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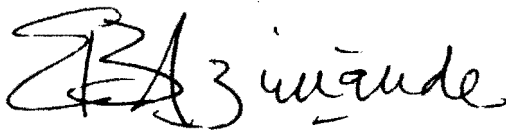
DEPARTMENT OF HIGHER EDUCATION AND TRAINING

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REPORT OF THE INDEPENDENT ASSESSOR INTO THE AFFAIRS OF CENTRAL UNIVERSITY OF TECHNOLOGY, FREE STATE, APPOINTED BY THE MINISTER OF HIGHER EDUCATION AND TRAINING

I, Bonginkosi Emmanuel Nzimande, MP, Minister of Higher Education and Training, in terms of Section 47 (2) of the Higher Education Act, 1997 (Act No. 101 of 1997), publish the report of Prof. Julian Smith, the Independent Assessor (appointed under Section 44 of the same Act) on the investigation conducted into the affairs of Central University of Technology, Free State, as set out in the Schedule.



Dr Bonginkosi Emmanuel Nzimande, MP

Minister of Higher Education and Training

Date: 02/05/12

**REPORT OF THE INDEPENDENT
ASSESSOR APPOINTED BY THE MINISTER
OF HIGHER EDUCATION AND TRAINING
CONCERNING AN INVESTIGATION AT THE
CENTRAL UNIVERSITY OF TECHNOLOGY,
FREE STATE**

BY

PROFESSOR JULIAN SMITH

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OF HIGHER EDUCATION AND TRAINING CONCERNING AN INVESTIGATION
AT THE CENTRAL UNIVERSITY OF TECHNOLOGY, FREE STATE**

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1. Executive summary

The Minister of Higher Education and Training appointed an Independent Assessor on 28 February 2012 by way of the statutory required promulgation in the Government Gazette. In general the Independent Assessor was charged with the responsibility to investigate governance and administrative and management problems at the Central University of Technology, Free State (CUT). The Independent Assessor was furthermore mandated to investigate, amongst others, allegations of the alleged abuse of power and the misuse of funds.

(See Annexure A)

A variety of individuals and representatives of several structures were interviewed and data and documentation were gathered and accessed. In addition a campus-wide invitation in three languages was extended to all staff members who wished to make written submissions. Students were involved through the Student Representative Councils of the Bloemfontein and Welkom campuses. After studying and interpreting a vast body of information, it has been found that:

- While there generally seems to be an awareness of the need for and necessity to adhere to good governance principles, several serious breaches were identified. These relate to how the University Council executed its statutory responsibility in general, but particularly to its highly unsatisfactory handling of the anonymous memorandum sent to the Minister of Higher Education and Training. Serious shortcomings with regard to financial and human resources management have furthermore been identified.
- While management systems are generally in place, several areas for improvement have been identified.
- While administrative policies, practices and procedures are generally satisfactory, several shortcomings need attention.
- While the general academic project is proceeding routinely, some aspects have been identified for attention.

An Independent Assessor is inevitably faced with the very difficult task of considering a lot of information, experiences, perceptions and points of view. In the interest of fairness these need to be interpreted in a balanced way, taking into account the objective of the assignment, as well as the serious implications which the findings and recommendations may have. As a consequence, proof has been sought concerning allegations – also proof to the contrary. Where convincing evidence was found, the findings and recommendations are specific. In cases where a satisfactory measure of proof has not been found, the findings and recommendations are more circumspect. Where it is appropriate, good practices and achievements are recognised. The achievements of the institution, as well as those of individual students and individual staff members (including members of

the University Executive) should not be trivialised or ignored. Internal reports as well as media reports bear testimony to excellence being achieved in various spheres of the university. However, in the situation that it finds itself in, the focus is of necessity on the problems that have been given prominence by the intervention of the Minister.

The following findings are made:

- (i) That the University Council has handled the anonymous memorandum sent to the Minister extremely inadequately and unsatisfactorily. If the allegations alone did not cause Council to act swiftly and decisively, certainly the enquiries of the Minister should have. Several aspects of Council's response to the situation is very worrisome. This includes a first aborted investigation, the so-called KPMG Report, as well as a second and subsequently supplemented, though inconclusive one, the so-called Lubbe Report. It has been established beyond reasonable doubt during the assessment that the KPMG Report was handed in at the Registrar's office, but this was consistently denied during interviews, inter alia with the Chairperson of Council, the Executive of Council and the Audit Committee. Advocate Jannie Lubbe has in fact, at the request of the Independent Assessor, confirmed in writing that he has personally delivered the reports to the Registrar's office. The Minister has therefore been misled concerning the existence of the report. In response to the enquiry from the Minister the number of individuals acting on behalf of Council, as well as the involvement of the two Council sub-committees mentioned, in addition to Council itself, contributed to uncertainty and confusion. The due application of the whistle-blowing policy may also have been compromised by the way in which Council and its sub-committees chose to act.
- (ii) That in general, but with the aforementioned matter as an example, Council has shown a poor adherence to good governance principles and an unsatisfactory level of fiduciary responsibility. The reappointment of the Vice-Chancellor, which does not reflect a thorough and inclusive process warranted at this level, is another case in point. Key stakeholders like the University Senate (as custodian of the core academic activities) and the Institutional Forum did not have the opportunity to give formal inputs into the process. The general oversight of the financial management of the university by Council, through its Audit Committee, may also be regarded as having been insufficient. Various matters relating to financial oversight have been identified by the financial expert on the team of the Independent Assessor. **(See Annexure B)** These relate to the decrease in reserves; the significant increase in expenditure on external consultants, legal

fees and management services; the seemingly unplanned increase in the number of employees; the establishment of a services and enterprises trust; the management of a partnership concerning an Information Technology "hub"; the management of financial aid; and the management of a National Lottery Distribution Trust Fund. Furthermore the dissatisfaction of a small number of former Councillors has led to them losing their membership, either through disciplinary action or through resignation. They seemingly were not allowed to hold views contrary to those of the majority of Councillors. An extensive disciplinary process was instituted against one Councillor, while another recently chose to resign.

- (iii) That the unsatisfactorily mediated and prolonged staff "restructuring" process took a heavy toll on staff confidence, loyalty and job security. An exceptionally high staff turnover is evident, as are a very high number of severances, some of which have or are still being challenged. Conspicuously, instability at executive level seems to fit into this institutional pattern. Apart from whether severances satisfy the test of transparency, fairness, compliance with labour legislation, and institutional accountability, the absence of evidence that staff wellness was held in high regard, especially under such circumstances, reflects badly on the Vice-Chancellor and his Executive, as well as on Council, which does not seem to have expressed concerns in this regard. The Human Resources Committee of Council should have had an ongoing interest on behalf of Council. However, the extent to which such a committee would be able to act in an overseeing role, would be dependent on the extent and nature of the information provided to it by the Human Resources Department, under the direction of the relevant executive member(s). Like the Department of Finance, the Human Resources Department seemingly is a disempowered support services unit with little if any strategic direction evident from executive level.
- (iv) That the approach to and execution of financial management and oversight as embodied in the Chief Financial Officer as well as the Chairperson of the Audit Committee cause the university to be extremely vulnerable. Apart from the aloofness to the strategic management of the finances, ignorance of key financially significant activities and practices are matters of concern.
- (v) That the Vice-Chancellor has been unable to follow through on the major repositioning and reconfiguration of the university envisaged at the time of his appointment. Instead, the institution seems to have been haemorrhaging, evident especially in the inability to establish a robust and dynamic executive team and creating job security at all staff levels

within the institution. The severances of employment at the level of Deputy Vice-Chancellor must be regarded as exceptional, as are some of the investigations and actions which have affected the functioning of service sections and the employment status of some staff members. Instead, much time seems to have been spent by the Vice-Chancellor on justifying the actions, with no introspection being evident.

- (vi) That claims of unbecoming conduct of the Deputy Vice-Chancellor (Institutional Planning, Partnerships and Communication) have been encountered during the assessment process, which need to be specifically investigated by the Administrator in terms of the relevant institutional disciplinary processes.
- (vii) That while transformation is regarded as a priority, and some progress has been made concerning various aspects thereof, the institutional culture seems to be influenced by what could be deduced from the submissions of several interviewees, as well as from written submissions, as a culture of fear. No room for contestation seems to exist, which would be counter-productive to transformation objectives. Fear of victimisation has been articulated several times during the assessment process. In addition to this a few references have been made to matters relating to specifically racial and gender inequality.
- (viii) That while there are encouraging developments with regard to the improvement of the physical infrastructure on the Welkom campus, the general impression gained, is that it does not get consistent and on-going attention in order for the effects of the merger to be mitigated and opportunities to be optimised.
- (ix) That while several international and local partnerships are in existence, the proximity of the University of the Free State does not seem to be formally exploited to the advantage of CUT.

It is recommended that:

- (i) The University Council be dissolved and that an Administrator be appointed to fulfil the duties of the Council, while a new Council is being established.
- (ii) The Vice-Chancellor, prof Thandwa Mthembu, be placed on special leave, pending the outcome of further investigation, following which the new Council needs to decide on his future, and the terms and conditions, in the event of him continuing. As some of the allegations concern abuse of

power and victimisation, it is best if the investigation proceeds in the absence of the Vice-Chancellor.

- (iii) The Administrator should give special attention to the alleged conduct of the Deputy Vice-Chancellor (Institutional Planning, Partnerships and Communication), prof Tanvil Schultz, using as reference the KPMG Report and determining whether action is warranted in terms of the relevant disciplinary code.
- (iv) The KPMG investigation be reactivated and expanded to include the Welkom campus, and for it to specifically be a forensic audit. Such an audit should inter alia focus on the management of grant/donor funding, the awarding and management of tenders, and the management of student financial aid.
- (v) Current investigations concerning staff and/or service sector units instituted by the Vice-Chancellor be placed on hold and that a moratorium be placed on new retrenchments.
- (vi) A review be undertaken by an appropriate professional (not necessarily a person qualified in law) on past and present labour relations matters such as retrenchments, severances, and disciplinary action, dating back to 2007.

These should all be regarded as short term recommendations.

2. Mandate and scope

The mandate and scope of the investigation have been described and defined in various ways. For example, in a letter of the Minister of Higher Education and Training to the Chairperson of Council of CUT in which the Council is advised of the intention to appoint an Independent Assessor, reference is made to "issues (which) must get further attention". These issues are then defined in the said letter as allegations of corruption and mismanagement; allegations that the Management does not apply rules consistently; lack of commitment to deal with allegations of racism and verbal abuse of staff; allegations of victimisation of staff and threats of dismissal; and allegations of poor management and failure to execute their responsibilities by Management and Council.

However the Terms of Reference (TOR) published in the Government Gazette (number 3508, 28 February 2012) describes the scope and mandate given to the Independent Assessor in detail and represents the official brief for the assignment. While pointing out specific aspects for attention during the

assessment, the TOR also leaves room for attention to “any other matter that may arise”.

The Minister expects, in terms of the overall purpose of the investigation, to be advised on the nature of problems facing the institution, measures required to solve problems identified, and that appropriate recommendations will be made.

More specifically the Independent Assessor is charged to analyse and report on university governance and management structures; alleged abuse of power and misuse of funds; financial policy and procedures and allegations of financial mismanagement; the implementation of the transformation programme; and any other matters which may impact on the effective functioning of the university.

Furthermore the Independent Assessor is expected to make recommendations concerning good governance; the effective management of academic operations specifically and the university in general; and short, medium and long-term solutions concerning the matters identified for investigation.

3. **Key concepts**

From the preceding section it is clear that the key concepts which had to be taken into account are “governance”, “management and administration” and “transformation”. While universities are quite unique institutions, with a strong history of collegiality, it has increasingly come under pressure to be more efficient and accountable. As a consequence sound governance and management and administrative practices have come to be expected as the norm

It is both a legal and a legitimate expectation that a university will adhere to the principles of good governance. In terms of the generally accepted “King” guidelines, the latest being King III, sound governance is characterised by: an increased emphasis on (social, economic and environmental) sustainability; an inclusive approach to stakeholders in terms of which their legitimate interests are considered and recognised; a suitably skilled audit committee; an internal audit function which provides assurance over governance, risk management and internal controls; the governance of information technology; compliance; and remuneration disclosure.

As indicated above, universities are increasingly required to be more effective and accountable in the way they are managed and administered. Those who use the services expect high levels of efficiency and effectiveness, a short turnaround time and consistency concerning the application of policies and the implementation of procedures. They have the right to expect a trustworthy, accessible, well planned, effectively organised, well-staffed, clearly directed and

judiciously controlled service. And at the top of the leadership expectations (as determined in a recent leadership survey) trust and accessibility may be added to the expectations.

In the South African context many notions of transformation and various references exist, one being the 2008 Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions (commonly referred to as the "Soudien Report"), in which the complexity of the concept is articulated. Amongst its findings this report points out the disjunction between policy and practice which may sometimes be ascribed to a disjunction between institutional culture and transformation policies. Other sources in the sphere of education policy emphasise that transformation concerns review and redefinition; fundamental change; redress of past inequalities; addressing the distortions of the past; equitable distribution of access, opportunity and achievement; the common good; reconstruction and development; and the retention and use of the valuable features and achievements of the existing system.

4. Approach and methodology

The approach to the assignment by the Independent Assessor has been to determine the state of affairs at the university independently and as objectively as possible against the backdrop of the TOR and to make appropriate recommendations. Clearly the process had to take into account the national interest, as well as the interest of the higher education sector in general and CUT in particular. Furthermore the investigation needed to be fair to all parties involved and the recommendations should be realistic.

The methodology followed was inevitably influenced by the time-limitations as well as the logistics relating to such a process. An assessment of this nature has to take into account that a university is by definition a very complex institution.

Following the appointment of the Independent Assessor a clarification and planning meeting was held with senior officials of the Department of Higher Education and Training (DHET). In particular the basis for the appointment, the timeline, the mandate and the logistics were discussed. It was inter alia agreed that the DHET will provide administrative support, as well as an independent financial expert.

The Independent Assessor has decided that the investigation will entail interviews on the CUT campus, a study of relevant documents and data, and a visit to the Welkom campus. **(See Annexures C and D)** The time allocated to the interviews was between 12 March and 23 March 2012, making provision for

certain interviewees to be recalled, while the visit to the Welkom campus was intended to have a look at the physical infrastructure and to get a sense of the dynamics on that campus.

5. Account of assessment

The interviews started on 12 March 2012, having been preceded by an introduction by the Chief Director: University Policy, DHET, mr Mahlubi Mabizela, of the assessment team to the Vice-Chancellor, prof Thandwa Mthembu, who was accompanied by the Registrar, dr Gift Vinger. A predetermined schedule was followed concerning the interviews, starting with the Chairperson of the University Council, who was followed by the Vice-Chancellor.

Initially fifteen (15) interviews were planned, but the list was of necessity expanded. As many interviews as possible were scheduled and the norm for each interview was two hours, with a few running over time. Similarly some interviews were of a shorter duration than planned. At the conclusion of the visit on Friday 23 March thirty three (33) interviews were undertaken. Included in these, were three (3) telephonic interviews, two (2) at an off-campus location and four (4) with interviewees who were recalled.

In order to create an opportunity for wider participation a campus-wide invitation (in three languages) for written submissions was issued. Eventually about fifty (50) submissions were received.

The reception of the assessment team was cordial and the campus community was generally very cooperative. An informal walkabout and interaction with some staff and students served to prove this. The requests for numerous documents and a lot of data were met with prompt responses. The Office of the Registrar requires special mention in this regard, as well as generally concerning support to the work of the Independent Assessor on campus. The Vice-Chancellor's positive reaction to the request of the Independent Assessor for the interview venue and support infrastructure to be moved to a location more befitting of the importance of the ministerial intervention and in the interest of greater prominence, needs to be recorded.

The visit on the afternoon of Monday 19 March to the Welkom campus was equally well facilitated and served the purpose for what it was intended, namely familiarisation with the physical infrastructure and campus life in general.

Finally, it is worth noting that the Independent Assessor and the team were invited to make a courtesy call at a Council meeting on Friday 23 March. Following this meeting of Council the Independent Assessor received a letter

from the Registrar in which concern was expressed about whether the Independent Assessor was still operating within the fifteen working days which was promulgated in the Government Gazette. The Minister subsequently extended the time by another fifteen working days in terms of a notice in the Government Gazette nr 35233, of which the Chairperson of the Council of CUT was subsequently informed.

For the record: The Independent Assessor was assisted by dr Patricia Watson (independent and external to DHET, and serving as scribe for part of the interviews); mr Frank Bold (independent and external to DHET, and serving as financial expert); while the DHET provided administrative and secretarial support.

6. Key aspects referred to in Terms of Reference

6.1. Governance

In terms of the Higher Education Act (as amended), as well as the Statute of CUT, the Council is the supreme governing body of the university. As a consequence its own actions and decisions should bear the hallmark of good governance, while it should also take a keen interest in ensuring that university employees as well as structures act in accordance with such principles. Apart from satisfying formal compliance requirements, Council is also expected to apply sound judgement concerning actions it wishes to undertake and decisions it makes. The institutional interest should be paramount and personal or sectional interests should not be allowed to dilute the responsibility which the Council has to ensure proper governance.

At face value the university seems to be sensitive to the need to adhere to good governance principles. At a theoretical level there clearly is evidence of an engagement with and alignment to King III. The delegation of authority, appropriate structures, extensive policy guidelines, general compliance with statutory requirements, and the acknowledgement of the need for risk management, are reflective of some good elements concerning governance. However several significant instances have been identified which cause the Council to be dysfunctional and the university to be extremely vulnerable, and unless appropriate interventions are made, the sustainability of the university may be at risk.

6.1.1 Investigations mandated by Council

- The University Council has handled the anonymous memorandum sent to the Minister extremely inadequately and unsatisfactorily. In the

normal run of things anonymously generated claims and allegations would not necessarily cause any Council to become involved and appropriate measures at a different level should have been sufficient. At a policy and procedural level the university would have been well equipped to deal with the matters through its whistle-blowing policy, managed by KPMG. This has proven not to be the case and Council, two of its sub-committees and individual Councillors became involved; which strengthen the concerns expressed several times in submissions to the Independent Assessor that the application of the policy is not effective and viewed with a measure of suspicion. If the allegations did not cause Council to act swiftly and decisively, certainly the enquiries of the Minister should have.

- Several aspects of Council's response to the situation is very worrisome. This include the actions and decisions related to the first investigation, which by some accounts resulted in what is commonly referred to as the KPMG Report, as well as concerning the second report, the so-called Lubbe Report. The latter report was subsequently supplemented, but still was inconclusive as to authoritative findings and specific action. Individual Councillors as well as members of the Executive Committee of Council and the Audit Committee have consistently denied that the KPMG report exists or was handed to Council or a representative of Council.
- The Independent Assessor has established that a KPMG report, dated 16 September 2011, does exist and that it was delivered to the Registrar's office at 14:00 on the same day that it was requested, and that the envelope was addressed to the Chairperson of Council. In his recall interview the Chairperson of Council remained with the view that the report in question has not been received, in spite of the letter of the Registrar to advocate Lubbe, dated 4 November 2011, from which the following is quoted: "The Chairperson has therefore instructed me to obtain the KPMG & Lubbe reports from you as soon as possible, probably today if possible. My PA will contact your office to find out how soon these two reports can be obtained from your office." In spite of the importance and urgency it is claimed that no report was received, nor was any follow-up made. In the light of advocate Lubbe's written confirmation of delivering the KPMG Report to the Registrar for the attention of the Chairperson of Council, it is deduced that the report was deliberately suppressed. (Advocate Lubbe informed the Independent Assessor in writing on 27 March 2012: "I can confirm that I was requested by the Office of the Registrar to provide them urgently with copies of my report and that of KPMG as the Minister requested same. I personally delivered the reports to Martina Moss at the Office

of the Registrar.”) Individual Councillors may have been involved in ensuring that the report did not surface, but Council caused itself collective responsibility by deciding to terminate the KPMG mandate ostensibly shortly before the report was ready to be formally submitted. Instead advocate Lubbe was given a mandate and allowed a timeframe well beyond the time when the KPMG Report would have been available.

- The DHET has in the meantime confirmed that the report, which was requested by the Minister, has not been received. The Minister has therefore been misled concerning the existence of the report and the University Council has failed to act with the integrity that good governance requires. The number of individuals acting on behalf of Council, as well as the involvement of the two Council sub-committees referred to above and Council itself, contributed to a situation of confusion and uncertainty. Due application of the whistle-blowing policy may also have been compromised by the way in which individual Councillors and Council and its sub-committees have acted.

6.1.2 Reappointment of Vice-Chancellor

- Council has shown a poor adherence to good governance principles and an unsatisfactory level of fiduciary responsibility concerning its handling of the reappointment of the Vice-Chancellor. According to the Institutional Statute of CUT (26 July 2010) the Council determines the procedure concerning the reappointment of the Vice-Chancellor: “The contracts are renewable on expiry, based on institutional criteria as determined by Council.” (Paragraph 10.5.1). The minutes of Council, as well as several interviews have confirmed that no thorough and inclusive procedure which such a level warrants, has been followed. As far as could be determined key stakeholders like Senate, the custodian of the core academic activities, and the Institutional Forum have for instance not been consulted or given an opportunity for a formal input into the process regarding the performance of the Vice-Chancellor and the merit of his reappointment. Most of the discussions in Council have in fact related to the terms and conditions of the new contract. Council has not maintained an appropriate critical approach to the leadership of the Vice-Chancellor, nor has it considered his performance in a substantive way.
- It is disconcerting that especially Senate has not insisted on being consulted on such an important matter.

6.1.3 Prolonged restructuring process

- At the start of his first term in 2007 the Vice-Chancellor predictably, with the support of Council, indicated a new direction predicated on a vision which would result in an evolution from a distinct past to an idealised future. Vision 2020 became the embodiment of this repositioning and redefining of CUT. One of the significant and far-reaching implications was that a major restructuring process had to be embarked on. The impact on employees of the university at all levels was bound to be great and as a consequence Council had to take a keen oversight interest in the process.
- The seemingly unsatisfactorily mediated and prolonged staff "restructuring" process has taken a heavy toll on staff loyalty, staff confidence and staff security, as evidenced by numerous written submissions and interviews. An exceptionally high staff turnover is evident, as is a very high number of severances, some of which have or still are being challenged. Conspicuously, instability at executive level seems to fit into this pattern. Coupled with a high incidence of disciplinary hearings the work environment has been experienced as a stressful one by many employees.
- Apart from whether severances satisfy the test of transparency, fairness, compliance with labour legislation, and institutional accountability, the absence of evidence that staff wellness was held in high regard, especially under such circumstances, is an indictment of the Vice-Chancellor and his Executive, as well as Council, which does not seem to have expressed concerns in this regard. The Human Resources Committee of Council should have had an on-going interest on behalf of Council. However, the extent to which such a committee would be able to act in an overseeing role would be dependent on the extent and nature of the information provided to it by the Human Resources Department, under the direction of the relevant executive member(s). Like the Department of Finance, the Human Resources Department is a seemingly disempowered support services unit.
- It is worth noting that change relates to three key processes, i.e. planning change, managing change and evaluating change. Furthermore it is often argued that major change processes fail or get bogged down because of three factors: lack of strategic commitment, inadequate resources and resistance to change.

6.1.4 Remuneration and bonuses

- A matter which was constantly raised was the payment of bonuses to members of the management team only, and not to other excellently performing staff at other levels. Such inequitable approach to remuneration is problematic and unjustifiable. Accounts were also shared with the Independent Assessor which claim that a member of Council who was not supportive of the way in which these bonuses were handled, had disciplinary measures instituted against her.

6.2. Executive management structures

- Like executive portfolios, executive management structures are generally a consequence of the unique objectives and needs of the Vice-Chancellor in consultation with his Executive and, as may be necessary, with Council. Whether the allocation and combination of executive responsibilities prove to be functional and effective is very much a dependent on the quality of the leadership and the ability to work as a team.
- The MANCOM, which the Vice-Chancellor chairs, is the key executive management structure and will be pivotal concerning strategic direction, institutional sustainability, human resources planning, etc. Therefore instability at this level should be a cause for concern. It also is worrying that the Vice-Chancellor has had to resort, on occasion, to issuing written warnings at this level.
- The Vice-Chancellor has been unable to follow through on the major repositioning and reconfiguration of the university envisaged at the time of his appointment. Instead the institution seems to have been haemorrhaging, evident especially in the inability to establish a robust and dynamic executive team and creating job security at all levels within the institution. The severances at the level of Deputy Vice-Chancellor must be regarded as exceptional, as are some of the investigations and actions initiated by the Vice-Chancellor and which have affected the functioning of the service sections and the employment status of some staff members. Instead, much time seems to have been spent on justifying actions, with no introspection being evident.
- Persistent allegations of unbecoming conduct levelled against the Deputy Vice-Chancellor (Institutional Planning, Partnerships and

Communication) inevitably affect the credibility of the Executive Management. This is worsened by the perception that the Vice-Chancellor condones or ignores such conduct.

- The reconstitution of the MANCOM which led to the former Executive Deans becoming "regular" Deans without membership of this management structure has been found to be a sensitive matter. The justification for the "demotion" of Deans and the subsequent lack of impact at the executive level still seems to be an issue which some senior staff remain concerned about.
- There seems to be a lack of strategic direction from the executives responsible for Finance and Human Resources to the heads of these sections. The emphasis seems to be on the administration of processes to the exclusion of contributing to a strategic impact under the leadership of the said line-managers.

6.3. **Financial policy and procedures**

- As with the human resources management environment, the financial management environment is one in which many policies and procedures are in place. In addition, compliance with the requirements concerning internal and external auditing is evident. The approach to and execution of financial management and oversight as embodied in the Chief Financial Officer as well as the Chairperson of the Audit Committee however cause the university to be very vulnerable. Apart from the aloofness to strategic management of the finances, ignorance of key financially significant policies and practices are matters of concern.
- Specific concerns have been identified by the financial expert who assisted the Independent Assessor. These concerns arise from an examination of relevant documents, invoices, vouchers, etc.
- The audited statements over the period 2007-2010 reflect a healthy state of affairs concerning financial reserves at the start of the period. However the concern is that these reserves have started to be eroded.
- Between 2008-2012 a significant increase in expenditure on external consultants, legal fees and management services occurred. Especially labour relations matters seem to have contributed significantly to this situation developing.

- Between 2006-2011 the number of full time and part time staff has increased, with a concomitant increase in the percentage of the remuneration expenditure in relation to the total expenditure. The concern is expressed that less funds are available for other routine expenditure.
- The objectives of the establishment of the CUT Services and Enterprises Trust are unclear. It is the view of the financial expert that "it would seem inherently wrong that CUT's commercial activities should be hived off to a Trust". He is also of the view that "it seems irregular and completely out of the ordinary that the Vice-Chancellor should (...) have the authority to form a Trust unilaterally" and "have the authority (...) to transfer its commercial activities to a Trust". The deduction of the financial expert is that it is difficult to see any good purpose for the income being diverted through the Trust, which will involve additional cost and administrative charges.
- Four concerns are raised in relation to overseas travel. Firstly, concerning the trip to the USA in 2011 the Vice-Chancellor argued that it was justifiable for him to upgrade the ticket of ms G Winkler from economy class to business class. The vouchers issued by the travel agent show that from the outset she enjoyed the same class of travel as the Vice-Chancellor and his daughter. Secondly a relatively high number of overseas trips, mostly concerning conference attendance/participation were undertaken. Time away from the campus, as well as costs should be a constant consideration. Thirdly, a trip (lasting eight days) was undertaken to the USA by three members of the Executive of Council for a conference on trusteeship, at a cost of R245 976-00. It is a concern whether such a trip was justified. Fourthly, the authorisation of the trips of the Vice-Chancellor should not be approved by a subordinate, namely the Deputy Vice-Chancellor (Institutional Planning, Partnerships and Communication), prof Schultz, but by the Chairperson of Council.
- The management of the Memorandum of Agreement concluded with MPeake Technologies (Pty) Ltd trading as It face is unclear and should get attention during the continued investigations. The stipulation that requires invoices to be submitted directly to the Vice-Chancellor, is not, according to the financial expert, in any way in line with the principles of good governance.
- The Management of the National Lottery Distribution Trust Fund grant is pointed out by the financial expert as a matter which requires

detailed examination, "given the absence of any evidence of the use to which the money was put".

- The financial expert concludes that, taking the time-limitations of the assessment into account "It is clear (...) that there are significant issues that require proper, detailed examination and that the principles of good governance and proper accountability for the handling and management of money are being disregarded."

6.4. **Transformation programme**

- As indicated above, transformation is interpreted in many ways. This is borne out by various references made during interviews and in written submissions. The commitment of the Vice-Chancellor and his Executive to fundamental change cannot be doubted. Strong support for transformation has also been expressed on behalf of the Institutional Forum and NEHAWU.
- Vision 2020, STEPS, the language policy, the commitment to procurement with a preference for BBBEEE compliant companies, and initiatives aimed at affirming black staff and students may be referred to as examples of the serious pursuance of a transformation agenda. Predictably engagement of staff outside of the executive and managerial levels concerning transformation relates mostly to race and gender. In an unrefined way generally black staff feel that some of the disadvantages of the pre-CUT era are continuing, while some white staff feel that they are being targeted and are most likely to lose their jobs. Some of the claims which were made include statements that white women are being affirmed more than is the case concerning other designated groups; that Senate remains predominantly white; and that inadequate support is given to black academics. The necessity to find the right strategies in order to balance these dynamics remain a challenge to the University Management and should not be underestimated. In particular the historical biases and prejudices of white staff, rather than legal and legitimate grievances, should not be allowed to be a barrier to the repositioning of the institution and transformation.
- Matters relating to gender equity are obviously less explicit and more subtle. More often than not gender biases are deliberately ignored or a lack of sensitivity exists. This trend has been confirmed by the many denials encountered concerning gender inequality, with only a few very circumspect indications of the existence of biases and stereotypes, a

situation which is not unique to CUT. One reference has been encountered concerning a case of possible sexual harassment.

- No evidence of racial tension was submitted and particularly students talked to randomly on campus expressed the view that harmony existed between the respective racial groups. A few submissions by black students do claim racial biases come into play in their interaction with white academic staff.
- While transformation is regarded as an institutional priority, and some progress has been made concerning various aspects thereof, the institutional culture seems to be influenced by what could be deduced from the submissions of several interviewees, as well as from written submissions, as a culture of fear. Little room for contestation seems to exist, which would be counter-productive to transformation objectives. Fear for victimisation has been articulated several times during the assessment period. Such experiences or even perceptions may undermine the good intentions to move towards a fundamentally changed institution and need to be prevented or appropriately mediated.

6.5. **Alleged abuse of power**

- Written warnings issued by the Vice-Chancellor: It has been noted that several written warnings have been issued to Executive and Senior Managers, including to the Vice-Rector (Academic), the Registrar and the Chief Financial Officer. The Vice-Chancellor has been at pains to explain his actions, but the views of the afflicted parties conveyed during the assessment process indicate that these steps were not necessarily regarded as justified. It is the view of the Independent Assessor that written warnings at this level and concerning the matters argued by the Vice-Chancellor would generally be the exception, rather than the rule.
- Investigations initiated: It has been noted that the Vice-Chancellor has initiated several investigations, usually undertaken at his instruction. The investigation into Protection Services a few years ago and the more recent one concerning the Events Management Unit may serve as examples. Again, it is the view of the Independent Assessor that using external individuals or agencies, usually with a legal background, should not be regarded as the norm. It is a bad managerial approach and does not represent good leadership. The use of internal quality assurance and quality improvement processes through the line-management function of the relevant Deputy Vice-Chancellor or the

Registrar would be a much more logical and satisfactory approach. The claims of insubordination seem forced and unwarranted and have led to statements such as the following, which were conveyed during the assessment:

- "CUT employees are paralysed with fear of intimidation, victimisation and dismissal."
 - At CUT there is an "atmosphere filled with fear and tension".
 - "I live in constant fear of being charged or dismissed."
 - The institutional climate is "very hostile and non-nurturing".
 - The work is unbearable and there is a feeling of being "victimised, intimidated and harassed by those in power".
 - "If you question the Dean, you are interrogated by the outside law firm."
- Actions experienced as stressful and humiliating: During the assessment process a number of indications were given that the Vice-Chancellor's interaction with his colleagues was experienced as stressful and humiliating. A former Executive colleague of the Vice-Chancellor for example wrote to him: "I feel bullied, humiliated, shamed, talked down, and emotionally abused." And: "I am not an abused wife, an abused child, a dog or a punching bag to be treated this way – but this is how you make me feel." (Incidentally the dog metaphor has also been used by an academic in relation to treatment which he alleges to have suffered at the hands of a manager: "I was chased out of the office like a dog!")
 - Involvement of Executive Management in disciplinary processes: It has been noted that the Executive has been instrumental in several disciplinary hearings being instituted. Furthermore the recall of a written warning (handed down as a sentence by the presiding chairperson) by a member of the Executive already handed to the accused and replaced with a dismissal notice, has been referred to several times during the assessment. One of the presiding chairpersons, in her statement to the effect that she was recusing herself from a particular case, has in fact referred to this intervention by the Executive as one of the reasons why she is recusing herself. She furthermore refers to "unethical" conduct with a view of putting pressure on her, as the reason for her to withdraw from chairing further disciplinary hearings. In her recusal speech she says: "I refuse to work under unwarranted pressure where my independence will be questioned by the respondent."
 - Involvement concerning appointments and promotions: Various claims have been made of inconsistencies concerning appointments and

promotions; nepotism; and meddling in the appointments process. The appointment of ms G Winkler is viewed by several staff as a case in point. The Chairperson of the committee which considered the candidates, prof Talvin Schultz, Deputy Vice-Chancellor: (Institutional Planning, Partnerships and Communication), maintains however that he had the discretion to overrule the committee in terms of its recommendation.

6.6. Alleged misuse of funds

- Upgrading of economy class ticket to business class: The Vice-Chancellor was asked about this and he maintains that it was in his discretion to make the decision, which was in breach of the policy, and to authorise the additional expenditure. It is the view of the Independent Assessor that the reasons given are unconvincing and that it at least represents a case of bad judgement.
- Taking along daughter as partner on overseas trip: The Vice-Chancellor was asked about this matter, which has had wide exposure in the media. He maintains that no policy was breached. The question should however be if such a policy should continue to exist at all, as such a benefit ironically is a relic of the past which gave Executive Management unjustifiable perks. It is the view of the Independent Assessor that the policy should be scrapped and the practice discontinued.

6.7. Alleged victimisation

- A high percentage of submissions and some interviewees claimed victimisation has been experienced and remains an ever-present possibility.
- In particular the trend seems to be: disagreement or "unsatisfactory performance", followed by an investigation, which is then followed by disciplinary measures or retrenchment. Instances quoted during the assessment were the Events Unit (in process), the Legal Affairs section and the Campus Protection Services.
- In this regard victimisation is not only ascribed to the Vice-Chancellor, but also and to a lesser extent to the Deputy Vice-Chancellor (Institutional Planning, Partnerships and Communication) and other managers, particularly on the Welkom campus. Significantly some students have also conveyed a fear of victimisation. Apart from the

allegations against particular members of the University Executive, the general view encountered reflects the existence of an unhealthy institutional culture in which suspicion and staff vulnerability are evident.

- Some quotes contained in 6.5 above give a reflection of the fear of victimisation, while some former employees and some whose positions are uncertain as a result of pending CCMA hearings or disciplinary action have been quite explicit in as far as they feel that their respective situations are the result of victimisation. Several references were made to “a hit list”. For example during one interview it was said: “(We) were on the hit list. The hit list is what people on campus refer to - those who don’t speak the VC speak”.

7. Other matters relating to governance and management

- In addition to the matters referred to in the TOR, a range of other matters were raised by staff and students. Owing to the scope and nature of the assessment, many matters relating to specific individuals could not be pursued. When relevant to the mandate of the Independent Assessor, such matters were taken into account in order for it to inform the overall assessment and recommendations. The following is worth mentioning and highlighted for future attention :
- Reference has been made several times during the assessment that the position and status of temporary staff, as opposed to their permanent colleagues, was not fair and in compliance with the relevant labour relations requirements. It is the opinion of the Independent Assessor that the Human Resources Department should review and clarify the status and rights of temporary staff and regularise cases concerning which there might be a situation of default (i.e. unfairness and non-compliance with labour legislation). In the same vein, several references have been encountered which refer to some staff being in acting positions for inordinately long periods of time. Again, it will be prudent for the Human Resources Department to review these instances.
- Reference has been made several times to what is referred to as unjustifiable salary disparities. Disparities are not unique in a university. However it is necessary to, from time to time, systemically look at possible disparities. It is the view of the Independent Assessor that such a process should be embarked on and, depending on affordability, corrective measures should be introduced.

- A very distinctive approach to and handling of conflict of interest is followed at CUT. In principle this is commendable in as far as it reflects a seriousness with regard to good governance. It may however also be counter-productive, especially in relation to Council, if it serves to strengthen the sense of serving in an individual capacity or on behalf of a constituency, rather than serving the general interest of the university. This is deduced from the number of recusals as a result of members feeling "conflicted". It is the view of the Independent Assessor that the current approach and policy should be reviewed, part of which process should be benchmarking against that of other South African universities.
- Exit interviews have become a routine function of Human Resources Departments, and may have proven especially valuable concerning the unique circumstances at CUT. Such interviews could have assisted the Management, if it was focused on building a loyal and secure staff corps, to identify weaknesses and challenges. It is the view of the Independent Assessor that an appropriate system relating to exit interviews should be established by the Human Resources Department under the guidance of the relevant Deputy Vice-Chancellor.
- External departmental evaluations, in particular of academic departments, are common at most universities. It is not necessarily the case concerning support service departments. As intimated above, external departmental reviews are preferable to a punitive approach of using external investigations. Such reviews would have the benefit of forcing the particular department to undertake a thorough self-evaluation process and to be visited by peers and experts (including from overseas) from within the higher education sector. The relevant expertise and experience, as well as the opportunity to benchmark, should prove to add much more value than "an investigation". It is the view of the Independent Assessor that a system of external departmental reviews (in cycles of three or five years) should be introduced.
- Several references to financial sustainability and a few concerning environmental sustainability have been encountered during the assessment. The references however seem to be peripheral, rather than reflecting a strategic and management approach which is aligned to an integrated and coherent approach to sustainability. A greater sensitivity with regard to the so-called "triple bottom-line" (i.e. economic, environmental and social sustainability) and a deliberate effort to promote sustainability in the fullest sense, is advisable.
- Except for an intended familiarisation visit which was planned before the assessment started, the Welkom campus was not initially identified as an area for investigation, as it turned out to be. As a result of several submissions to

the Independent Assessor on alleged victimisation, the alleged abuse of power and alleged dishonesty concerning tenders, the Welkom campus has attracted special attention. The new additions to the physical plant are positive developments, but the general feedback implies that the campus needs a lot more sustained attention concerning its physical infrastructure, academic programmes and student support. It is the view of the Independent Assessor that the cafeteria in particular is an affront to the dignity of staff and students and that it should be upgraded as a matter of urgency. A serious need for student accommodation has also been articulated several times. The value and significance of the Welkom campus may further be enhanced by introducing a telematic mode of teaching and learning.

These views may be translated into medium and long term objectives.

8. Recommendations

An Independent Assessor may be tempted to comment and make recommendations on every single matter encountered. It would not be fair to the institution to do this, as there are no perfect universities and each one is constantly faced with on-going and new challenges. Recommendations therefore focus on the matters referred to in the TOR.

8.1 Proposed measures to restore good governance

- The current Council should be dissolved and it should be ensured that the new Council will have a good blend of skill, expertise and experience and a commitment to the interests of the institution. At the start of its term, the new Council should be formally introduced to the requirements of good governance and, drawing on the weaknesses of the former Council, agree on relevant guiding principles. The new Council should also ensure that it elects an assertive and experienced Chairperson, as well as experienced and assertive Chairpersons of the Council sub-committees. It must furthermore assert its authority to the extent that it will not operate as a rubberstamp for the Vice-Chancellor and the Executive. An appropriate, critical distance should exist between the council and the Executive and dissenting voices should be respected and such members should not be frustrated to the point that they see resignation as the only option, nor should disciplinary action be regarded as necessarily an appropriate response in this regard.
- The Vice-Chancellor and the University Executive should respect the institutional policies and procedures, and similarly be sensitised to the requirements of good governance. Through executing its risk

management responsibility, the Audit Committee of Council should ensure that breaches and non-compliance do not occur at the level of Council and the University Executive. To this end broad compliance with King III should be ensured by Council and Management, particularly in cooperation with the internal auditors.

- An annual report on good governance should be submitted to Council by the University Executive, while Council should, as part of its own general self-evaluation, assess its own efficacy concerning compliance. The Audit Committee should evaluate the reports and propose corrective measures if necessary.
- The new Council and the University Executive should ensure respect for and due recognition of structures and bodies such as Senate. The Senate should in particular reflect annually on its experience of its role and advise the Council accordingly.
- Adequate measures should be implemented to ensure compliance with legal requirements as well as internal policies and procedures.
- The Council as well as the Executive should ensure transparency and accountability and generally an inclusive approach to governance and administration and management.
- The building of an institutional culture which respects the rights and aspirations of students and staff, and which is experienced as fair and non-threatening, should be regarded as an objective with a very high priority. To this end the Administrator and the new Council must ensure that the leadership and management approach of having individuals and units investigated, is summarily discontinued and replaced with a constructive approach. Through the leadership of the Deputy Vice-Chancellor (Resources and Operations) a strong staff wellness management capacity should be developed in the Human Resources Department.

8.2 Possible solutions

- The investigation by KPMG which was terminated by the Council should be reinstituted under the guidance of the Administrator and in the absence of the Vice-Chancellor. These investigations should continue to focus, as it has, on the Vice-Chancellor and the Deputy Vice-Chancellor (Institutional Planning, Partnerships and Communication).

- The university must move as quickly as possible to a situation of stability at the Executive Management level. This entails inter alia the clarification of the positions of the Vice-Chancellor and the Deputy Vice-Chancellor (Institutional Planning, Partnerships and Communication) and the filling of the vacancy of Deputy Vice-Chancellor (Academic).
- The on-going restructuring should be discontinued and planning for a new phase, through an inclusive process, should ensue.
- The Finance and Human Resources Departments should be empowered by recognising their reporting lines through the relevant Deputy Vice-Chancellor, who should be charged to ensure that the said departments are suitably equipped to contribute meaningfully to the pursuance of the strategic institutional objectives.

8.3 Action to ensure effective academic operations

- It should be ensured that Senate has the scope to play its proper role as the custodian of the core academic activities.
- Adequate support for academics concerning teaching and learning, research and community engagement, as well as opportunities for training, development and appropriate exposure (particularly for black academics) should be ensured.
- Regular external departmental evaluations (initially at three year and eventually at five year intervals) for academic support services sections, starting with student administration, research administration, human resources management and finance, should be introduced. These evaluations will typically be undertaken by peers in the higher education sector.

8.4 Action to ensure effective functioning of university

- A new University Council should be established and an Administrator should be appointed.
- The Vice-Chancellor should be put on special leave, pending the outcome of further investigation. The grounds are that his leadership style and management approach have been characterised by many inputs during the assessment process as victimisation and abuse of power and it is deduced that his presence may have an influence on the further investigation which is proposed. The possibility furthermore exists (as a result of instances found during the assessment) that he

may not necessarily comply with institutional policies which may have a bearing on the investigation. In the event of the Vice-Chancellor returning following the period of special leave, strict terms against which performance and conduct should be measured, should be instituted and monitored by the Council. Appropriate training should also be considered in such an event.

- Stability at the Executive Management level and confidence in the integrity and ability of the Executive Management Team should be created through the actions of the incumbents, as well as as through the oversight by Council, inter alia through the proper management of performance against agreed upon key performance areas.
- A supportive and constructive approach to leadership and management and administration should be established, instead of the continuation of a punitive approach.
- Strict adherence to procurement requirements should be ensured and a robust system of the monitoring of major projects should be established through the Audit Committee and the internal audit function.
- The efficacy of the whistle-blowing policy and procedures should be reviewed and improvements implemented in order for its credibility to be beyond reproach.
- The policy on the conflict of interest and its application should be reviewed.

8.5. Timelines

- The key short term recommendations are captured, as indicated, in section 1 on p.5. These are proposed for **immediate** attention. Otherwise recommendations and views on possible improvements, especially relating to policies and its implementation and monitoring (e.g. regarding overseas travel; performance management; procurement; whistle-blowing; and conflict of interest) should be regarded as medium term objectives. Other medium term objectives relate to reviews and action to be undertaken by the Human Resources Department (e.g. concerning temporary staff; staff in acting positions; and remuneration disparities). In addition the enhancement of the value and significance of the Welkom campus; the introduction of external evaluations for support service departments; the submission of an annual good governance report to Council, the submission of an annual report on its role by Senate to Council; the creation of a legal compliance capacity; as well as the building of a staff wellness capacity

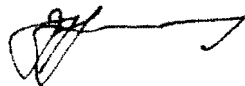
in the Human Resources Department may also be regarded as medium term objectives. These are proposed for **gradual** attention. In the long term the institution should initiate deliberate efforts to promote sustainability in its fullest sense. Continuing with, and refining the transformation program, should be an integral part of this objective. This is proposed for **eventual** attention. Views and recommendations not categorised in this manner are left to the discretion of the Council and/or the University Executive.

9 Closing remarks

It must be accepted that the assessment is part of the possible solution, and not the solution per se. Appropriate steps need to be implemented in order for the university as a valuable national asset to be appropriately, satisfactorily and effectively governed and managed. The Minister of Higher Education and Training has a justifiable interest and a statutory responsibility to ensure that the CUT functions at an optimal level and that it does not deteriorate into a locus at which unacceptable practices thrive to the detriment of academic excellence pursued in an environment conducive to equity and excellence.

ANNEXURES

- Annexure A: Terms of Reference
- Annexure B: Report of financial expert, mr Frank Bold
- Annexure C: Schedule of interviews
- Annexure D: Schedule of documents received



SIGNED:

PROF JULIAN SMITH (INDEPENDENT ASSESSOR)

13 APRIL 2012



REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

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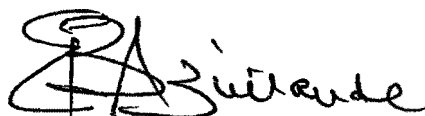
DEPARTMENT OF HIGHER EDUCATION AND TRAINING

No. 167

28 February 2012

APPOINTMENT OF AN INDEPENDENT ASSESSOR TO CONDUCT AN ASSESSMENT INTO THE AFFAIRS OF CENTRAL UNIVERSITY OF TECHNOLOGY

I, Bonginkosi Emmanuel Nzimande, MP, Minister of Higher Education and Training, in accordance with Section 44 (1) (a) of the Higher Education Act (Act 101 of 1997) hereby appoint an Independent Assessor to investigate the affairs of CENTRAL UNIVERSITY OF TECHNOLOGY.



Dr BE Nzimande, MP

Minister of Higher Education and Training

Date: 24/02/12

MINISTRY OF HIGHER EDUCATION AND TRAINING**TERMS OF REFERENCE
of the
INDEPENDENT ASSESSOR****TO CONDUCT AN ASSESSMENT INTO THE AFFAIRS OF CENTRAL
UNIVERSITY OF TECHNOLOGY****INTRODUCTION**

In terms of Section 44 (1) (a) of the Higher education Act, the Minister of Higher education and Training will appoint an Independent Assessor to conduct an investigation into the affairs of CENTRAL UNIVERSITY OF TECHNOLOGY. The overall purpose of the investigation is to advise the Minister and the university council on:

- The nature of problems facing the institution, including those relating to governance, financial management and procurement practices, administration matters, transformation programme and any other matter that may arise.
- Measures required to resolve problems identified in all areas.
- Clear, short, medium and long-term recommendations.

TERMS OF REFERENCE

- Conduct a detailed analysis of and provide a report on the current situation of the university governance and executive management structures, in particular their functioning and efficacy, and relationships between the various structures and portfolios.

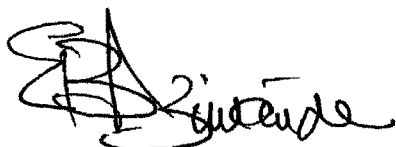
- Conduct an investigation on the alleged abuse of power and misuse of funds by the executive management of the university.
- Conduct a thorough investigation of the financial policy and procedures of the institution, with a specific focus on internal audit processes, procurement and tender procedures, expenditure on legal fees, donor funding management, the management of NSFAS allocations, and any specific allegations of financial irregularity that may be brought to the attention of the Independent Assessor.
- Assess progress of the institution in the implementation of its transformation programme.
- Investigate and report on any matters that, in the opinion of the Assessor, may impact on the effective functioning of the university, from the analysis of problems relating to governance and management.

TO MAKE RECOMMENDATIONS ON

- Possible measures that could be undertaken in order to restore good governance, specifically in relation to the Executive Management of the University and its Council.
- Possible Short, Medium and Long-term solutions required to address any issues identified in relation to the areas in the Terms of Reference.
- Any action required to ensure effective academic operations at the university; and
- Any other areas of action required to ensure the effective functioning of the university.

COMPLETION AND REPORT

The Independent Assessor must complete his/ her work and submit a report to the Minister within 15 working days of appointment.

A handwritten signature in black ink, appearing to read 'Nzimande', with a stylized initial 'N'.

Dr BE Nzimande, MP
Minister of Higher Education and Training
Date: 24/02/12