the Task Team and Prof. Goba. On 18 May the Chair of Council reaffirmed that the audit must continue. On 26 May we received a letter from Prof Goba criticizing the audit and the documents relating to our appointment...On 8 June we presented to Council our findings to date. At this meeting the Council agreed that our fees are to be paid...Prof. Goba confirmed that he was present at the meeting where the Chair was assigned to manage this contract.”

The crucial dates in the history of the audit at Durban University of Technology are briefly as follows. On 29 March 2005 a Council decision was taken to conduct an audit. On 15 September 2005 the Audit Task Team (made up of the Vice Chancellor, V Moodley, J Thabade, E Tshabalala) was appointed with Professor Goba as convener. On 8 December 2005, auditing firms presented at a meeting with the Task Team. At a meeting between the auditors and the Task Team on 8 April 2006 the decision to appoint the Chair of Council as Chair of the Task Team in the place of the Vice Chancellor was taken. This is reported to have been done with the full cooperation of Prof. Goba and in the interest of the integrity of the entire auditing process. It should be noted that although the formal decision to unseat Prof. Goba was taken on 8 April 2006, the Chair of Council appears to have effectively taken over the leadership of the Task Team well before the decision of 8 April. An example here is the signing of the mandate letters from the auditors on 7 February 2006.

Participants in the interviews told the Assessor that they supported the auditing of the University. The main bone of contention is the process and management of the audit following the appointment of the Task Team on 8 December 2005. There is a view, as limited as it is, that there are people who

are opposed to the audit. Some senior members of the audit firms engaged in the audit suspect that there may well be opposition in some quarters amongst senior managers. Most participants in the investigation disapproved of the fact that prima facie evidence had not been presented to Council before the appointment of the auditors as per the decision of Council. The assessment was that in terms of procedure, the audit is flawed. In spite of this, the work needed to be taken to its logical conclusion. There is notable disappointment because both Council and the statutory Council committee, the audit committee were sidelined and kept out of the process.

Having been privy to the recent correspondence between the parties closely involved in the audit the Assessor is able to say that tension has been building up between the Vice Chancellor and the Chair of Council particularly in respect of the payment of audit fees. Two urgent special meetings of Council to discuss difficulties around the audit were cancelled in the recent past ostensibly on account of the unavailability of some Council members. The levels of concern and mistrust have risen so high that a member of the University Council who made a written submission to the Assessor on 14 July 2006 wrote in respect of the audit committee and the audit that:

“Although it is a statutory committee [audit committee], this committee has been totally ignored by the Chair, especially with regard to the forensic audit- eventually resulting in the Chair of this Committee (and Vice-Chair of Council), Adv K. Govender, resigning from Council. [The forensic Audit Task Team]. This task team was only mandated to draft the terms of reference for the audit. Yet, it has taken over the “management of the forensic audit”- with the exclusion of its convener, Prof. Goba...”

4.5 Solutions

The last dominant theme from the interview record is the question of what needs to be done: solutions to what is increasingly being experienced as a situation of organizational drift. One of the strongest signals that were given to the Assessor was the sense of urgency surrounding developments at the University. One participant went to the extent of saying: “the Minister must act now”. Once again, the two most senior members of the Durban University of Technology community, the Chair of Council and the Vice Chancellor appeared to see this issue very differently. It is perhaps understandable that the Chair saw the solution in the context of the audit. For her, salvation lay in the uninterrupted completion of the audit. The Vice Chancellor had four proposals namely: (a) Council should be reconstituted, (b) vacant management posts should be filled, (c) code of conduct for Council should be adopted and (d) the forensic audit should continue, be finished as soon as possible and be managed by an independent person.

The participants had numerous suggestions about what needs to be done. The main suggested solutions are:

- Appoint the required senior staff and take a good look at management capacity;

- Dissolve the present Council and reconstitute in terms of the statute;
- Complete the audit;
- Re-establish rules and proper role of Council;
- Mobilise support from the Merger Unit of the Department of Education;
- Current members of Council should be barred from re-appointment;
- The Vice Chancellor should give room to new leader (minority view);
- Managers must be held accountable;
- Manage the forensic audit better than it is being managed at the moment;
- A “catalyst” is required to manage the reconstitution of Council;
- An administrator should be appointed (minority view).

The Assessor has taken note of other aspects concerning the audit that may have a bearing on the final recommendations to the Minister. The additional points made below should be taken together with the report on the audit outlined above. It must be reported that attempts were made during the two meetings which the Assessor had with the auditors, to get to grips with (a) indications of the nature of preliminary findings and (b) estimates of expected costs of the entire operation. On both occasions, the auditors were reluctant (despite assurances) to provide the Assessor with written documents covering the report, which they presented to Council on June 8 2006. Despite promises, this information could not be provided. At long last there was a longish indemnity document, which the Assessor was expected to sign. This offer from the auditors was rejected.

What can be reported at this point is that the auditors believe that they have turned up problems in most areas, which they have already investigated. The scale of what has been done and its potential value is suggested by the following indications: (a) 111 events have already been reported, (b) 55 were being investigated when the dispute about payments interrupted the progress that was being made, (c) 13 matters referred to management without investigation, (d) 29 closed as “no case” events, (e) there is potential for disciplinary cases in 40 events involving 11 members of staff, (f) there was potential for criminal cases in six events and (g) potential for civil recovery in four events. The Chair of Council and the auditors agreed to provide the Assessor with both costs estimates and time frames for the completion of the task. In this regard, Camilla Singh (KPMG Director-Forensic) wrote in a letter to the Chair of Council passed on to the Assessor: “The projected duration of the investigation is approximately eight months from commencement and the corresponding cost is estimated at R3, 5 million to R4 million exclusive of VAT and disbursements.” The partner firm Ama-FACE sent a corresponding letter similar to the KPMG one estimating their costs at R1.8 million exclusive of VAT and disbursements. It seems realistic to think of costs in the region of about R7 million. This is a substantial financial outlay which should have been subjected to regular University cost control measures had Council not disregarded its own committees and by the same token its fiduciary accountability.

5. FINDINGS

Given that this report is made up of “evidence” interspersed with findings of various kinds, the section, which follows, is largely a consolidation of findings on the basis of the terms of reference mandated by the Minister at the beginning of this investigation.

5.1 Deterioration of Relationships Within Council

The main source of difficulties in formal and informal relationships amongst members of Council and its committees arose out of the failure of the Council to discharge its governance mandate at the University. In due course, the Council's inability to provide governance at the University created opportunities for arbitrary decisions first by the Council itself such as delegating the entire management of a costly institutional audit to a task team, ignoring its own audit committee in the process. Once this abrogation of duty had taken place, it was open season for sectarian interests to creep in. The ongoing tussle for power between the Vice Chancellor and the Chair of Council would in all probability not have developed if proper institutional procedures had been followed. When the powers of the standing committees of Council and those of the Vice Chancellor and his management were being insidiously undermined earlier this year the Vice Chancellor and other members of the executive committee of Council played along. The Vice Chancellor should have put his foot down when the Chair of Council started to actively participate in meetings with academics, in meetings with the Student Representative Council, which the Vice Chancellor and his management team should have managed. It was in instances such as the above that the real blurring of boundaries emerged in 2006. The study of the work of executive management has shown that most matters that were referred to Council committees and to Council needed to be considered by those structures either for purposes of consultation or approval.

Along a broad front the Chair of Council failed to be every member of Council's Chairperson thus failing also to act as a unifying force within Council and the University community as a whole. Instead sectarianism has triumphed and this has contributed significantly towards less than satisfactory relationships within Council. By mid-June this year the flurry of heated correspondence between the Chair of Council and the Vice Chancellor demonstrated beyond doubt that their relationship had reached rock bottom. The Vice Chancellor appears determined to reclaim what he may consider to be lost ground in respect of his role as the chief executive officer of the University. From the tone of the recent letters written by **Ms** Tshabalala to Prof. Goba it appears as if she has limited experience in both conflict resolution and management at senior levels.

5.2 Lack of Confidence in Governance Structures

Disenchantment (as indicated earlier in this report) with the work of Council and its associated standing committees, the performance of executive management and the diffusion of roles and boundaries needs to be understood as a by-product of a perceived sense of futility. The endless meetings of both the executive committee and Council (with some of the Council meetings sometimes happening every month over a three month period) have exhausted the patience and confidence of some members of Council and stakeholders within the Durban University of Technology community. The recycling of agenda items without observable outcomes in the life of the University has had unfortunate results: ennui, frustration and even anger. Hope amongst members of Council and the University community that current management and governance problems will be resolved soon is in short supply.

5.3 The Blurring of Roles

The Vice Chancellor and his executive team could have done more to challenge the increasing disregard of rules, procedures and systems that protect the role differentiation between the executive and Council and its standing committees. They could have done more specifically to strengthen the organizational hand of the executive committee of council and in this way their own ability to implement their own decisions in the University. Vice chancellors and their senior colleagues play pivotal roles in the organizational effectiveness of council executive committees. It is true that attempts to strengthen the University's managerial capacity were frustrated at every turn by procrastination, litigation, as well as the use of unhelpful solutions such as the rotation of executive staff in different senior portfolios. The University Council must accept responsibility for their failure to provide the Vice Chancellor and his colleagues with the human capital to carry out their responsibilities. The Executive Committee of Council, which shared the proclivity for low productivity meetings similar to those of Council, failed to discharge one of its most important mandates within universities, namely, to help university management to structure and coordinate the work plans of council meetings. Executive management should have acted more consistently to promote their role in making certain that whenever possible decisions were acted upon at the level of the executive committee of Council.

5.4 Fiduciary Accountability

The handling of the university budget provides indications of an institutions execution of its fiduciary accountability. The budget trail for the 2006 financial year at the Durban University of Technology was briefly as follows. The Finance Committee considered the budget during its meeting of 4 August 2005. As reported earlier, Executive Management considered the budget on 3 October 2005. On 13 October 2005, Council discussed the revised budget. It decided that a full presentation was to be made at the next council meeting. Additional directives were given to the Finance Committee in preparation for the meeting of 23 November 2005. Various aspects of the budget were

discussed in what appears to have been a concerted effort to come to grips with the issues. In this instance, the Finance Committee, Executive Management and Council worked together to exercise oversight over the resources of the university. So in respect of the budget of the University, all indications are that the Council was able to exercise its fiduciary responsibility.

However, the Council and University Management failed to exercise their responsibility in their handling of other important work such as the current University audit. As reported earlier, the audit is widely supported by members of Council and other stakeholders within the Durban University of Technology community. However, it is also true that the audit has been long in the making. In the process, the fiduciary role of the Council was undermined when an ad hoc team appointed by Council was mandated to perform functions ordinarily performed by a council audit subcommittee: a statutory committee of Council. Subsequently, the work of this ad hoc task team became less transparent and its accountability to Council was undermined. Decisions were made such as the summary removal of the Vice Chancellor from his Council assigned position as convener of the team and his replacement by Ms Tshabalala. The reason provided for this disregard for the authority of Council was subsequently given by Ms Tshabalala as the need to appoint an independent convener so as to protect the integrity of the audit. These developments resulted in deep disappointment amongst members of Council who believe that the fiduciary authority of Council has been tarnished by the unauthorised activities of the task team and its convener. The actions of the Chair and the task team which are given a veneer of legitimacy by the auditors must be seen as a kind of administrative recklessness which should not be countenanced by any council that respects its fiduciary accountability. The Finance Committee was also kept in the dark about developments in spite of the fact that documents presented (reported earlier) indicate that costs upward of R7 million may be at stake by the end of the audit. In addition, questions are being raised about the legality of the Chair's mandate to sign contracts on behalf of the Durban University of Technology.

Other infringements of financial policies (substantial unbudgeted expenditure as well as spiraling costs for subsistence and other expenditure) have been fully described in the report of the Merger Unit and need not be repeated here.

A significant new factor affecting the governance of the Durban University of Technology must be the limited experience in university management and governance of about half of the current crop of members of Council. These members of Council were appointed in October and November 2005. The composition of the current Council with a large number of novice Council members will need to be taken into account in planning the future governance of the University.

6. RECOMMENDATIONS

There are a number of key issues which need to be taken into account. They represent an important backdrop to the recommendations that follow. It needs to be remembered that a short period before the beginning of this investigation, the Durban University of Technology Council debated its fate as a council. Characteristically, the Council hesitated and withdrew just before it was about to make a breakthrough which would have saved the institution a good deal of grief. The rest, as the expression goes is history. To crown it all, the relationship between Professor Goba, the Vice Chancellor, and Ms Tshabalala, the Chairperson of Council has deteriorated to unprecedented levels. The audit of the University welcomed by everyone as an important development, is currently mired in controversy. It has been in progress for too long and needs to be brought to a close.

It should be said that the institutional leadership of the Durban University of Technology has spoken. As reported earlier, the prevailing view in the highest councils of the institution is that decisive steps need to be taken urgently to bring the prevailing inertia and uncertainty to an end. Those members of Council who obstructed the adoption of solutions following the report of the Merger Unit may try to do so once again. No one should be allowed to stand in the way of reason, justice and the best interests of the Durban University of Technology. This point needs to be given prominence in this report and the context is briefly as follows.

While the majority of those interviewed believed that the present Council had had its day, three late electronic submissions were received by the Assessor. Although it was late in the day, the submissions were considered. Two came from members of Council who had appeared before the Assessor but had felt a need to provide additional information, which for one reason or another was not at hand during the interviews. The third submission came from a concerned member of the University community, a member of the African Forum. Briefly: the Assessor was informed that (a) Prof Goba had actively lobbied against the appointment of Ms Tshabalala as Chair of Council; (b) that he has been uneconomical with the truth about the course of events relating to decisions of the Task Team; and (c) that there is rampant corruption at the University. Of more significance, however, is the fact that they were unanimous in the view that the Council should not be disbanded. To dissolve Council, according to their view would be to give mismanagement by the executive and corruption within the institution a new lease of life.


Two points need to be made to lay this position to rest. First: the evidence is overwhelming (including earlier reports) that the interests of the University and the public interest more broadly require that action be taken urgently to deal, amongst other things, precisely with the concerns raised namely corruption, poor management and the timely completion of the audit. The present Council has proved that it is unable to get things done, properly, in time and in accordance with generally accepted norms of public accountability. Significantly, no evidence was presented by those championing the virtues of the present Council to indicate how the Council's lack of effectiveness, its

unsatisfactory levels of fiduciary accountability and worsening interpersonal relations are to be brought to a rapid end. The Assessor is of the view that their view is to be respected but cannot be recommended to the Minister.

It is a happy coincidence that the recommendations, which follow, are in line with the hopes and views of most members of the University Council. The need to act quickly is more urgent than it was a month or so ago. Everything must be done to save the University from expanding more resources on account of a chronic state of organizational paralysis, rising Council administration costs, chronic uncertainty and endless bickering.

The Assessor would like to make the following recommendations in the light of the findings reported throughout this report:

- The Minister of Education should, in accordance with the relevant provisions of the Higher Education Act, 1997 (Act No 101 of 1997) appoint an Administrator to undertake tightly defined tasks at the Durban University of Technology for a period of one year with the option of an extension as provided for in the relevant legislation.
- The Administrator must be assured of the full backing of the Minister and the Department of Education (especially the Merger Unit) throughout his or her term at the institution.
- Clear performance outcomes between the Department of Education and the Administrator must be agreed upon on appointment of the Administrator. The outcomes should include: (a) reconstitution of the University Council. The Administrator must consider in addition to the relevant provisions of the Statute of the University, the recent history of the Council at the University, and any additional measures which circumstances may dictate at the time (b) establish the full complement of executive managers necessary for the proper management of the core activities of the University, including a full review of the position of the Vice Chancellor (c) bring order and stability into the on-going audit of the University and matters relating to financial controls, (d) manage the timely and successful completion of the audit
- The reconstitution of Council must include the re-establishment of the proper standing of the executive committee of council in the regulation of the roles of management, council and council committees. The executive committee of council must work in a manner that promotes the effective management of the University by helping executive management to carry out its responsibilities.


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Professor N. Chabani Manganyi
Independent Assessor

ACKNOWLEDGEMENTS

First a sincere word of appreciation addressed to the Minister of Education, the Honourable Naledi Pandor, M.P for the confidence she demonstrated in assigning this task to me. The Vice Chancellor of the Durban University of Technology provided ample hospitality and practical assistance in the arrangements for meetings in Durban. The Chairperson, all the members of Council and the University community who sacrificed their time to participate in the investigation need to be thanked unreservedly. Members of the Department of Education and in particular Mr. Craig Lyall-Watson needs to be thanked for the logistical support provided to the Investigator.
