

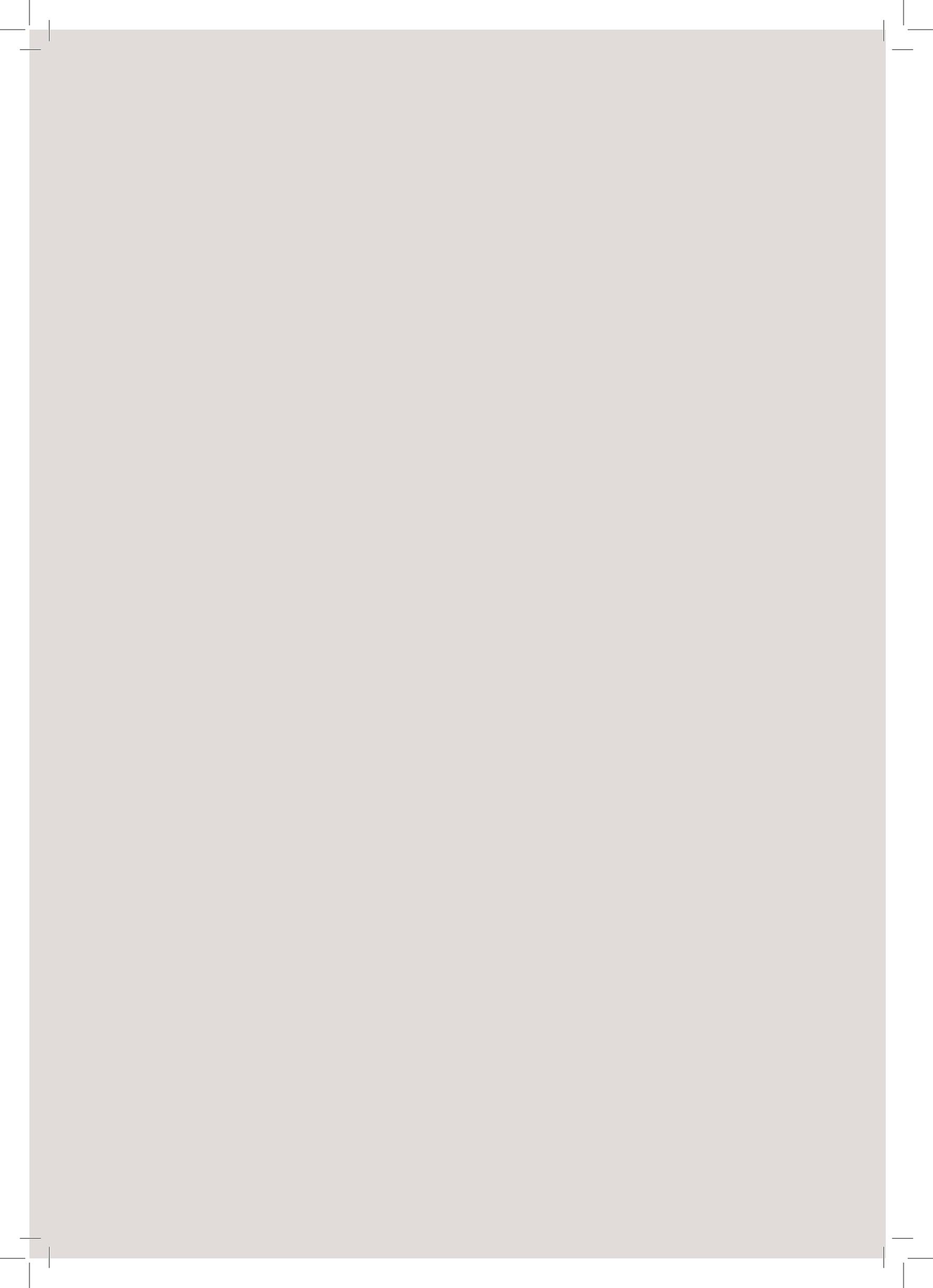
The Final Report by

**THE INSTITUTIONAL
RECONCILIATION AND
TRANSFORMATION
COMMISSION (IRTC)**

of the University of Cape Town

March 2019





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Executive

SUMMARY

1. The Institutional Reconciliation and Transformation Commission (IRTC) began its work in February 2018 following the negotiated agreement ultimately concluded on the 7th November 2016 between the executive of the University of Cape Town (UCT), students representative council and other student organizations that took part in the protests that unfolded at the University of Cape Town throughout 2015 and 2016.
2. The commission was mandated to look into *‘institutional culture and practices, including decolonisation and any that entail unjust discrimination, domination or violence including sexual violence’* and to make relevant recommendations in this regard, in particular in relation to *‘institutional culture, transformation, disability and any other matters which the university community has raised over the years or may wish to raise’*. The IRTC was also requested to deal with the issue of amnesties for those students who were granted clemencies by the university, and to make recommendations on how to deal with the outstanding cases in the spirit of restorative justice.
3. The protests came to be known as the #RhodesMustFall, #FeesMustFall culminating in the 2016 Shackville protest which must be contextualized against the broader student movement that has emerged over the last years in South Africa in clear opposition to racism, colonialism at the university, social injustice and the lack of opportunities that predominantly black South Africans students face on a daily basis. The protests should also be seen in the context of prevailing and deeply rooted cultural dominance, racial exclusion, invisibility and violence that continue to characterise many public and private institutions in South Africa still today.
4. Protests, which begun at the University of Cape Town in March 2015 with students demanding the removal of a statue of Cecil John Rhodes located at the university campus, continued with various intensity throughout 2015, 2016 and 2017 leading to exasperation, frustration, damage to property, much finger-pointing and different versions of precisely what happened.
5. This commission has received 80 submissions in total, held amnesty and public hearings as well as examined many documents submitted by the university, students and other interested persons or entities, which allowed it to take the appropriate decisions on amnesties, and formulate findings and develop relevant recommendations.
6. **The commission made the following decisions and raised the following preliminary observations:**
 - 6.1 Having received written and oral submissions from individuals concerned and having assessed all the evidence, the commission recommended in total eight students for amnesty. Having in mind the restorative justice approach, the IRTC adopted two criteria for granting amnesty, namely, a full disclosure of the events and incidents in which the student was implicated, and an admission of responsibility.
 - 6.2 During the amnesty proceedings, the IRTC dealt only with the cases arising directly from the ‘Shackville

protest', in particular the events that happened on 16 February 2016. However, the IRTC acknowledges the student protests that unfolded throughout 2016 and 2017 and believes these were a direct continuation of inadequately addressed and/or unaddressed grievances of the students. Accordingly, the commission developed a classification of outstanding cases that have arisen from these protests, and formulated relevant recommendations in this regard.

7. Based on the information received and heard, the commission arrived at the following conclusions:

- 7.1 The student protests overall had a devastating impact on individuals, their families and communities, as well as the academic community as a whole. The commission heard how a many individuals have been seriously affected with many students being expelled or suspended, including some against whom criminal charges were brought. The impact of protests has also reached parents, siblings and communities of all those affected, in particular students who were often the first ones in their families to attend the university. However, to listen about the disastrous impact of the protests on the academic community as a whole was probably most shocking. The resentment at being treated unfairly, the divisions and cleavages along the racial lines and the overall atmosphere of mistrust at the university between the staff members themselves, and between the staff and the students, had become even more evident following the protests. We have also learnt about the extensive damage to university property, which as such should serve all the students in the years to come.
- 7.2 However, at the same time student protests brought to the fore an ongoing debate on the lack of decolonisation of higher and tertiary education in South Africa and slow transformation at the universities, particularly at the University of Cape Town. We hope that this debate will culminate in tangible and substantive transformation which is fast tracked by the University of Cape Town, and which will go beyond a technical tick-box approach and instead will favour a holistic, evidence-based and sensitive strategy.
- 7.3 The student protests in 2015, 2016 and 2017 were linked to a number of issues that fuelled the protests i.e. refusal to accommodate admitted students despite them being notified about having a place in a residence, high university fees, a practice

of outsourcing employees at the university or a demolition of the shack built by the students to protest against the accommodation crisis. There were also other causes of protests that included structural violence, racism, sexism, psychological abuse, the domination of a prevailing ideology, or the repression.

- 7.4 The response of the university management to the protests that unfolded in 2015, 2016 and 2017 was inadequate and inappropriate, to say the least, and as such failed to take account of students' experiences of racism, structural violence, discrimination or psychological abuse. Instead of handling the protests with a necessary understanding and sensitivity, the university management was predominantly preoccupied with removing students from the sites they were occupying without giving due consideration to their needs, motivations and reasons for their action.
- 7.5 Based on the available information, the commission believes that the university did not exercise enough care in contracting private security companies to operate at the campus by vetting and screening them. In particular the university failed to prevent private security personnel from using ostensibly extensive force on the campus. The available information points to the extensive use of force by the private security personnel. The commission also received information about inappropriate, discriminatory or racist behaviour by security personnel at the campus – the allegations that must be, however, further investigated. The commission also notes with concern the lack of an appropriate university policy on private security companies at the campus.
- 7.6 On the basis of submissions received and an analysis of policies and other documents, we have, reluctantly, concluded that racism does exist at UCT, that it goes beyond attitudes and beliefs and is aided and abetted by poor management systems which administratively result in discrimination on a racial basis. It is worth noting that not a single submission claimed that UCT is not a racist place. Racism at the University of Cape Town often demonstrates itself in subtle forms of daily micro-aggressions, which however, have an impact equal to a direct and explicit racial discrimination. We also found that racism often affects people differently and therefore, should be understood intersectionally in conjunction with other

forms of discrimination and violence linked to one's different identities.

- 7.7 The policy of allocating places at the university residences, in particular the system of 'over-booking' has been dysfunctional since 2014, and has become the major trigger of the Shackville protest that took place in February 2016. The commission has been particularly concerned to find: the lack of available data on the exact number of students who were refused accommodation despite having been initially offered a place in a residence; miscommunication and lack of mutual understanding between the College of Wardens and the Student Housing and Residence Life management; historical system of preferential access to accommodation at the same residence as one's parents as well as the lack of adequate measures to address a history of economic disparity while at the same time improving the demographic profile at the university. The commission has found these factors to be the major causes of the accommodation crisis.
- 7.8 The commission's findings point to a growing number of students and staff suffering from mental health problems that should be contextualized given the challenges students and staff members face at the university i.e. history of apartheid, poor socio-economic conditions, violence or crime and stigma, lack of accommodation or lack of food, and financial difficulties. The commission has found that both students and staff members have suffered from trauma and other mental health problems related to protests that occurred in 2016, and many of them are still to come to terms with the anxiety, anger, low self-esteem, fear and helplessness caused by these events.
- 7.9 While the university has introduced a number of measures to address the growing demand for the mental health services at the university, the services still seem to be inadequate. In this regard, students spoke to the long waiting periods to access mental health services, whereas the academic and support staff members raised concerns over the lack of mental health services for the staff.
- 7.10 The commission has observed that the university has introduced a number of programmes and measures aimed at financially assisting those students who are unable to pay for university fees, accommodation, transport or food. The commission would like to commend the university for these initiatives which contribute to a greater inclusivity and equity at the university. However, the commission has also noted with concern that many students given the extreme poverty they come from feel compelled to share their bursaries with their families, which results in them being unable to meet their on-campus needs. The commission believes that this is yet another example of the structural poverty and inequality which we have to continuously grapple in South Africa.
- 7.11 While the number of African South African academics at the levels of senior lecturer and lecturer at UCT has been increasing, as revealed by the 2017 Transformation report, the commission notes with concern that great disparities still exist at the university when it comes to race and gender. At all levels of professional staff employment, White South African have been greatly over-represented with more position being occupied by men than women at the level of full Professorship. In terms of gender, male academics across all racial groups were over-represented as compared to female academics. At the level of lectureship, the number of African South Africans has increased significantly but this number is still low as compared to other racial categories. Information available also indicates that African South African female academics occupy the lowest levels of all academic positions in the university.
- 7.12 While commending the process of insourcing the staff, the commission observes that this process ultimately undertaken by the UCT Council following the 2015 protests, has dramatically changed the staff profile at UCT. South Africans who are regarded as African and Coloured occupy unskilled positions. The majority of White South Africans occupy professionally qualified mid-management and semi-skilled positions. The commission observes that these inequalities in terms of support staff members are rooted within the history of colonialism and apartheid in South Africa and has not been sufficiently addressed by the university.
- 7.13 The commission has taken the view that while the violence itself cannot be afforded constitutional protection, students who protest, albeit even violently, continue to be protected by the constitution. The manner in which protest action is managed should therefore depend to some extent on the reasons for the protest action and we believe that all protests must be handled with sensitivity and care. The commission also observes that peaceful protest does not mean ineffective protest and thus, it

does not have to be limited to protests that cause no inconvenience.

- 7.14 The commission found that some of the procedures at the university regarding sexual and gender-based violence, in particular rape, as well as sexual harassment and abuse, were inadequate and ineffectual. While the policies exist they have not been properly implemented.

8. Based on these findings, the commission has formulated the general recommendations included at the end of the report that must be read in conjunction with the more specific recommendations formulated in the respective chapters. Here, we just provide a succinct version, in our opinion, of the most relevant recommendations. In particular, the commission recommends that:

- 8.1 The university deals with outstanding cases (arising out of 2016 and 2017 protests) without undue delay in accordance with the restorative justice approach and as per detailed recommendations contained in this report. The commission also recommends that the university develops a policy on amnesty and clemency that can be used in the similar instances in the future.
- 8.2 The university conducts research on the best ways to embrace and celebrate diversity and adopts creative policies, initiatives and programmes in this regard.
- 8.3 The university enters the debate on decolonisation at the university in accordance with the modality as developed and agreed to by the academic and student community.
- 8.4 The university embraces and teaches of the Bill of Rights. The latter must be entrenched within the institutional culture, legal framework as well as social fabric at the university.
- 8.5 The university reforms its recruitment and promotion practices that must be based on equity, transparency and inclusiveness. The university must promote programmes or introduce initiatives aimed at the promotion and retention of Black academics, in particular female Black academics.
- 8.6 The university revises its affirmative action practices and policies aimed at increasing the number of black students at the university in a way that they ensure a critical mass of Black students at same time making sure that other services (e.g. accommodation) are aligned to these changes in the admission strategy.
- 8.7 The university initiates or cultivates programmes and initiatives aimed at promoting openness, dialogue and freedom of thought and speech.
- 8.8 The university and the government immediately review the crisis they have created in university accommodation and urgently negotiate in order to determine how much student accommodation is necessary and make provision for this as soon as possible. University also revises the policies on assigning residences at the university, in particular the practice of ‘over-booking’ should be stopped. The university should also re-examine the ‘policy of preferential treatment’ based on the parents’ previous stay at residences, and collect data on the students refused places in residences and why.
- 8.9 The university should appoint a panel to determine how to strengthen mental health services available to students and staff at the university.
- 8.10 The university must immediately develop a comprehensive policy on the functions of all security personnel on campus, in particular the conditions for employing private security companies. The commission has formulated detailed recommendations in this regard at the end of this report.
- 8.11 The university must establish effective channels of communication between the all departments as well as between the students and management. A relevant policy document should be developed in this regard.
- 8.12 The university must ensure that all its policies aimed at addressing racism, sexism, sexual harassment and all other forms discriminatory practices are effectively and adequately implemented.
- 8.13 The university must develop and implement a programme to make reasonable and equitable legal representation available to students to defend themselves in disciplinary proceedings brought against them by the university.
- 8.14 The university strengthens and begins an effective and prompt implementation of its policies and procedures regarding sexual and gender based violence, in particular rape, as well as sexual harassment and abuse by providing a full-spectrum of psychosocial, health and legal services to victims of violence.

Chapter 1:

THE APPOINTMENT OF THE COMMISSION

The IRTC was established because of student protests at the University of Cape Town – which are described in Chapter 3 of this document – and their difficult consequences traversed in this report. The student action should be evaluated in the context of student resistance virtually throughout the country. These protests as they unfolded at the University of Cape Town came to be known as the #RhodesMustFall, #FeesMustFall and the Shackville protest, which are more fully discussed in Chapter 3.

suffice to say here that the student protests gave rise to efforts at persuasion by the protesting community, which in turn resulted in exasperation, frustration, damage to property, much finger-pointing and different versions of precisely what happened. Students and members of staff were both badly affected. The 2015 academic year had been seriously disrupted. During October 2016 it became clear that unless something drastic was done, the university was in danger of losing the 2016 academic year as well with its disastrous attendant results.

As we understand it, it was in this context that negotiations between the student body and the university establishment began in earnest. Many students had been expelled from the university and many had been suspended, and there was a real danger that examinations would not be written at the end of that year. Criminal charges had been brought against some students. However, there had not been any real effort to resolve the disputes, or the existing critical situation in a different, more creative, constructive way aimed at resolution and a progressive way forward.

The beginning of the process, as far as we are aware, was an agreement between the university executive, the student representative council, those students who were in jeopardy as a result of their participation in the protests, as well as other role players (stakeholders). The agreement between the UCT management and student groups known

as SRC Candidates, Shackville TRC and other student formations was ultimately concluded on 7 November 2016.¹ (The agreement, marked Annexure A, is attached.)

We make some brief remarks about this agreement.

The agreement proposed that *‘in the spirit of restorative justice ... clemency is granted on the basis of the following principles ...’*. The set of conditions included some rather stringent ones with which the students had to agree.

Students had to *‘acknowledge wrongdoing and committing not to repeat such actions by those granted clemency’*. The agreement promised dire consequences if they repeated any of these deeds. It was also specified that an *‘IRTC/ Shackville TRC’* be formed which would, after requesting submissions from constituencies, *‘make recommendations on the granting of amnesties’*.²

Of importance is the fact that the university management and the Shackville TRC were to make available to the IRTC/Shackville TRC a full list of students against whom internal disciplinary proceedings and criminal charges had been instituted, together with full particulars of the charges against them, notwithstanding that there was a moratorium on all university tribunal proceedings. It is crucial to record that the executive also undertook to

¹ *Agreement with the SRC Candidates/Shackville TRC and Other Student Formations*, 7 November 2016, available at http://www.uct.ac.za/usr/downloads/2016-11-07_UCT_resolution.pdf (last visited 16 November 2018)

² See Clause 1 (a) (v) of the agreement (Annexure A)

subject itself to investigation at the hands of the IRTC/ Shackville TRC.

The agreement expressed *‘support in principle for the call to decolonise the university’s institutional culture and the curricula and other matters brought forward whilst recognising decoloniality is not understood the same way by all ...’* The agreement included an undertaking that programmes, activities and time-frames on how the concept of decolonisation could be approached by the university community as a whole should be negotiated. There was also a commitment to *‘bring the university into conversations about these issues, listening deeply, accepting that there is a problem that needs addressing by us all.’*

The IRTC/Shackville TRC appears, as we understand it, to have become the steering committee. It is led by the chairperson of Council. It is this steering committee that developed the terms of reference (ToR) of this commission and was responsible for appointing it. (A document containing the ToR, Annexure B, is attached.)

The ToR sets out stringent criteria for the appointment of commissioners. We confirm that our appointment complies with these criteria. We declare that we are all, as required by the ToR, *‘persons with integrity, and (have) a commitment to social justice’*. We understand the ToR to enjoy the support of the *‘wider campus community’*. None of us has any formal affiliation to the University of Cape Town. At least two of us have experience in restorative justice processes, while one served as a member of the Truth and Reconciliation Commission (TRC). Almost all of us have an understanding of and experience in dealing with conflict, while one of us has expertise in the field of trauma and institutional and systemic violence. We come from diverse backgrounds and have all committed ourselves to contributing to creating a society free of racial, gender, disability and LGBTI+ inequality. We ultimately came together on Friday, 2 February 2018.

Chapter 4 gives an indication of the processes that we have followed, the meetings we have had and the evidence we have heard.

Chapter 2:

SUMMARY AND ANALYSIS OF THE TERMS OF REFERENCE

The ToR start by making it clear that the IRTC/Shackville TRC will (and we assume here that what is being referred to is the current IRTC) do certain things (which we refer to later) ‘without limiting the terms of reference’. This provision necessarily implies that the ToR were not to limit our work but to facilitate it. We were given the discretion to do what was necessary. This is supported by a statement at the end of the ToR which reads: ‘the above terms of reference are provisional and will be refined by the Commissioners once they are appointed.’

Although we may not have complied with the strict letter of the ToR in a literal sense, we have abided by their substance. We amended the application of the ToR in order to ensure efficiency and restorative justice. Our terms of reference deal fundamentally with two things: (a) amnesty; and (b) making recommendations on *‘institutional culture, transformation, disability and any other matters which the university community has raised over the years or may wish to raise’*. However, the ToR then immediately stipulate that we deal with all these matters in an effort to contribute towards reconciliation amongst the different role players within the university as soon as possible.

The ToR consists of six numbered points.

Point 1. asks us to *‘look into’* what is referred to as *‘Shackville protest of February 2016, including any related and subsequent protest actions’*. The factual details of these protests and a measure of evaluation are captured in Chapter 3 of this report. The causes of the protests are broad and multifaceted. They include racism, problems in the residences, the mental and psychological health of students and staff, and the financial position of students. The analyses of the student protest action are dealt with in chapters 6, 7, 8, 9, 10 and 11.

Point 2. of the ToR requires us to invite submissions from all constituencies and make recommendations on converting clemencies into amnesties or to retain the clemencies. The amnesties we have granted and the reasons we have granted them are detailed in Chapter

5. We did not expressly invite submissions from all constituencies on these issues, but proceeded on the basis that the impacted constituencies had had enough notice of amnesties to be considered, and that they could have made recommendations to the commission if they wished to do so. Constituencies were invited to be present, but some declined. It was agreed that management attending the hearings would preclude the amnesty applicants from being frank and open. The IRTC decided that the amnesty hearings would be dealt with on the basis of confidentiality.

We have complied with Point 4. and taken cognizance of all the information with which we have been provided about the initiatives that have been taken to address the issues which fall in the broad scope of the IRTC. We describe these where relevant.

As far as points 4. and 6. of the ToR are concerned, many of the investigations conducted and the submissions made, together with our recommendations, are dealt with in most of the other chapters of this report.

That leaves Point 3., which requires us *‘to make recommendations on how to deal with outstanding cases in the spirit of restorative justice’*. We deal with these aspects in this opening chapter because we believe that they form a basic point of departure on the conceptual basis on which we have done our work in general and, in particular, on our approach to the relationship of cause and effect between different kinds of violence and the implications of that relationship for the way in which violence can be

positively taken account of, managed and prevented by the institution. We also talk about the relationship between criminal justice and reconciliation in relation to criminal conduct, in particular violent criminal conduct.

In our view the starting point of this rather sensitive and multifaceted inquiry comes from the views expressed by the alumni in the document entitled Alumni Constituency's Proposed Framework, which was attached to the ToR (and is reproduced in this report at the end of Annexure B for easy reference). This document proposed a framework for the way in which we should approach these questions. We emphasise that we do not accept this approach but we used it as a starting point for discussion. We will in the course of this chapter refer broadly to other approaches to this question on the basis that readers will have access to the detailed evidence in Chapter 4.

The document suggests that violence is not limited to physical violence but includes non-physical violence (sometimes referred to as invisible and structural violence), including historical experiences of apartheid and structural violence, racism, sexism, psychological abuse, the domination of a prevailing ideology, the repression of other ideologies and matters of that kind. We have no difficulty with this proposition. Johan Galtung, by many named a precursor of studies on '*structural violence*', considers structural violence '*an avoidable impairment of fundamental human needs*'.³ If we accept Galtung's qualification of basic needs, which according to him include: '*survival (negation: death, mortality); wellness (negation: misery, morbidity); freedom (negation: repression); and identity/meaning (negation: alienation)*',⁴ we can easily see how apartheid deprived black people of all of them. If we follow Galtung in his reasoning further, we see how '*actors, systems, structures, ranks and levels*' interacted with each other under apartheid to create inequalitarian distributions of power and resources.⁵ Galtung says that this leads to structural violence, which not only leaves marks on the human body but also on

³ Galtung, Johan. 'Kulturelle Gewalt', Vol. 43, *Der Bürger im Staat* (1993), p. 106 in Ho, Kathleen, 'Structural Violence as a Human Rights Violation (2007)', *Essex Human Rights Review*, Vol. 4, No. 2, September 2007.

⁴ Galtung, Johan & Fischer, Dietrich. 'Violence: Direct, Structural and Cultural', in *Johan Galtung: Pioneer of Peace Research* (2013) p. 35, at pp. 36-38.

⁵ Galtung, Johan. 'Violence, Peace, and Peace Research', in *Journal of Peace Research*, Vol. 6, No. 3 (1969), p. 167, at pp. 175-176.

the mind and spirit.⁶ He states that structural violence (in our case apartheid) results in the impediment to consciousness-formation and mobilisation.⁷

We would therefore reject any notion that there is a qualitative difference between physical and non-physical violence. Indeed we would emphasise that, very often, non-physical violence can have a far greater negative impact on the psyche and conduct of individuals and on their coping mechanisms and even survival potential than physical violence.

We are therefore hesitant to accept the proposition that criminal acts of physical violence are necessarily more deleterious than non-physical or invisible acts of violence which do not amount to criminal offences in our law. It follows that the moral culpability (whatever the criminal culpability may be) of those who are physically violent cannot be judged without considering the non-physical, structural or hidden violence that has existed over centuries, including colonialism and apartheid, to which they and their ancestors have been subjected and which is in all probability one of the causes of their own violent behaviour.

While we agree with this proposition of the alumni as supported by other submissions, we do not accept the next proposition which is made: that physical violence is always justified by the non-physical violence that preceded it. This implies that there is no room for convicting criminally those responsible for physical violence because it is justified by preceding invisible violence, whether the preceding violence is committed by the same person or by society at large.

But we also disagree with the opposite proposition which has been put forward by some academics of note. This is the view that, firstly, people who commit crime must always be prosecuted because this is the only way to stop crime and, secondly, the approach that those advancing alternative ways of dealing with the violence that is the result of historical violence in fact treat students as a special category of people whose violence must be treated differently precisely because they are students.

Our objection to the first notion is this: it is not true that criminal prosecution is the only way to prevent crime,

⁶ Galtung, Johan & Fischer, Dietrich. 'Violence: Direct, Structural and Cultural', in *Johan Galtung: Pioneer of Peace Research* (2013) p. 38.

⁷ Ibid.

nor is it true that punishing people is the best way to stop people from committing crime. Throughout the world, crime has not decreased because of the threat of criminal action or the severity of its punishment. People are more afraid of getting caught. The only real way of reducing crime and preventing it is to create a society in which the economic, cultural and social conditions would promote equality and dignity, having the effect of pushing against the commission of crime. This objective will take a long time to achieve, but achieve it we must. We cannot suggest that crime must never be prosecuted while society is in the process of change and achieving these conditions.

Our society today is in transition on the issue of how to reduce crime. We most often use the punishment model and, depending on the circumstances, from time to time the social and restorative justice model. Our society has almost reached a stage where we accept that the punishment model is neither the only model nor necessarily the best way. We are moving into an era in which social and restorative justice aimed at resolving the commission of crime, by mediating the relationship between the accused and the victim in a meaningful way, is becoming more current.

If we accept this approach, which the members of the IRTC do, we have no option but to reject the notion that the only route to follow in cases of student criminal violence is the route of internal disciplinary proceedings and/or the criminal justice road with all its punitive consequences.

We, as the IRTC, do not make this exception for students alone. We would like to see a society in which the restorative justice approach is followed wherever feasible to a greater extent than the punishment road, on the basis that the restorative justice route combined with programmes to educate and reconstruct society would be much more positive.

This brings us to our disagreement with the alumni proposition that invisible and structural violence always justifies criminal violence. We believe that the answer is more nuanced.

Whether violence resulting from past historical injustice grievances and violence should be punished criminally by the state must be determined by the exercise of a sensitive discretion from case to case and based on prosecutorial policy. Where, however, the university has to decide

whether to institute disciplinary proceedings, it too must exercise its discretion sensitively and carefully after taking into account all relevant circumstances. It is against this background that we consider how outstanding cases should be finalised.

1. OUTSTANDING CASES

Section A, Point 3. of the IRTC ToR stipulates that the IRTC ‘*make recommendations on how to deal with the outstanding cases in the spirit of restorative justice*’. The commission understands ‘*outstanding cases*’ as those relating in one way or another to the Shackville protest of 2016. Consequently, in our opinion the outstanding cases include: Pending Shackville Cases, Other Pending Cases, and Moratorium Cases. Pending Shackville Cases refer to three students who participated in the February Shackville protest, were granted clemency but did not benefit from the amnesty procedure. Other Pending Cases are those that unfolded in 2017, were linked to the 2016 Shackville protest but included investigations in which no disciplinary charges had been prepared. Moratorium Cases include cases dating pre-November 2016 for which charges were prepared but not issued and therefore no disciplinary procedures took place.

We believe that it is necessary to effect a fair balance between the nature of the offence or violence weighed against the nature of past violence (visible or invisible), also taking into account the extent to which the actions of campus security were responsible for exacerbating the situation.

Although the security personnel have not given evidence before us, we do not accept the view either that only the students were responsible for the troubles that ensued, or that the security forces were solely responsible. We believe that the truth lies somewhere in between, and the real question is how the different levels of responsibility should impact on and help determine what is morally acceptable.

We also accept that the degree of invisible or non-physical violence in the shape of racism and the like must be brought into the equation. Regard must also be had to the fact that the students were not motivated by wanton criminality; they were motivated by deep feelings of pain and frustration and a moral, socio-economic or political

objective, with which we have at least some sympathy, although all of us may not agree.

The motivation of students to protest must be understood against a broader context in South Africa, in which a number of institutions, including the university, remain untransformed, maintaining apartheid systems and a culture rooted in the past. Students referred to the almost constant struggle to navigate and challenge the unrelenting colonial, white supremacist, patriarchal and anti-poor systems of the university.

We will say more about this in the chapter (Chapter 11) about protest action when we discuss the question of the limits of protest action. Even the Constitutional Court in *the case of Hotz*⁸ (referred to in Chapter 4) gave weight to these factors when it took into account what was called ‘the constitutional context’ in deciding that students implicated in serious violence in that case should not be ordered to pay the costs. The Constitutional Court said at paras 33 and 34 of its judgment:

‘What I have said above does not detract from the fact that in determining appropriate costs the High Court was required to locate the costs award in a constitutional setting, by identifying the nature of the issue, as a starting point.⁹ It is common cause that the group of protesters, including the applicants, were engaged in a “#FeesMustFall” protest because they could not, amongst other things, afford the university fees. At the heart of the protest, as the applicants contended, was a “seething” sense of injustice that prevails among university students and South Africans at large at the failure of the state and universities to provide free, quality and decolonised education to South Africans. This issue had the effect on the protesters’ right to education in terms of Section 29 of the Constitution. The issue involved was of concern not only to the protesters at UCT, including the applicants, but also to other students generally in other universities in South Africa. Whilst the applicants’ conduct went beyond the boundary of a peaceful protest, the constitutional context should have been taken into account. It cannot be

⁸ *Hotz and Others v University of Cape Town* [2017] ZakC 10, para. 34.

⁹ See *Biowatch* above n. 21, para. 16.

gainsaid that the issue they raised was of genuine constitutional importance.¹⁰

We add with deference that the issues are indeed of concern to South African society at large as implied in the judgment.

Of considerable importance in the exercise of the discretion of whether to discipline or not lies in determining what will best contribute to reconciliation at the university and ensuring that the university enters into a mediation process between its management and its students.

2. RECOMMENDATIONS ON OUTSTANDING CASES

We would suggest that all outstanding cases be determined in the following way:

The outstanding cases include: Pending Shackville Protest Cases; Moratorium Cases (pre-dating November 2016 but no charges issued); Other Pending Cases (arising out of 2017 protests). The IRTC declined to deal with Moratorium Cases and Other Pending Cases, on the basis that it could not deal with cases in which there would be a dispute of fact. The commission informed the university management accordingly.

A. At the Level of Disciplinary Proceedings

a. Pending Shackville Protest Cases (three instances of clemency)

- i. We recommend that UCT management bring closure to the ‘Shackville Protest’ through finalising the cases of the three students who received clemency and were eligible to apply for amnesty to finalise their matters. They should be given a period of one month to finalise their applications, which could be heard by a reconstituted three-person panel from the IRTC for this purpose.

b. Moratorium Cases (pre-dating November 2016 but no charges issued)

- i. We recommend that UCT decides without undue delay on whether it intends to issue disciplinary charges against those students whose cases were

¹⁰ *Hotz and Others v University of Cape Town* (2017) ZakC 10.

identified as ‘moratorium’ cases. These include cases dating pre-November 2016 for which charges were prepared but not issued and therefore no disciplinary procedures took place. For this reason, these students were unable to benefit from the clemency and the amnesty processes, particularly because the commission lacked the investigative capacity and therefore did not deal with the dispute of facts.

- ii. In the case of the remaining ‘Shackville’ students, we recommend that the university considers convening disciplinary sessions allowing for plea bargaining by students, dealing with any disputes of facts at this stage, and then submits their dossiers for amnesty to an external and independent structure like that of the IRTC. It could reconstitute a three-person panel from the IRTC for this purpose.

c. Other Pending Cases (arising out of 2017 protests)

- i. While the commission during its amnesty proceedings decided to deal only with the cases arising from the ‘Shackville protest’, in particular the events that happened on 16 February 2016, the commission took note of the continued students protests that unfolded throughout 2016 and 2017. The commission was informed that there are still a number of students whose cases stem from the late 2017 events pending further investigations. No disciplinary charges were prepared for these ‘pending cases’.
- ii. The Other Pending Cases involve students who took part in the 2017 protests, which owe their origins to the Shackville protest, and in which charges have not been formulated in respect of disciplinary processes. These students were not able to benefit from the clemency or amnesty processes. The process should not be prolonged unnecessarily, as this has the potential to undermine the credibility and genuineness of undertakings by the university, and will leave students negatively impacted in the future by the uncertainty of how the university intends to proceed.
- iii. We therefore recommend that UCT deals with these cases promptly and without undue delay.

Given the nature of these incidents, which were similar to those dealt with by the commission, we recommend that UCT decides on the disciplinary charges and considers convening disciplinary sessions with the possibility of plea bargaining for students, dealing with any disputes of fact in this process, and then submits their dossiers for amnesty to an external and independent *ad hoc* structure.

B. At the Level of Criminal Proceedings

- a. Where the case is about a serious criminal offence such as rape or murder, the university has no power to withdraw the charge and therefore the case will proceed subject to the discretion of the National Prosecuting Authority (NPA). The university could (if feasible) try and bring the victim, and, if the victim agrees, a family member and the perpetrator together to consider some kind of restorative justice.
- b. Where the conduct concerns university property or possessions, the university has the discretion and should be able to withdraw the complaint if convinced that this approach will help reconciliation and social justice.
- c. Account must be taken of the seriousness of the offences and whether the withdrawal of the charges or their prosecution will better contribute to reconciliation and appropriate mediation, not only between the university and its students today but also for the future.

As far as upset or negatively affected staff or students are concerned, arising out of the way in which they have suffered, it should be possible to put together a process by which the students, staff and all other role players are able to engage with each other to understand each other and to ensure that they accommodate each other in the process of receiving the kind of justice which does not punish but restores. Sometimes a sanction might be considered necessary in order to facilitate restorative justice or reconciliation.

Chapter 3:

EVENTS OF #RHODESMUSTFALL, #FEESMUSTFALL AND SHACKVILLE

This chapter provides a factual account of events that preceded and followed the Shackville protest in February 2016. These events and the Shackville protest itself should be understood against the background of racism, social injustice and the lack of opportunities that predominantly black South Africans students face on a daily basis. It should also be seen in the context of prevailing and deeply rooted dominance, racial exclusion, invisibility and violence that characterise many public and private institutions in South Africa still today and that have been identified and described in more detail in the chapters that follow.

1. #RHODESMUSTFALL

On 9 March 2015, Chumani Maxwele threw human excrement at a statue of Cecil John Rhodes that was located on the campus at the University of Cape Town. Wearing running shoes and tights, a pink safety helmet and carrying a whistle, a drum and two placards – ‘Exhibit White Arrogance UCT’ and ‘Exhibit Black Assimilation UCT’ – Maxwele’s performance was perceived by many as an act of political defiance in response to a lack of action against the historical symbols glorifying white supremacy, colonialism and racism and representing the lack of opportunities still facing the black majority in South Africa.¹¹

As a much as initially Maxwele’s performance was aimed at forcing UCT management to remove the statue of the man perceived by many as an unapologetic colonialist, it ultimately became a nationwide student movement known as #RhodesMustFall. Soon after the March 2015 events at UCT, students across the country protested against the lack of racial transformation at universities and institutional racism, and called for the decolonisation of higher education in South Africa.¹² At UCT, a number of initiatives were undertaken to reconcile the parties but

eventually students marched to the UCT Bremner building, where Vice-Chancellor (VC) Max Price was addressing the issue, and stormed it, demanding the prompt removal of the statue.¹³ They renamed the building Azania House and occupied it for a couple of days until the unanimous decision by the UCT Council on 25 March 2015 called for the removal of the Rhodes statue.¹⁴ The statue was taken down on 9 April 2015 in front of cheering protesters.¹⁵

While the #RhodesMustFall movement ultimately achieved its goal, the campaign that had led to the removal of the statue had a cataclysmic impact on the social and political fabric in South Africa. While it raised the invisibility of racial exclusion and white supremacy, it also polarised South Africans on the matter of historical symbols by triggering counter-protests directed at protecting the historical statues around the country.¹⁶ Nevertheless, the #RhodesMustFall campaign gave rise to a wave of student movements demanding in-depth reforms in the higher education sector, at the same time raising the structural issues of racism, decolonisation and exclusion.

¹¹ SAHO, *Chumani Maxwele ignites the #RhodesMustFall Movement at UCT* (9 March 2015) available at <https://www.sahistory.org.za/dated-event/chumani-maxwele-ignites-rhodesmustfall-movement-uct> (last visited 15 November 2018).

¹² BBC, *The Symbolic Statue Dividing a South African University* (25 March 2015) available at <https://www.bbc.com/news/business-31945680> (last visited 15 November 2018).

¹³ IOL, *Rhodes Statue: Students Occupy Offices* (21 March 2015) available at <https://www.iol.co.za/news/south-africa/western-cape/rhodes-stature-students-occupy-offices-1835276#VSE086g0WSo> (last visited 14 November 2015).

¹⁴ Daily Maverick, *It’s official: #RhodesWillFall* (9 April 2015), available at <https://www.dailymaverick.co.za/article/2015-04-09-its-official-rhodeswillfall/#.VkjQE64rL-Z> (last visited 14 November 2018).

¹⁵ BBC, *Rhodes Statue Removed in Cape Town as Crowd Celebrates* (9 April 2015) available at <https://www.bbc.com/news/world-africa-32236922> (last visited 14 November 2018).

¹⁶ Ibid.

2. #FEESMUSTFALL

The #FeesMustFall movement originated at the University of the Witwatersrand (Wits) following an announcement in 2015 by the university that fees would be increasing by 10.5% in the following year. On 14 October 2015, protesting students barricaded the entrances and the shut-down of the university began, with lectures and other activities suspended.¹⁷

On 17 October 2015, an agreement was signed between the protesting students and Wits management that provided for the suspension of the fees increase for 2016 and stipulated that no disciplinary action would be undertaken against the protesting students and staff members.¹⁸

Despite the agreement, the protests continued and on 19 October 2015 Rhodes University and UCT, led by the #RhodesMustFall movement, joined the protests against the fees increase.¹⁹ Students were also demanding that people working at the universities be employed by the institutions and not subject to outsourcing through private companies.²⁰

Following the protests and the lockdown of UCT by the protesting students, university management applied for and received a court interdict to prevent further unlawful protests on its campus.²¹ Discussions between the students and management outside Bremner were held; the students broke through into the building, declaring it occupied again.²² In response to students occupying the building the riot police were summoned. They used

stun grenades and teargas, dispersing the protesters and arresting 23 of them.²³ The 23 protesters were transferred to the Rondebosch police station, where a group of demonstrators subsequently gathered to demand the release of those arrested.²⁴

On 20 October 2015, the Minister of Higher Education, Blade Nzimande, proposed a 6% cap on university fee hikes for 2016 and the establishment of a task team responsible for investigating the issue of fee increases. The proposal was rejected by the protesting students, who were joined by fellow students from the universities of Fort Hare and Stellenbosch, and the Cape Town University of Technology.²⁵ The #FeesMustFall campaign gained momentum and protests continued in all major cities, with campuses in Pretoria and Durban joining in.

On 21 October 2015, thousands of students marched on the South African Parliament in Cape Town, which was in session at the time to hear the medium-term budget. Neither Minister Nzimande nor President Zuma addressed the protesters.²⁶ Students broke the gate and stormed Parliament before being dispersed by riot police, who used stun grenades, teargas and tazers.²⁷ Kevin French, Markus Trengove, Nathan Taylor, Chumani Maxwele, Kgotsi Chikane, and Lindsay Maasdorp were arrested following the incident but were released the next day on warning.²⁸

Campuses remained closed all over the country, with students continuously protesting. Many campuses had been vandalised as a result of protests, and clashes

¹⁷ IOL, *#WitsFeesMustFall Shuts Down Campus* (14 October 2015) available at <https://www.iol.co.za/news/south-africa/gauteng/witsfeesmustfall-shuts-down-campus-1930026> (last visited 16 November 2018).

¹⁸ News24, *Wits Suspends Fee Hike* (17 October 2015) available at <https://www.news24.com/SouthAfrica/News/Wits-suspends-fee-hike-20151017-2> (last visited 15 November 2018).

¹⁹ SAHO, *University of Witwatersrand Student Protests 2015 Timeline* available at <https://www.sahistory.org.za/article/university-witwatersrand-student-protests-2015-timeline> (last visited 15 November 2018).

²⁰ GroundUp, *Students Shut Down UCT* (19 October 2015) available at https://www.groundup.org.za/article/students-shut-down-uct_3412/ (last visited 15 November 2018).

²¹ The High Court of South Africa, Western Cape Division, *University of Cape Town v Rhodes Must Fall et al*, Case No. 20182/2015, 19 October 2015.

²² Daily Maverick, *Student Protests: UCT Flexes its Muscles* (19 October 2015) available at <https://www.dailymaverick.co.za/article/2015-10-19-student-protests-uct-flexes-its-muscles/> (last visited 15 November 2018).

²³ News24, *The 9 Days when Students Shook SA* (29 December 2015) available at <https://www.news24.com/SouthAfrica/News/the-9-days-when-students-shook-sa-20151229> (last visited 15 November 2018); News24, *Arrested Protesters Released on Warning, Case Postponed* (22 October 2015) available at <https://www.news24.com/SouthAfrica/News/Arrested-protesters-released-on-warning-case-postponed-20151022> (last visited 15 November 2018).

²⁴ GroundUp, *UCT Students Defy Court Order* (20 October 2015) available at https://www.groundup.org.za/article/uct-students-defy-court-order_3417/ (last visited 16 November 2018).

²⁵ News24, *#FeesMustFall Timeline: Where are we now?* (25 October 2015) available at <https://www.news24.com/SouthAfrica/News/FeesMustFall-timeline-Where-are-we-now-20151026> (last visited 15 November 2018).

²⁶ News24, *The 9 Days when Students Shook SA* (29 December 2015).

²⁷ GroundUp, *The Day the Students Stormed the Parliament* (21 October 2018) available at https://www.groundup.org.za/article/day-students-stormed-parliament_3420/ (last visited 15 November 2018).

²⁸ News24, *Arrested Protesters Released on Warning, Case Postponed* (22 October 2015).

between the police and protesters were reported. The extensive use of force by the riot police during the student protests was condemned by local and international observers, including Amnesty International.²⁹

On 22 October 2015, protesters marched to the African National Congress (ANC) headquarters at Luthuli House in Johannesburg and handed over a memorandum to Gwede Mantashe – the party’s Secretary General. Their demands included: a no fee increase for 2016, free quality education, and no outsourcing of staff at universities.³⁰

On 23 October 2015, allegedly 10 000 people demonstrated in front of the Union Buildings in Pretoria, demanding that President Zuma personally addresses their concerns. Whilst this did not happen,³¹ a meeting of the president with student leaders and representatives of universities’ management, aimed at ending the impasse, took place. President Zuma subsequently announced from inside the Union Buildings a 0% increase in tuition fees in 2016. During the protest a minority group of protesters set mobile toilets on fire and tried to break through into the Union Buildings. They were prevented from doing so by the riot police, who used rubber bullets, stun grenades and teargas to disperse the crowd.³² It was reported that running battles between small groups of protesters and police continued after sunset, and that several vehicles were damaged.³³

Following the announcement by President Zuma, disagreements on the future of the #FeesMustFall movement arose between different student groups. Ultimately, this resulted in a small group of students continuing the protests demanding free higher education and an end to the practice of outsourcing of university

staff.³⁴ At the beginning of November 2015, #OccupyUJ erupted at the University of Johannesburg (UJ), where students and workers demonstrated, blocking the university’s main road in contravention of a court order prohibiting protests on the campus during exams.³⁵ The group, supported by Wits #FeesMustFall was calling for an end to the outsourcing of workers at UJ. The police dispersed the protest and arrested 161 people, all of whom were transferred to the Brixton police station. They were all subsequently released.³⁶

On 14 January 2016, President Zuma announced the establishment of the Commission of Inquiry into Higher Education and Training (the Fees Commission) that was eventually put in place in terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996. The Honourable Justice Jonathan Arthur Heher was appointed chairperson, and Advocate Gregory Ally and Ms Leah Thabisile Khumalo, the last mentioned an attorney, as members of the commission.³⁷ The commission was mandated to look into the feasibility of making higher education and training fee-free in South Africa. The commission handed in its final report to President Zuma on 30 August 2017 and recommended a number of measures: an increase of expenditure on higher education and training to at least 1% of GDP; the adoption of an affordable plan to develop more student accommodation, in particular for the historically disadvantaged institutions (HDIs) or the replacement of the current funding model with a cost-sharing model of government-guaranteed Income-Contingency Loans sourced from commercial banks. Consequently, the commission did not envisage fee-free higher education but proposed a different model of funding.³⁸

²⁹ Amnesty International, Public Statement, *South Africa: Investigate Excessive Use of Force Against “Fees Must Fall” Protesters* (14 November 2016) available at <https://www.amnesty.org/download/Documents/AFR5357252016ENGLISH.PDF> (last visited 15 November 2018).

³⁰ SAHO, *University of Witwatersrand Student Protests 2015 Timeline*; News24, *The 9 Days when Students Shook SA* (29 December 2015).

³¹ The Guardian, *South African Students Score Tuition Fee Protest Victory* (23 October 2015) available at <https://www.theguardian.com/world/2015/oct/23/south-african-students-protest-pretoria-tuition-fees-rise> (last visited 15 November 2018).

³² SAHO, *University of Witwatersrand Student Protests 2015 Timeline*.

³³ The Guardian, *South African Students Score Tuition Fee Protest Victory* (23 October 2015).

³⁴ SAHO, *University of Witwatersrand Student Protests 2015 Timeline*; News24, *The 9 Days when Students Shook SA* (29 December 2015).

³⁵ EyeWitness News, *#OccupyUJ Slept Outside Brixton Police Station* (07 November 2015) available at <https://ewn.co.za/2015/11/07/OccupyUJ-Parents-slept-outside-Brixton-Police-station> (last visited 15 November 2018).

³⁶ Ibid.

³⁷ SAHO, *University of Witwatersrand Student Protests 2015 Timeline*; DOJ&CD, *Official Website: Commission of Inquiry into Higher Education and Training*, available at <http://www.justice.gov.za/commissions/FeesHET/index.html> (last visited 15 November 2018).

³⁸ DOJ&CD, *Release of the Report of Commission of Inquiry into the Feasibility of Making High Education and Training Fee-free in South Africa* (13 November 2017), available at <http://www.justice.gov.za/commissions/FeesHET/docs/20171113-ms->

In August 2016, a new wave of student protests resurged in South Africa following the announcement by the Council on Higher Education that a 0% fee increase would be unsustainable. Instead, the council recommended a uniform inflation-related increase for all South Africa's universities in 2017.³⁹ As a result of an anticipated increase in fees, the student organisations started afresh to mobilise for protests, while the universities beefed up the security on their campuses by calling in the police.⁴⁰ On 15 August 2018, the University of Pretoria, the University of KwaZulu-Natal (Pietermaritzburg) and the Mangosuthu University of Technology closed their campuses because of fees-increase protests.⁴¹

The possibility of increasing university fees in 2017 also caused a row within the ANC government. Whereas both the Treasury and the Minister of Higher Education insisted on the increase, warning that otherwise the fiscus would not carry on, President Zuma on 20 August 2016 instructed Finance Minister Pravin Gordhan and Minister Blade Nzimande to find the money to accommodate the 0% fee increase.⁴²

Despite President Zuma's instruction, on 19 September 2016 Minister Nzimande announced that universities would be allowed to decide individually on whether their own fees would increase for the year 2017, but instructed that the increase should not be more than 8%. Also, the government promised to assist qualifying students to fund the gap between the 2015 fee and the adjusted 2017 fee at their institution.⁴³ In anticipation of the fee announcement,

FeeCommissionReportRelease.pdf (last visited 15 November 2018).

³⁹ EyeWitness News, '0% University Fee Increase for 2017 will be Unsustainable' (2016), available at <https://ewn.co.za/2016/08/13/Council-on-Higher-Education-recommends-inflation-related-increase-for-universities> (last visited 15 November 2018).

⁴⁰ The South African, *SAPS Deployed to Universities in Preparation for #FeesMustFallReloaded* (15 August 2016), available at <https://www.thesouthafrican.com/saps-deployed-to-universities-in-preparation-for-feesmustfallreloaded/> (last visited 16 November 2018).

⁴¹ IOL, *Students Fragmented Over Fee Protests* (17 August 2016), available at <https://www.iol.co.za/dailynews/news/students-fragmented-over-fees-protests-2057768> (last visited 16 November 2018).

⁴² City Press, *#FeesMustFall: 'Find the Money', says Zuma* (21 August 2016), available at <https://city-press.news24.com/News/feesmustfall-find-the-money-says-zuma-20160821> (last visited 16 November 2018).

⁴³ EyeWitness News, *Nzimande: Universities Decide on 2017 Fees Hikes Themselves* (19 September 2016), available at <https://>

UCT decided to close its operations on 19 September 2016.⁴⁴

As a result of the announcement, new protests erupted at universities around the country, some of which turned violent, with riot police using rubber bullets, stun grenades and teargas.⁴⁵

In October 2016, protests at Wits continued, with students demanding 'free education now'. During the weeks of protests, protesters were reported blocking the streets with rocks and burning tyres, setting a bus on fire, damaging university property and barricading roads, while the riot police used teargas, rubber bullets and stun grenades to disperse the crowds. Former president of the Wits student representative council, Mcebo Dlamini, was arrested for allegedly assaulting a police officer.⁴⁶

3. SHACKVILLE PROTEST

The protest dubbed by the participants 'Shackville' commenced at UCT on 15 February 2016 and must be understood against the broader background of student protests and movements in 2015 and 2016 in South Africa. Protesters were demanding a solution to the systemic problems faced by black students and the lack of transformation at the universities which they perceived to be a product of a Eurocentric and colonial heritage, in effect the need for decolonisation.

UCT communicated in 2016 that it faced a much greater shortfall in residence spaces than anticipated, 'as a direct

ewn.co.za/2016/09/19/Higher-Education-minister-announces-decision-on-fees-hike-for-2017 (last visited 16 November 2018).

⁴⁴ News24, *UCT Suspended Classes in Anticipation of Fees Announcement – Price* (19 September 2016), available at <https://www.news24.com/SouthAfrica/News/uct-suspended-classes-in-anticipation-of-fees-announcement-price-20160919> (last visited 16 November 2018).

⁴⁵ The Guardian, *#Feesmustfall: South African Students Clash with Police – In Pictures* (22 September 2016), available at <https://www.theguardian.com/world/gallery/2016/sep/22/south-african-students-clash-police-johannesburg-wits-university> (last visited 16 November 2018); News24, *UKZN Riots Hit a New Low as Protesters Fling Faeces* (27 September 2018), available at <https://www.news24.com/SouthAfrica/News/ukzn-riots-hit-a-new-low-20160926> (last visited 16 November 2018).

⁴⁶ eNCA, *Wits Student Protesters Block Oxford Road, Parktown* (17 October 2016), available at <https://www.enca.com/south-africa/students-protests-block-oxford-road-parktown> (last visited 16 November 2018); EyeWitness News, *#FeesMustFall Protests Turn Violent, Bus Set Alight in Jhb CBD* (10 October 2016), available at <https://ewn.co.za/2016/10/10/Bus-set-alight-during-Wits-protests> (last visited 16 November 2018).

result of a drastic increase in two drivers of demand, firstly students completing deferred exams in January needed beds while awaiting decisions related to financial aid (...); and secondly, the clearance of historic debt had increased the number of returning students.⁴⁷ As reported, in 2016 a total of 6 679 beds plus an additional 58 were available in the system, with a demand of more than 24 000 applications.⁴⁸

The Shackville protest was at that point concerned primarily with two issues: (1) the difficulties experienced by predominantly black students in paying the tuition fees; and (2) the lack of affordable accommodation.

As a result of the 'accommodation crisis', on 15 February 2016 protesters, led by the #RhodesMustFall movement, erected a shack and placed a portable toilet in the middle of Residence Road between Fuller and Smuts residence halls on the UCT upper campus. They then marked off a large area around the shack with the red and white plastic tape used on different sites to demarcate areas of danger. The words 'UCT HOUSING CRISIS' were displayed at the back of the shack. Since the Residence Road is a major route for vehicle and pedestrian traffic, the shack significantly restricted the ordinary movement of people. The same day, two protesters spray-painted red the bust of Mrs Fuller in Fuller Hall. The protest continued with singing and dancing towards the evening but only a small number of protesters stayed in the shack overnight.⁴⁹

On 16 February 2016, the protest continued, effectively obstructing the pedestrian movement from and to upper campus and causing significant traffic in and around the campus. Parking areas were blocked off with rocks and burning rubbish bins, and a number of people were allegedly physically assaulted and verbally abused by the protesters. Moreover, one of the protesters painted a number of slogans on the War Memorial, which included, among others, 'F*** White People' and 'F*** Black Exclusion'. Following a letter by UCT senior management requesting that the protesters move the shack to the

⁴⁷ UCT, *Media Release: UCT Communication & Marketing Department 8 March 2016* as cited in UCT, Department of Student Affairs, Student Housing & Residence Life, Student Housing Admissions and Advocacy Services, *Report of the Senate Executive Committee March 2016 – 2015-2016 Student Housing Admissions Cycle* (2016), at p. 8.

⁴⁸ *Ibid.*, at p. 8.

⁴⁹ Facts as established in *Hotz v UCT* (730/2016) 2016 ZASCA 159 (20 October 2016), paras. 4-23.

grass lawn, the protests escalated and the numbers of protesters grew. Some protesters gained access to Fuller Hall, where they helped themselves to food meant for resident students. Some of the protesters then removed paintings, photos and pictures from Fuller and Smuts halls as well as other buildings, and set them alight. They also tried to erect a second shack but were prevented from doing so by campus security and the police. Following the incidents on campus, the university filed a complaint against the protesters at the Rondebosch police station. As a result, the police arrived and attempted to disperse the protesters, which led to a further escalation of violence, with a Jammie bus and a car being set alight and an incendiary device being thrown through the window of the office of the VC in the Bremner building on the lower campus.⁵⁰ The shack was ultimately demolished by private security and police.⁵¹

On 17 February 2016, UCT filed an urgent application in the Western Cape Division of the High Court seeking an interdict order against the protesters allegedly involved in the events of the previous days. UCT was reportedly seeking the interdict in response to a threat of further arson attacks on buildings on the campus. The interdict against five individuals was granted but the Supreme Court of Appeal, which confirmed the interdict, nevertheless decided to narrow its scope.⁵² The proceedings before the Supreme Court of Appeal were not about the legitimacy of the protest but about the unlawfulness of applicants' actions. This was accepted by the applicants.⁵³ Moreover, in their written submissions before the Supreme Court of Appeal, the applicants accepted that they were '*in the midst of protest action which went beyond the [boundary] of peaceful and non-violent [protest] and thus rendered themselves subject to disciplinary processes that [UCT] initiated against the students.*'⁵⁴ The applicants maintained, however, that their actions should be seen against the background of their struggle for social justice.⁵⁵

On 12 April 2017, the Constitutional Court of South Africa set aside the costs order of the High Court as confirmed by the Supreme Court of Appeal, and ordered that each

⁵⁰ *Ibid.*, para. 20.

⁵¹ *Ibid.*

⁵² *Ibid.*, para. 79.

⁵³ *Ibid.*, paras. 1-2.

⁵⁴ *Ibid.*, para. 31.

⁵⁵ *Ibid.*, para. 2.

party pay its own costs based on an earlier judgment in the *Biowatch* case, in which the court found ‘*The primary consideration in constitutional litigation must be the way in which a costs order would hinder or promote the advancement of constitutional justice. The ‘nature of the issues’ rather than the ‘characterisation of the parties’ is the starting point.*’⁵⁶ Consequently, the Constitutional Court in the *Hotz* case ruled that:

*‘Whilst the applicants’ conduct went beyond the boundary of a peaceful protest, the constitutional context should have been taken into account. It cannot be gainsaid that the issue they raised was of genuine constitutional import. Although the applicants were unsuccessful, the Court should have considered the chilling effect the costs order would have on the litigants, in the context of constitutional justice. The Court erred in not doing so.’*⁵⁷

Following the protests, disciplinary proceedings were instituted against a number of students. As a result of the first disciplinary hearing the UCT Disciplinary Tribunal imposed sanctions in respect of six students, including rustication together with a period of community service. Two other students were initially expelled but managed to have their sanctions changed to rustication and community service. During the second disciplinary hearing three students were expelled.⁵⁸

In order to address the challenges that arose as a result of the Shackville protest, the UCT Council decided at a special meeting held on 14 October 2016 to grant the VC the discretion and authority to grant amnesty to the above-mentioned students. Subsequent to the Council meeting, students and management concluded an agreement on 7 November 2016. The agreement was intended to reduce tension and lead to a de-escalation of violence as well as address the challenges at UCT. It provided, amongst other things, for:⁵⁹

- Clemency for eligible students who took part in the Shackville protest;
- A moratorium on disciplinary tribunals relating to the list of cases pending the recommendations of IRTC;
- Establishment of the IRTC;
- Development of a coherent policy on funding higher education and advocacy for free decolonised education; and
- Development of a protocol for the use of private security.

The IRTC was effectively established on 1 February 2018.

⁵⁶ *Biowatch Trust v Registrar, Genetic Resources* (2012) ZakC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC), para. 16 as cited in *Hotz and Others v University of Cape Town* (2017) ZakC 10, para. 29.

⁵⁷ *Hotz and Others v University of Cape Town* (2017) ZakC 10, para. 34.

⁵⁸ Amnesty Decision of the Institutional Reconciliation and Transformation Commission of the University of Cape Town (IRTC), 19 April 2018.

⁵⁹ *Agreement with the SRC Candidates/Shackville TRC and Other Student Formations*, 7 November 2016, available at http://www.uct.ac.za/usr/downloads/2016-11-07_UCT_resolution.pdf (last visited 16 November 2018).

Chapter 4:

SUMMARY OF DATES, EVENTS AND HEARINGS

The IRTC convened for the first time on Friday, 2 February 2018. The first phase was the finalisation of the clemency, and the consideration of whether each student's clemency (13 students in total) would be converted to amnesty or whether their clemency status would be retained. The IRTC commenced with these hearings on 27 March 2018, which continued on 28 March 2018 and reconvened on 9 April 2018, thus completing all of the clemency hearings.

1. THEMATIC SUBMISSIONS AND HEARINGS

Based on the ToR the commission proceeded to call for submissions on several occasions, with the final call scheduled for Sunday, 30 September 2018.

About 80 submissions were received altogether covering at least every topic called for in the ToR but also matters that were not necessarily explicitly mentioned.

2. MASS MEETING AND FACULTY ENGAGEMENTS

In a final bid to create awareness the commission elected to dedicate a week to meeting all of the faculties and publicly addressing the university. The mass meeting which was held on Tuesday, 14 August 2018, as well as the faculty engagements, which were held over the course of the entire week, proved to be a complex exercise. Awareness was created, and voices were heard.

3. SPECIAL ENGAGEMENTS

On 3 September 2018, following a special request from the Humanities faculty, the commission attended a rescheduled meeting with the faculty, due to the below average attendance rate in the first engagement. The turnout at that meeting proved to be just as poorly attended as the first faculty engagement.

Beyond scheduled engagements, the commissioners met students after hours. The commission also had a group

visit. The group refused to meet with the commissioners on campus due to fear of oppression and victimisation, substantiating the apparent unpleasant, sad and dire state of affairs within the institution.

Chapter 5:

AMNESTY

1. GENERAL PROVISIONS ON AMNESTY

According to the IRTC ToR, the commission was mandated, among others, to:

‘Invite submissions from all constituencies on the clemencies granted and make recommendations on converting clemencies into amnesty (or the continuation of clemency) and what the nature of these amnesties will be.’⁶⁰

A legal opinion obtained by UCT on the IRTC and the issue of amnesty provided that:

‘(...) the granting of amnesty can encompass the obliteration of both criminal and civil liability for the conduct in question. In the present case, there is nothing in the Council Resolution of 14 October 2016 or in the agreement of 7 November 2016 that militates against the conclusion that the amnesty envisaged obliterates both disciplinary sanctions and civil liability for violations of the disciplinary code (...). A successful applicant for amnesty under the IRTC process would accordingly enjoy indemnity in respect of both disciplinary sanctions and civil liability for violations of the disciplinary code.’⁶¹

⁶⁰ Section A (2) of the IRTC Terms of Reference.

⁶¹ IRTC Opinion by Dezil Potgieter, paras. 28-29.

In light of the above, the IRTC defined ‘amnesty’ in the following terms under Section 2 of the IRTC Decision from 28 March 2018:

‘The Commission defined amnesty as to include the complete expunction of the student’s record of all information or offences which they have pleaded to, in order to allow their records to be cleared so that they can graduate, pursue academic studies elsewhere, to be declared “fit and proper persons” and to be able to pursue future careers and opportunities.’

Section 2 of the IRTC Decision from 19 April 2018 adds the following paragraph to the definition of ‘amnesty’:

‘The amnesty would therefore have the consequences that the University ensure that the records of all students be cleansed of all evidence which would have the possibility of impacting them negatively in the future, in the spirit of reconciliation and transformation on the University has committed itself to by establishing the IRTC. (...)’

The IRTC invited eligible students (see amnesty criteria in Section 4 of this chapter) to submit their amnesty applications in a form of written submissions that had to be short and not technical in nature.⁶² To support their

⁶² Amnesty Decision(s) of IRTC of UCT from 28 March 2018 and 19 April 2018, Section 4.1.

amnesty applications, some students also submitted accompanying documents, e.g. decisions of the UCT Disciplinary Tribunal or footages featuring the incidents in question. Based on these written submissions, students applying for amnesty were required to appear before the IRTC in order to make oral submissions and to respond to questions.⁶³

2. AMNESTY DECISION BY IRTC

Having received the written and oral submissions from individuals concerned and having assessed all the evidence, the IRTC in its decisions between 28 March 2018 and 19 April 2018 recommended in total eight students for amnesty.⁶⁴ On 4 May 2018, the IRTC met with members of the steering committee and informed them of the amnesty process and handed them the list that included the names of amnestied students.⁶⁵

On 23 June 2018, the UCT Council resolved to confirm the recommendation of the IRTC that amnesty be granted to eight named students in respect of the events on campus of 16 February 2016.⁶⁶

For reasons of confidentiality, the UCT Council agreed not to release publicly the names of the students concerned but it felt that it was important to disclose the offences for which amnesty was granted:⁶⁷

Student A

- Transporting a container of petrol and three tyres onto Upper Campus;
- Defacing, removing and burning paintings and other items from Fuller Hall;
- Entering Fuller Hall dining hall and taking food;
- Putting a barricade on Baxter Road;
- Occupying Avenue House and preventing staff from continuing with normal duties.

⁶³ Ibid., Section 4.2.

⁶⁴ Amnesty Decision(s) of IRTC of UCT from 28 March 2018 and 19 April 2018, Sections 6 and 8 respectively.

⁶⁵ Clarification of Decision(s) of IRTC of UCT from 28 March 2018, para. 2.

⁶⁶ PoliticsWeb, *Amnesty Granted to UCT Shackville Protestors – Siphon Pityana* (3 July 2018,) available at <https://www.politicsweb.co.za/opinion/amnesty-granted-to-uct-shackville-protestors--siphon> (last visited 16 November 2018).

⁶⁷ Ibid.

Student B

- Transporting a container of petrol and three tyres onto Upper Campus;
- Defacing, removing and burning of paintings and other items from Fuller Hall;
- Entering Fuller Hall dining hall and taking food.

Student C

- Defacing, removing and burning paintings and other items from Fuller Hall;
- Removing and burning paintings from Smuts Hall and Jameson Hall;
- Entering Fuller Hall dining hall and taking food;
- Putting a barricade on Baxter Road.

Student D

- Defacing, removing and burning paintings and other items from Fuller Hall;
- Entering Fuller Hall dining hall and taking food.

Student E

- Removing and burning paintings from Smuts Hall and Jameson Hall;
- Putting a barricade on Baxter Road;
- Occupying Avenue House and preventing staff from continuing with normal duties;
- Entering Leo Marquard residence, making threats to staff and taking food;
- Assault on Upper Campus;
- Threatening and abusive representations.

Student F

- Removing and burning paintings from Fuller Hall;
- Removing and burning paintings from Smuts Hall and Jameson Hall;
- Entering Fuller Hall dining hall and taking food;
- Occupying Avenue House and preventing staff from continuing with normal duties;
- Entering Leo Marquard residence, making threats to staff and taking food;
- Graffiti on Lower Campus;
- Graffiti on Upper Campus and defacing university property.

Student G

- Removing and burning paintings from buildings on Upper Campus.
- Student H
- Defacing, removing and burning paintings and other items from Fuller Hall;
- Removing and/or burning paintings from Smuts Hall and Jameson Hall;
- Entering Fuller Hall dining hall and taking food.

3. DISCUSSION ON RESTORATIVE JUSTICE

As emphasised by the IRTC in its Clarification Decision on 28 March 2018, the IRTC, following the lead of the UCT Council, adopted an approach of restorative justice as opposed to retributive justice, given the context of the protests, which were directed against a historic and recurring institutional culture and practice of perceived racism, violence and domination. In addition, the impact and consequences that followed from the Shackville protest on the protesters themselves, other students, staff members and the university community were considered to be best dealt with by the restorative justice mechanisms. This approach had major ramifications on the functioning of the IRTC and is therefore briefly explained in this section.

The notion of ‘restorative justice’ is a long-held principle that exists in the South African legal system. The Department of Justice and Constitutional Development defines ‘restorative justice’ in the following terms:

‘Restorative Justice is an approach to justice that aims to involve the parties to a dispute and others affected by the harm (victims, offenders, families concerned and community members) in collectively identifying harms, needs and obligations through accepting responsibilities, making restitution, and taking measures to prevent a recurrence of the incident and promoting reconciliation.’⁶⁸

As further explained by the Department of Justice and Constitutional Development, restorative justice shifts a focus from punishment understood in the retributive terms to repairing the harm. Restorative justice is also based

⁶⁸ DOJ&CD, *Criminal Law: Restorative Justice*, available at <http://www.justice.gov.za/rj/rj.html> (last visited 16 November 2018).

on the premise that an offender also needs assistance and therefore it seeks to identify what needs to change to prevent future re-offending.

Archbishop Desmond Tutu⁶⁹ similarly spoke about restorative justice:

‘We contend that there is another kind of justice, restorative justice, which was characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment. In the spirit of ubuntu, the central concern is the healing of breaches, the redressing of imbalances, the restoration of broken relationships, a seeking to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he [or she] has injured by his [or her] offense.’⁷⁰

Amnesty, particularly in the South African context, is therefore closely linked to the concept of restorative justice. It is argued that amnesty can be a tool contributing to a restorative justice and reconciliation as long as it encourages offenders to admit the responsibility for their actions and to engage effectively with accountability through participation in restorative justice processes.⁷¹ Consequently, by persuading offenders to participate, amnesty can potentially lead to creating the conditions for the restoration of broken relationships.⁷² Amnesty has the potential to assist offenders to regain their dignity and, once granted, allows them to continue their life without the stigmatisation of a criminal conviction or having disciplinary sanctions on their academic records. In the context of the UCT students, the amnesty would have the effect of expunging from their records the outcome of the disciplinary hearings, including the sanctions which would have the potential to impact them negatively in the future.

⁶⁹ Desmond Tutu is a South African Anglican cleric and human rights activist known for his struggle against apartheid in South Africa. In 1984 Tutu was awarded a Nobel Peace Prize. He also chaired the Truth and Reconciliation Commission in South Africa.

⁷⁰ Tutu, Desmond. *No Future Without Forgiveness* (1999), at pp. 54-55.

⁷¹ SSRN, Mallinder, L. *Amnesties in the Pursuit of Reconciliation, Peacebuilding and Restorative Justice* (2011), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1707489 (last visited 16 November 2018), at p. 20.

⁷² Ibid.

4. PROCESS OF GRANTING AMNESTY

Having in mind the restorative justice approach, the IRTC adopted two criteria for granting amnesty:

- i. A full disclosure of the events and incidents in which the student was implicated;
- ii. An admission of responsibility.⁷³

An amnesty decision was taken individually case by case based on evidence received and heard during the written and oral submissions presented by students concerned.⁷⁴ Amnesty was granted only to students who had been through the university disciplinary processes and which had resulted in the expulsions and rustication of students.⁷⁵ Moreover, this group of students participated in the clemency proceedings instituted by the UCT.⁷⁶ Lastly, amnesty could only be granted in respect of the events and incidents of 16 February 2016.⁷⁷

Acting in accordance with the restorative justice approach, students were required to take responsibility for their actions and to fully disclose the facts of the events and incidents. This provided for the accountability element in the restorative justice process. In line with the IRTC procedure, students were not required to express remorse or make an apology to be eligible for amnesty.⁷⁸ The IRTC, while it welcomed an expression of remorse or a genuine apology, did not consider that either of these was necessary for the amnesty process, given how difficult it is to ascertain how genuine an apology or statement of remorse is. This is similar to the approach adopted by TRC in South Africa, where the applicants were neither required to express remorse nor to apologise.⁷⁹

As repeatedly observed by the IRTC on a number of occasions, the commission was not a court of law and its approach of restorative justice thus differed significantly from tribunals and courts of law. The IRTC was not established to determine individual criminal responsibility and therefore the evidentiary threshold it adopted was

⁷³ IRTC Amnesty Decision(s) from 28 March 2018 and 19 April 2018, Section 5.

⁷⁴ Ibid., Sections 6 and 7 respectively.

⁷⁵ IRTC Clarification Decision from 28 March 2018, para. 3.

⁷⁶ Ibid.

⁷⁷ Ibid., para. 5.

⁷⁸ Ibid.

⁷⁹ South Africa, The Promotion of National Unity and Reconciliation Act No. 34 of 1995.

based on 'reasonable grounds to believe'. The IRTC was put in place to look into the Shackville protest from the restorative justice perspective and to draw the context of institutional culture and practice, including decolonisation, unjust discrimination, domination or violence, and to provide recommendations on the subjects.⁸⁰

In view of the IRTC's mandate, the context of unlawful acts in which the students concerned were involved as well as the fact that they had been through the UCT Disciplinary Tribunal, where the facts had been established, the IRTC accepted, based on the standard of 'reasonable grounds to believe', that statements made by the students concerned were true. The IRTC assessed oral and written submissions against other materials and proceedings and came to a conclusion that as long as the facts revealed by the students were consistent with the facts determined by the UCT Disciplinary Tribunal, the High Court and the Supreme Court of Appeal in their interdict proceedings, students were eligible for amnesty.

Moreover, all amnestied students pleaded guilty to disciplinary charges brought against them during the proceedings before the UCT Disciplinary Tribunal. Finally, as repeatedly stated by the IRTC, the commission did not have the capacity to investigate and determine disputes of facts and therefore would only hear those cases where students had already been through the UCT Disciplinary Tribunal.⁸¹

In the course of oral hearings, the IRTC was assessing whether the incidents in question were indeed acts associated with protesters' objectives of raising awareness of students' dissatisfaction with the housing crisis as well as the institutional culture at UCT, which they perceived to be racist. In this way oral hearings created a platform for the commissioners to determine the motivation of students for taking part in the protests as the motivation of the students seeking amnesty was essential for granting amnesty.

Critics of the amnesty process, predominantly staff members, expressed their dissatisfaction with the process of granting amnesty by the IRTC, in particular with the commission's decision to not hear other constituencies within the university who were prejudiced

⁸⁰ Section A, IRTC Terms of Reference.

⁸¹ IRTC Clarification Decision from 28 March 2018, para. 3.

by the Shackville protest. In this regard, the IRTC took the view that many of these individuals had been heard during the disciplinary proceedings held by the UCT Disciplinary Tribunal and therefore they had already had an opportunity to express their grievances and provide their account of events. Since the process of granting amnesty before the IRTC relied on the said proceedings, the commission did not consider it necessary for these individuals to re-appear before the IRTC with regard to amnesty proceedings. However, the IRTC held numerous hearings in Cape Town and received written and oral representations from academic and administrative staff affected at the university with regard to institutional and cultural practices at UCT.

5. THE SCOPE OF AMNESTY

The IRTC in its amnesty decisions defined the scope of amnesty in the following terms:

‘While the IRTC has no control over the criminal actions or future disciplinary proceedings being pursued against students, it will request that the University in the spirit of the establishment of the IRTC withdraw its complaints and urge the National Directorate of Public Prosecutions to drop all criminal actions. The amnesty would also result in the University ensuring that the records of all students would be cleansed of all evidence which would have the possibility of impacting them negatively in the future. This would be done in the spirit of reconciliation and transformation which the University has committed itself to by establishing the IRTC. (...).’⁸²

6. OTHER ISSUES RELATED TO THE PROCESS OF GRANTING AMNESTY

A. Outstanding cases

The IRTC dealt only with the cases arising directly from the ‘Shackville protest’, in particular the events that happened on 16 February 2016. However, the IRTC acknowledges the students protests that unfolded throughout 2016 and 2017, and provides relevant recommendations in this regard. The

⁸² IRTC Amnesty Decisions from 28 March 2018 and 19 April 2018, Section 3.

commission deals comprehensively with the outstanding cases in Chapter 2.

B. Access to justice and legal assistance

During the amnesty hearings the IRTC heard extensive testimony from students on not being in a position to afford private legal assistance. Many indicated that they were unable to fully understand the disciplinary and other procedures and thus were deprived of the capacity to fully exercise their rights. This stood in sharp contrast to the position of UCT, which employs the best legal professionals to represent the university’s interests. It is, indeed, in the interest of a reputable institution such as UCT that the latter provides legal assistance to its students as it enhances the legitimacy and credibility of any process. Nevertheless the students expressed their gratitude to the pro bono counsel who represented them in these proceedings.

C. Sexual and gender-based violence

Students interviewed by the IRTC spoke to the failure of UCT properly to implement its policy and procedures in respect of sexual and gender-based violence, in particular rape and sexual harassment and abuse. A student interviewed testified to the harrowing experience of her rape during the protests where in the aftermath of the rape she found herself in desperate circumstances without any assistance by the university regarding the rape, including medical support and access to a rape kit. Her experiences at the hands of the police resulted in her further victimisation. This was exacerbated by the university’s failure to observe confidentiality in dealing with her case.

7. RECOMMENDATIONS IN RELATION TO AMNESTY PROCEEDINGS

A. Policy on clemency and amnesty

We recommend that UCT adopts an appropriate policy and procedures for clemency and amnesty that will serve as a legal basis for handling the remaining Shackville cases and also serve as a framework for dealing with similar cases in the future.

B. Psycho-social assistance

- a. The IRTC heard from many students of the pain and suffering experienced personally during

the protests, the anguish and fear during the disciplinary process, as well as the loss of academic years and opportunities. The financial loss incurred as well as having to deal with the anger, pain and disappointment of their parents were frequently raised. It is therefore paramount that professional psycho-social assistance is provided to these students in order to help them with recovery from the traumatic experiences, achieve closure and move forward. This assistance will also address the deeply rooted grievances and anger which, for some students, were the reasons for their taking part in the protests.

- b. The IRTC recommends that UCT establishes a policy on providing psycho-social support for those students who participated in the Shackville protest who are still at the university and who went through the disciplinary and amnesty processes.
- c. The IRTC recommends that such a policy is made available to other students and academic staff who also suffered trauma during this period as victims and witnesses to the protests and violence.

C. Access to legal assistance

- a. During the amnesty hearings we heard extensive testimony of students who could not afford legal assistance and therefore were unable fully to understand the disciplinary and other procedures and thus were deprived of the ability to exercise their rights. This was in sharp contrast to the university, which employs the best legal professionals to represent UCT's own interests. It is, indeed, in the interest of a reputable institution such as UCT that they provide legal assistance to its students as this enhances the legitimacy and credibility of any process.
- b. The university must develop and implement a programme to make reasonable and equitable legal representation available to students to defend themselves in disciplinary proceedings brought against them by the university.

D. Rape and other forms of sexual violence

- a. Students interviewed by the IRTC spoke to the inadequate procedures at UCT regarding sexual and

gender-based violence, in particular rape as well as sexual harassment and abuse. In one instance, a student who was raped during the protests found herself in desperate circumstances without any assistance by the university regarding the rape, including medical support and access to a rape kit.

- b. The IRTC therefore recommends that the university strengthen its policies and implementation mechanisms in dealing with sexual and gender-based violence, in particular rape as well as sexual harassment and abuse. The university should in these cases ensure that the 24-hour support mechanism is available to assist victims, including ensuring that they are provided with counselling and medical support, and access to a rape kit within the necessary window period.
- c. The IRTC also recommends that free legal assistance be provided by UCT to those students who are victims of sexual and gender-based violence, in particular rape, as well as sexual harassment and abuse. These persons remain particularly vulnerable as they continue to function among alleged perpetrators, be these powerful members of the UCT community or fellow students. Again, it is in the interest of the university to ensure that all allegations of sexual misconduct and sexual and gender-based violence are investigated promptly and that victims are capable of effectively exercising their rights. The university's good reputation depends on this.

E. Communication

- a. The IRTC heard evidence from the university community that they were not kept informed of the disciplinary and legal processes taken by the university to deal with students who had been part of the Shackville protest. This lack of communication by the leadership and management of UCT with the academic staff led to assumptions that the students had been let off the hook without any attempt to hold them accountable. The IRTC found itself having to explain that even before the students appeared at the amnesty hearings, they had been the subject of disciplinary processes in which they had been compelled to make

admissions of guilt and after being sentenced, a year later were given clemency by UCT. By the time the amnesty hearings had taken place, the university had dealt with disputes of fact and had disciplined students.

- b. The IRTC recommends that in the future, when protests or other crises arise at UCT, and when the university institutes procedures against students in respect of such incidents, including disciplinary hearings, possibilities for clemency, amnesty processes etc., the university takes all measures necessary to improve the communication with the academic community and student body. This should be done in a transparent manner. The inability to do so on the Shackville protest led to enormous distrust and anger on the part of both management and the students. The university has many channels of communication at its disposal and should use them to communicate effectively and meaningfully with its major constituencies, namely the students and academics. Any process of communication should be inclusive and transparent.

F. Criminal charges

- a. At least two of the students whom the IRTC recommended for amnesty have had criminal charges filed against them. Many of the students charged also petitioned the Minister of Justice and the Regional Director of Public Prosecutions to drop the charges.
- b. The IRTC recommends that UCT withdraws the complaints and urges the NPA to drop criminal charges against those students who have been granted amnesty for their conduct during the Shackville protest. This should be done against a commitment by these students to non-violence in the future with the clear understanding that UCT will reinstitute the charges should they be involved in any further unlawful behaviour. This will demonstrate UCT's commitment to deal with these issues in accordance with a restorative justice approach.

Chapter 6:

RACISM

1. INTRODUCTORY NOTE

The right to be free of racism is foundational to the South African Constitution and is encapsulated in the following clause:

'1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a. *Human dignity, the achievement of equality and the advancement of human rights and freedoms.*
- b. *Non-racialism and non-sexism.*⁸³

The right to be free of racism cannot be separated from the right to human dignity, since racism is by definition dehumanising. However, the constitution also sets out this right separately, as if to emphasise its importance. Section 9 (1) and (2) further entrench the right to be free of racism, emphasising that legislative and other measures have to be taken to advantage persons or categories of persons disadvantaged by past discrimination and that both direct and indirect discrimination are prohibited.

Further protection is offered by the Bill of Rights, which goes beyond race to establish what may be termed an intersectional approach to the protection of human dignity:

'(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more

⁸³ The Constitution of the Republic of South Africa, 1996, p. 3.

grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).⁸⁴

These clauses make it unlawful not only for the state and public institutions to practise racism, but also for any individual resident in this country to discriminate on the basis of race. Racial discrimination *per se* can be prosecuted under *crimen injuria* or can be dealt with in the equality courts. (*Crimen injuria* is defined as 'the unlawful, intentional and serious impairment of another person's dignity'.) Despite these constitutional provisions and the protections provided in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA), it is of serious concern that so many stakeholders at UCT perceive the environment as being one of institutionalised racism. It is all the more grievous to observe that no one is prepared to stand up and claim that UCT is not racist. In effect what we are being asked to observe is a massive, systematic undermining of the rule of law. After all, surely the most fundamental element of the constitution is that it provides for the supremacy of itself and the rule of law:

⁸⁴ The Constitution of the Republic of South Africa, 1996, p. 6.

*'2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.'*⁸⁵

From a systemic perspective, the constitution is ultimately a social contract, proposed to bring the horrors of the apartheid period to an end and to prevent any possibility of its re-occurrence. It is not a perfect document, being of human construction, but it is endlessly better than what preceded it. But for the constitution to work it must be a living document, upheld in our daily thoughts and actions rather than by force. It establishes community from what used to be bitter enmity. This social contract exists because we all agreed to it in 1994, and continue to agree to it every time we vote or pay taxes. Theoretically, many different contracts were conceivable, but this is the one we agreed to.

In this sense, if we do not have respect for the rule of law, we are subverting the constitution and the social contract is null and void. Chaos may ensue. As such, the possible occurrence of racism at UCT is not a minor flaw, nor a small problem. It is a major issue. Every time racism and allied discriminations are perceived it causes us to question whether the social contract is viable. We cannot move forward if we are continually defending the little that we have. UCT, as a public institution, is doubly responsible for protecting the rule of law and civil peace.

Beyond the law, everyday understandings and commonsense interpretations of experiences have a profound influence on the way we relate to each other. There are many different definitions of racism. From the perspective of standpoint theory, the right to define how we think about key issues is in itself a site of struggle:

'Elite groups routinely minimize the workings of their own power in determining what counts as social theory, claiming they merely want to protect universal standards of excellence. As a result prevailing definitions of theory portray it as an ahistorical, static system of abstract, logic, reason, or science that, when applied to social phenomena suggest universal relationships between theory and practice. Separating questions of what counts

⁸⁵ Ibid., p. 3.

*as knowledge from questions of who decides what knowledge is – in effect severing epistemology from power – privileges elites.'*⁸⁶

The National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance as approved by the Joint Cabinet Committee relies on the definition of racism as developed by the *Oxford Living Dictionary*, namely: '*prejudice, discrimination, or antagonism directed against someone of a different race based on the belief that one's own race is superior*' and also refers to the definition of the International Convention on the Elimination of All Forms of Racial Discrimination, which defines '*racial discrimination*' as: '*Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*'⁸⁷

Since the purpose of this report is to make recommendations on transformation, it is incumbent on us to ensure that we do not utilise definitions which may inadvertently benefit those already privileged. For instance, and without ascribing intent in any way, the former VC described racism at UCT as follows:

*'... I could go on with countless examples: the daily experience of being black or female and not being taken as seriously as your white, or male colleague when you make a contribution in a meeting, who gets thought of first to sit on a committee, whose grammar gets corrected, who gets their way in dealing with a bureaucracy because they know how to work the system, and they have networks and connections to overcome bureaucratic obstacles, or simply the confidence, the social capital directly to call someone high up in the organisation to get assistance.'*⁸⁸

⁸⁶ Hill Collins, Patricia. *Fighting Words: Black Women and the Search For Justice*, University of Minnesota Press, Minneapolis, 1998, p. xxi.

⁸⁷ Art. 1, International Convention on the Elimination of All Forms of Racial Discrimination.

⁸⁸ Price, Max. Submission to the IRTC on Institutional Racism, 19 May, 2018, p. 2.

It should be clear from this definition that racism is limited to the familiar white account of racism which reduces it to a set of attitudes or behaviours without acknowledging their contribution to upholding a white supremacist structure. Yet even the former VC's description should give cause for pause. A system in which networks, connections and social capital are so crucially important encourages nepotism rather than excellence and in such a system those who are already networked into power are going to benefit the most. Hierarchical power possesses inertia; it remains in place unless challenged. The most effective challenge lies in our very use of words. It is for this reason that a sound definition of racism is of value.

In their submissions to the IRTC students described their almost constant struggle to navigate and challenge the unrelenting colonial, white supremacist, patriarchal and anti-poor characteristics and systems of the university, in effect the struggle to decolonise university systems and culture. Frantz Fanon describes decolonisation as *'the meeting of two forces, opposed to each other by their very nature'*. It seems that when an institution like UCT is bent on maintaining colonial legacies and white supremacy through the dehumanisation of black bodies, and meets a radicalised student force, violence is inevitable.

Therefore definitions of racism from the point of view of those who have a history of suffering under discrimination assume primary importance. The classic definition of racism as enunciated by Steve Biko in the cauldron of black struggle is useful here:

*'Those who know, define racism as discrimination by a group against another for the purposes of subjugation or maintaining subjugation. In other words one cannot be a racist unless he has the power to subjugate.'*⁸⁹

What is critical in this statement is that Biko defined racism not merely as a set of attitudes and behaviours based on the belief that one race⁹⁰ was superior to another. This

⁸⁹ Stephen Bantu Biko. *I Write What I Like: Steve Biko. A Selection Of His Writings*, edited by Aelred Stubbs, (ProQuest LLC, Cambridge, 2005 (1987)), p. 25.

⁹⁰ For an intersectional definition of race, see Abrahams, Y. 'We're Here Because We're Here – Speaking African Womanism', in Duncan, Norman & Gqola, Pumla, et al (eds.) *Discourses on Difference, Discourse on Oppression*, Centre For Advanced Southern African Studies, Cape Town, 2001, pp. 37-76.

is a necessary but not sufficient condition for racism to occur. There also has to be a material and ideological infrastructure which transforms those attitudes and behaviours into the systematic subjugation of one race by another. This understanding of racism as a set of practices as much as a set of beliefs also informed Biko's approach to ending racism:

*'I can do no better than to suggest that this remains our primary task: to learn and to teach one another how to live in a democratic, non-racial society based on anti-capitalist economic and humanist social and cultural principles. We have to protect and rebuild our communities and our neighbourhoods. The blight of a decaying epochal culture is infecting our country in all strata and in all dimensions. These words of Steve Biko are at one and the same time an accurate diagnosis and a prescription for social and individual health.'*⁹¹

It is also important to note that the task of change is laid both on those who are oppressed and those who do the oppressing. It is as important that the victims of racism unlearn entrenched behaviour patterns as much as those who profit from racism. This must be expressed in practice, which in turn sheds light on the theory, which in turn leads to more improved practice. In understanding Biko's definition of racism, therefore, it is critical to also give space to the epistemological underpinnings of this definition.

As such the importance of racist practices to our analysis cannot be underestimated. A white person marooned on a desert island might hate blacks as much as he likes but he would not, in Biko's terms, be a racist. On the island, with an army to assist him, and the intention to steal people's land, however, this person would, according to Biko's definition, become racist. Racism is defined by a person's power over the system as much as by individual attitudes. From this definition flows the conclusion that the problem is the system that subjugates, and individuals who, in subjugating or in failing to resist subjugation, uphold the system. Our attention, then, in seeking to elucidate whether a particular event or set of people is racist, must be to focus on whether

⁹¹ Alexander, Neville. *Thoughts on the New South Africa*, Jacana Media, Johannesburg, 2013, p. 35.

a systemic use of the power to subjugate is evident, and is upheld by individuals.

This emphasis on practice as much as theory, and on the importance of change on the part of those at the bottom of the system as much as those at the top, remains a mainstay of Black Consciousness theory to this day.

Mamphela Ramphela asks:

*'We have to acknowledge that we have normalised ongoing privilege for the minority acquired at the expense of the majority of our society. We have lost our capacity for outrage at the exclusion and marginalisation of 80% of children in poorly constructed, maintained and run schools. We have lost our capacity for outrage at the talent wastage of more than half of the cohort of just over a million pupils who fall off the bus of our under-performing public school system. These youngsters swell the ranks of unemployed and unemployable young people every year. We have normalised apartheid urban planning by continuing to build human settlements on the margins of our towns and cities, perpetuating multigenerational poverty. Can we make 2019 the point of departure for reaffirming our common humanity and redoubling our efforts to ensure that we acknowledge and heal the wounds of racism in all of us? Can we dare to renew our vows to promote social justice and refocus our energies to live in harmony with one another and with nature?'*⁹²

The problem with a definition, as Ramphela points out, is that in an elitist society words tend to get defined in ways that privilege the elite. As such privilege tends to become normalised, that is, it becomes such a part of our vocabulary and everyday practice that we accept it as 'normal'. That is of course the point at which we become unable to change the practices which embody normalised violence and re-inscribe privilege. Therefore it is important that we become outraged. When we become outraged it disrupts the normalisation of hierarchy. Here the emphasis on a system which subjugates is greatly helpful since it highlights the violence that should outrage us.

⁹² Ramphela, Mamphela. 'Tackling the Resilience of Racism in 2019', News 24, 22 January 2019, available at https://www.news24.com/Columnists/Mamphela_Ramphela/tackling-the-resilience-of-racism-in-2019-20190122 (last visited 30 January 2019).

Racism as a system has existed contemporaneously with other systems of subjugation, such as patriarchy, heteronormativity, and class divisions. Sarah Henkeman points out that:

*'In more than 50 years of violence and peace research, it was found that violence starts with the idea that some people are inferior to others. This is symbolic violence. Examples of this aspect of violence that we know best are racism, xenophobia, sexism, and discrimination against disabled people, people who are gay or anyone who is considered inferior by others who consider themselves to be superior. Symbolic violence makes other aspects of violence seem reasonable and completely acceptable.'*⁹³

Thus symbolic violence (which could be attitudes and behaviour, culture, or books) is in a complex relationship with the power to subjugate. Symbolic violence must precede other forms of violence, since the thought is necessary to birth the deed. It often also follows other forms of violence, both in justifying the deed and in rendering more peaceful ways of relating unthinkable. Moreover it is clear from this approach that racism will rarely occur on its own. Identities in a hierarchical society will seldom be unitary. The same person may at one at the same time be black, born a woman, and a lesbian suffering from an emotional disability such as chronic Post-Traumatic Stress Disorder. These identities will be mutually constitutive in a specific social and historical context such that lived experience of such a person involves experiences of many forms of violence and overlapping systems of subjugation. This theoretical stance, commonly known as intersectionality, is not advocating a 'laundry list' approach, nor an add-on summation. Identity does not work like that. In our example this person has never been black without also at the same time being a woman, and an analysis which seeks *a priori* to allocate more importance to one identity rather than acknowledging multiple identities is most often an expression of privilege. A man who says that class is more important than gender, for instance, is able to say that because he is a beneficiary of patriarchy. A heterosexual person who says that racism

⁹³ Henkeman, Sarah Malotane. *Disrupting Denial: Analysing Narratives of Invisible/Visible Violence and Trauma*. New Adventure Publishing, Cape Town, 2018, pp. 26-27.

is more severe than homophobia is able to believe this because their position at the top of heteropatriarchy allows them to remain blind to the experiences of those at the bottom. No one aspect of hierarchy is theoretically more important – of greater causative force – than another. Should there be a hierarchy of oppressions, this can only be decided by studying a specific situation from the standpoint of those who are at the bottom of every hierarchy. Most commonly, all these different forms of hierarchy interact with one another in complex ways, which can only be studied within their specific context.

As has been alluded to, a key aspect of the ways in which Biko's definition of racism has been used is in its emphasis on the actions of black people as much as those of whites. A system of subjugation does not subjugate all the time. In a country where black people are the majority it could not. Black people's complicity with the system – whether actively or through inaction – is part of what enables the system to continue. As Mosibudi Mangena observes:

*'The philosophy of Black Consciousness, of which Biko was a leading proponent, sought to inculcate in black people a sense of pride in what they are, and to negate all the propaganda about their alleged inferiority. It is unfortunate that after centuries of domination and brain-washing, we have internalised these negative messages about us. Blacks who are imbued with this philosophy would love themselves and want to excel in what they do. They would seek to uphold the dignity of their people in everything they do. We would build ourselves better houses, teach our children with dedication and love, treat patients in our care with respect and dignity, speak our languages and practice our culture with pride. We would be authentic people who do not try to run away from themselves. Then our solidarity in social and economic issues would see us building a country where the colour of your skin would not matter.'*⁹⁴

The notion of authenticity plays a key role in Black Consciousness definitions of racism. To dismantle a racist system it is not enough that whites cease to practise racism. Blacks must also cease to accept racism, and

⁹⁴ Mangena, Mosibudi. 'Bantu Biko and Us', *AZAPO News*, 14 September 2014, available at <http://azapo.org.za/bantu-biko-and-us/> (last visited 30 January 2019).

they must do so out of a sense of self-love, self-respect and pride. In this regard it is particularly concerning that rising rates of inequality have acted so as to deprive black children of self-respect. When you live in a shackland with raw sewage running down the middle of the street you are supposed to play in, when your daily activities are surrounded by flies and an unbearable stench, you are being sent a message that you are worth nothing. Constitutional guarantees of human dignity struggle to be realised in a situation where subliminally the message is sent that you are not worthy of the most basic of human dignities. This militates against the sense of self-love and black pride which is so necessary to change a racist society. Writing in 2019 especially, it has become clear that survivors of racist violence do not necessarily become active proponents of anti-racism, given an economic system which leaves the majority of black people poor, if not poorer, than they were during apartheid. Such a system may not overtly be racist, but derives its racism from the fact that, structurally, the vast majority at the bottom of the system are black, while the majority of those at the top inevitably remain white because of historical privilege and access. Increasing levels of inequality divided along racial lines can become normalised to the point where nobody thinks it is racist, but a mere fact of life, and at that point the ability of black people to transform the system is undermined. It is therefore of importance that we should draw attention to outrageous situations. As Joel Netshitenzhe observes:

*'The burden of inequality falls inordinately on the poor and the marginalized. Yet ... inequality has a negative impact even on the rich. This relates to such issues as the magnitude of violent crime, educational performance and even teenage pregnancies among both the rich and the poor.'*⁹⁵

The notion that we all suffer from the existence of inequality, and that we all have a role to play in its abolition is key to a fuller understanding of Biko's definition of racism. It was grounded in an Africanist

⁹⁵ Netshitenzhe, Joel. *Why Inequality Matters: South African Trends and Interventions*, Mapungubwe Institute (MISTRA), Johannesburg, November 2013. Cited In Henkeman, op cit., pp 223, available at <http://www.mistra.org.za/Library/ConferencePaper/Documents/Why%20Inequality%20Matters-South%20African%20Trends%20and%20Interventions.pdf> (last visited 29 January 2018).

philosophy of community in which everyone suffers (whether spiritually or physically) when one person suffers. The definition was rooted in Biko's understanding of our history and what we should be striving towards. The black person who becomes outraged and through this process normalises racist violence is in this context acting for the humanity of whites as well because fundamental to Black Consciousness is an understanding of human dignity as indivisible. This forms a point of common ground with the provisions of our constitution. It is in how we enable constitutional practice in our daily lives that we make it a living document rather than an abstract piece of paper.

It is in this spirit that the IRTC has worked with a definition of racism which:

- understands the importance of human dignity as fundamental to the social contract which enables a modicum of civil peace
- normalises racist violence, including daily micro-aggressions
- draws attention to the relationship between theory and practice, and
- highlights equally the role of the privileged and those discriminated against in upholding or dismantling the system.

2. ALLEGATIONS OF THE EXISTENCE OF RACISM

Many allegations of racism were made against UCT management at the time of the events discussed here.

Testimony from students indicated that while UCT opens its doors to black students it does so on the condition that black student assimilate into whiteness. Many black students alleged that the high rates of suicide are because of a racist institutional culture, unreasonable academic demands and the existence of an alienating environment.

Keeping in mind the theoretical framework outlined above, and the responsibilities inherent in the social contract as defined by the constitution, the obvious answer to the question 'Does UCT management have the power to suppress the protests of students?' is 'Yes.'

This was no more clearly demonstrated than through the use of private security during the period 2015-2017. The description of events by management makes clear that

their sole concern was to remove protesting students from the sites they were occupying. For instance, the period leading to the use of private security on the 15 February is explained as follows:

*'The Special Executive Task Team (SETT) sent Acting DVC Anwar Mall, together with the Director of Student Housing, Mr Grant Willis, to negotiate with the students, urging them to leave Avenue House and to avoid hampering the allocations process at such a crucial time in the University calendar when students were being housed.'*⁹⁶

It is clear here that the priority of the executive is ensuring the orderly running of the university notwithstanding the unfair and inherent injustice of the accommodation allocations system – 'the allocations process' – rather than the needs of black students, many of whom were in fact both homeless and hungry at this point. These needs were made quite clear by the students in unequivocal terms: *'Various demands were made by the students for housing that same evening, either in the residences ...'*⁹⁷ Quite clearly the black students were *at that point* homeless.

This exemplifies a case of poor management and management failing to uphold the social contract. Where management might have sought a peaceful solution to this particular crisis, instead they chose to invoke the power of the system to subjugate. While not necessarily system change, a different gesture would have fulfilled the university's contractual obligations (offer of a place in residence), ameliorated some small part of white supremacy in favour of black equality, and incidentally saved the university community large amounts of money and pain. However, it is a token to the power of symbolic violence that the evidence does not show that any of these alternatives were thought of or discussed. Instead, the black students were made an offer of wholly substandard conditions. They in turn refused to accept second-class citizenship and continued to occupy university working spaces.

⁹⁶ Price, Max. Report For Joint IF-Council Committee On Past Use Of Private Security Services (n.d.), p. 1.

⁹⁷ Ibid., p. 1. Italics added by IRTC.

What is of interest in management's description of events is precisely the fact that they were aware that the students were protesting about basic human needs:

*'On the first night of negotiations, the students demanded food. GW and AM agreed to let them eat at University House Dining Hall for that night only. However, the RMF/FMF continued to enter the dining hall by force throughout the week. The wardens and students of that residence complained of the intrusion and intimidation. Management felt that the University House dining hall had to be secured because the lives of the residents were being disrupted by protesters. Eventually the dining hall was secured with Campus Protection Services (CPS) to prevent this. The protesters then moved on to enter and eat in other dining halls.'*⁹⁸

In other words, these were not armed guerillas attacking military targets. These were not terrorists seeking to take hostages. These were black students seeking food, the majority of whom had a reasonable expectation of receiving such since they had been offered a place in residence and financial aid before leaving the homes of their parents.

In the explanation provided by UCT management, it should be noted that its definition of students is racially biased. Thus they argue that *'The provision of private security services on campus, to augment CPS services, is a standard operating procedure within the university in view of its custodial duty to minimise potential risk and ensure the safety of students, staff and visitors.'*⁹⁹ However, the safety of those black students who had been excluded from residence on the night of 1 February and forward, despite receiving written offers of residence, is clearly not considered in this formulation. This is a weighty consideration, as especially black female students had their right to safety imperilled by the actions of management in rendering them homeless. This is a textbook example of Biko's observation that: *'This description of "metaphysical guilt" explains adequately that white racism "is only possible because whites are indifferent*

⁹⁸ Ibid. p. 2.

⁹⁹ Price, Max. Submission of the Executive of the University of Cape Town on the Use of Private Security, 12 May 2018, p. 1.

*to suffering and patient with cruelty" meted out to the black man.'*¹⁰⁰

Another example would be the conduct of private security, brought in to protect the safety of students and management, which was, according to impartial witnesses, racially violent in the extreme:

'Long before #Shackville and after, there had been a heightened presence of private security at our tertiary institutions, which had taken on a definite para-militaristic feel and tone. Countless accounts of misconduct by private security personnel had been circulating on social media and the mainstream media. Undoubtedly UCT was aware of this but refused to significantly address it. This resulted in them acting with impunity and [they are] alleged to have committed numerous transgressions, many criminal in nature:

- *Not wearing nametag*
- *Refusing to identify themselves to stakeholders and members of the public when requested to do so*
- *In plain clothes with no insignia and badges*
- *Conducting clandestine surveillance and spying*
- *Blatant racial profiling*
- *Arresting and detaining without reasonable cause, essentially behaving as "sheriff's deputies" or assistant peace officers*
- *Driving behind police vans*
- *Intimidation and threats*
- *Bigoted language and hate speech*
- *Committing arson and damage to property to incriminate workers and students in order to justify their presence and thus continued contracts*
- *Physical acts of violence and unlawfully doing public order policing and crowd control*

Students and organisations alleged that the police fired stun grenades and rubber bullets at unarmed students for three hours. Private security kidnapped and violently assaulted one student, who while part of the #RhodesMustFall movement was not at the protest. Throughout the night, police escalated the violence (even shooting at students who were

¹⁰⁰ Biko, Stephen Bantu, op cit. , p. 23.

not protesting). Observer organisations like More Than Peace gave accounts as to how the university and police blatantly ignored how private security firms “dramatically escalated existing conflicts and contributed to the violence” and failed to acknowledge it in statements after events.¹⁰¹

This happened despite public calls for UCT to deal with violence against black students dating back to 2014.¹⁰²

The conduct of private security, including racial profiling (backed up by many eye witness accounts) and hate speech, have never been investigated by UCT management. Instead it looked the other way and paid the bills which arguably enabled this behaviour.¹⁰³ Be that as it may, it should be clear that UCT management in 2016 chose to operate in a racist manner which relegated the rights of black students to food and shelter as being secondary to the needs of other students, but also demonstrated this belief by excluding black students from equal enjoyment of those rights through *the power to subjugate black students into submitting to this behaviour*. This fulfils every element of Biko’s definition of racism.

Turning from the power of subjugation to more structural and symbolic elements of racism, it is clear from the evidence before us that UCT can best be characterised as an integrated structure in which assimilation into a dominant culture was privileged. Integration, in Biko’s terms, is a profoundly racist approach to equality of opportunity:

‘The concept of integration, whose virtues are often extolled in white liberal circles, is full of unquestioned assumptions that embrace white values. It is a concept long defined by whites and never examined by blacks. It is based on the assumption that all is well with the system apart from some degree of mismanagement by irrational conservatives at

¹⁰¹ Ferwood, Harold. UCT IRTC Submissions, 12 May 2018, p. 1. IRTC’s italics. Cf. also the statement of More Than Peace, an independent consortium of faith-based organisations <https://www.news24.com/SouthAfrica/News/uct-private-security-blamed-for-escalating-conflict-20161005>

¹⁰² https://www.amandla.mobi/uct_racism

¹⁰³ Cf eg. <https://www.news24.com/SouthAfrica/News/uct-protesters-accuse-security-guards-of-racial-profiling-20161003> <http://www.theconmag.co.za/2016/02/26/shackville-the-secure-state/> <https://www.news24.com/Video/SouthAfrica/News/watch-uct-security-clashes-with-students-on-campus-20160217>

the top. Even the people who argue for integration often forget to veil it in its supposedly beautiful covering. They tell each other that, were it not for job reservation, there would be a beautiful market to exploit. They forget they are talking about people. They see blacks as additional levers to some complicated industrial machines. This is white man’s integration---an integration based on exploitative values. It is an integration in which black will compete with black, using each other as rungs up a step ladder leading them to white values. It is an integration in which the black man will have to prove himself in terms of these values before meriting acceptance and ultimate assimilation, and in which the poor will grow poorer and the rich richer in a country where the poor have always been black. We do not want to be reminded that it is we, the indigenous people, who are poor and exploited in the land of our birth.¹⁰⁴

Does the assimilation of white values and concepts prevail at UCT? This can be gauged in many different ways. There is the taken for granted every day symbolic superiority: *‘People like me are called black academics, but white academics are not called white academics. They are called academics.’¹⁰⁵*

In relation to these micro-aggressions, the evidence received by the IRTC points to a systematic suppression of black excellence in recent years. Submissions are rife with stories of better qualified black academics being passed over for employment and promotion in favour of white academics. Thus, it was alleged that:

‘[t]here are departments at the university that have never had in their employ a Black African above the level of cleaners. A case in point is the Department of Physics where 50% of the staff is white foreign nationals, 35% is white South African and 14% is Indian. The Department of Philosophy does not have a single black academic on its staff and it is unclear if it has ever had.’¹⁰⁶

¹⁰⁴ Biko, Stephen Bantu, op cit, pp 91.

¹⁰⁵ Statement by Lwazi Lushaba, cited in <https://www.groundup.org.za/article/uct-student-leader-vows-continue-protests/>

¹⁰⁶ Black Academic Caucus. BAC Submission to the IRTC, 12 May 2018, p. 3.

If people experience their reality in this way, it will be understood as both symbolic and structural violence. Structural because access to key posts appears to be blocked on the basis of race and other factors, and symbolic because the message being sent with such a pattern of appointments is that blacks are not good enough. The lived experience of this reality looks like this:

‘When I just started at UCT in March, 2017, I met X [name withheld], an academic whom I worked closely with ... I did wonder at the time how it was possible that she, a white European, was able to get a job at UCT when so many of our South African Physics PhD graduates struggle to find appointments. I raised this question much later with Y [name withheld], who told me that he gives people he knows the benefit of the doubt, and even said that it was the same in my case with my appointment (as I’d been a student here too). I don’t find this acceptable in fact and it is the definition of nepotism ... On working with X and the senior lab demonstrator team whose appointments she had facilitated before my arrival, I discovered that one of the senior demonstrators who was supposed to manage a very experienced team of demonstrators was problematic and aggressive toward the rest of the team. Regimental, argumentative, all in all a very abrasive personality. Looking deeper into this and chatting to X about it, X admitted she had decided to give this person, Z [name withheld], this opportunity because she felt bad that she had gotten a permanent position at UCT whilst Z had been doing odd segments of work here and there in the hope of finding a job ... This in itself was shocking to me. What was more shocking was that Z had near zero physics background. Probably maximum first year physics and no experience demonstrating first year physics at all, let alone managing a team of very experienced demonstrators. As issues kept on coming up, I chatted to Y about problems arising in the lab because of Z and he asked if X had not warned me about Z’s personality. He basically allowed this woman to be appointed taking more than triple pay

per session over more experienced (predominantly black) demonstrators.’¹⁰⁷

We do not, at this point, seek to pronounce on the truth value concerning these people’s behaviour, although we note with some concern the appearance of an assumption that a white skin appears to confer a knowledge of physics. It is also interesting to note that often the reference to ‘international standards’ perpetuates racism and white supremacy even by non-South Africans who also become proponents of white supremacy and racism just like local. But what is of real importance here is the way the system is set up so that one or two individuals appear to have complete discretion over employment in a department. This cannot continue with public money. UCT is accountable to the people of South Africa for how public monies are spent, and as such, the appearance of a situation where it is even possible that that public money could be spent on someone who is not qualified to hold the post is a severe transgression of law and prescript. It is instructive to observe how this institutional failure appears to translate into systematic racism:

‘When I asked the Dean last year why transformation is so slow in the Science Faculty, especially the ones I know of, that is Physics, Astronomy and Oceanography, his answer was because they go for better positions. Now that is wrong. Dr Azwinndini Muronga was here for two years, as a senior lecturer, they then employed a white German as a full Professor, the same man did his postdoc at the same University that Dr Muronga did and was employed without having more teaching experience than Dr Muronga. Dr Indresan Govender left to go to UKZN because he was here for a few years and did not get a promotion. It was declined and at UKZN he was employed as a Professor, whereas whites got promotions despite having fewer years experience. Dr Rudolph Nchodu left for the same reason as Dr Govender and now rather went to work at iThemba Labs. Dr Vilakazi is now VC for Research at Wits. When our new Irish lecturer starts, the Department

¹⁰⁷ [Name Removed]. UCT Anti-Transformation: IRTC Submission, 31 August 2018, pp.1-2.

*of Physics will have more foreigners than South Africans.*¹⁰⁸

While this appears to be an extreme case – certainly in view of employment equity it would appear to be so - it provides a useful insight into the inner workings of racism. The prevalence of most departmental heads exercising wilful behaviour can exist only where there is no oversight (or for that matter where there is complicity) from senior management. That it could continue for so long, and is (judging by submissions) so widely spread, speaks to institutional structures which have been set in place to make this possible.

The prevalence of unchecked management discretion was a theme repeated many times in the IRTC submissions. While space does not allow for the unlimited representation of examples, the following one is instructive in how it highlights the intersection of several forms of oppression:

*‘.. I assert that Professors [names withheld] want to teach me a lesson by continuing to act as gatekeepers as to who may be staff or associates (majority young and white) and who may not (this outspoken older black woman). The attempts to paint themselves as my victims is historically unfounded and a clear manifestation of institutional racism which remains painfully denied. With the very greatest respect, their attempts to pathologise me and criminalise my non-violent resistance to the invisibilised structure that favours them, is in line with orthodox criminology that does not take cultural, structural and psychological violence of institutionalised racism into account. They exclude me for the very reason I was appointed – to shed light on these invisibilised issues from the standpoint of the oppressed ... I am also keen to understand how UCT can get away with **systemic failure** and then refer me to the CCMA, the Labour Court and the IRTC after the VC admitted that I had experienced his definition of institutional racism which holds that white people do not “intend” the racism that black people experience.’¹⁰⁹*

¹⁰⁸ [Name Removed]. IRTC Submission, 31 August 2018.

¹⁰⁹ Henkeman, Sarah. IRTC Submission: Recurring Patterns of Institutional Racism, 9 March 2018, pp. 3-4.

This submission raises the important question: who is qualified to pronounce on racism? We hold the view that such definitions are best expressed from below, since the opinion of someone who benefits from a system is unlikely to hold a view on the matter which accords with objective reality. As such we have been at pains to include definitions of racism developed by Black people in the cauldron of black struggle and to provide examples given by black people.

3. SUBTLE RACISM

It is perhaps striking that not a single submission from a Black person has been received stating that UCT is not racist. Perhaps more surprising is the fact that we have not received a single submission from a white person to that effect. At best, some white people have sought to define racism in a way that preserves elements of the current system intact.

An example underscores the point that, at best, what we received was a back-handed acknowledgement of the existence of racism narrowly defined:

‘All existing staff should be counselled to improve their ability to empathise with and educate struggling students. Key players in this exercise are staff who choose to focus on teaching, especially those who share lived experiences with educationally disadvantaged students. To the extent that they are willing and able to go the “extra mile” and excel in helping educationally disadvantaged students to succeed, they should be rewarded financially (in terms of pay packets and research funds) and fast-tracked in terms of promotion.’¹¹⁰

We read statements like these as saying that, while they stop short of admitting racism, a behaviour change on the part of established staff should be encouraged and rewarded. Once again, not a single submission claimed that UCT is not a racist place.

It is revealing, for instance, that we had a number of submissions which mentioned physical or financial damage sustained during the protests. It is perhaps not

¹¹⁰ Crow, Timothy. ‘How to “Fix” UCT’, in ‘Something Else for IRTC to ‘Chew’ On’, Submission dated 11 May 2018, p. 5.

always clear to the people making the submissions that to confine one's complaints to those issues, without a single word said in compassion or fellow feeling for the many damages suffered by black students, ranging from physical injury to mental health issues and material losses such as loss of financial aid or time lost due to suspensions, is an act of micro-aggression.¹¹¹ The silence makes a statement about what is important. And what is not important is black pain. We are comforted to note that such submissions form a minority of submissions received, while the vast majority are eloquent on the subject of black suffering. This is a good development in respect of upholding our constitutional responsibilities since it is in the silences and micro-aggressions that ultimately the illegal acts of racism can thrive.

4. CONCLUSION

This chapter has discussed various definitions of racism, from the legal framework within which we operate to the more intellectual definitions applied in daily practice. It has justified the extensive use of definitions from those who suffer from racism, and has discussed these at length. In the light of this discussion we have then considered allegations for and against the existence of racism at UCT. We have, reluctantly, concluded that racism does exist at UCT, that it is beyond attitudes and beliefs but aided and abetted by poor management systems which administratively manage to discriminate on a racial basis.

¹¹¹ Cf. eg. Hoffman, Timm. IRTC Submission, 2 May 2018; Haman, Ralph. IRTC Submission, 21 August 2018; Giid, William. IRTC Submission, 29 September 2018.

Chapter 7:

RESIDENCES

1. DIFFICULTIES EXPERIENCED

Student housing was at the core of the protests staged during February 2016, and continues to be a sore point on campus. Submissions reveal that problems were occurring as far back as 2014:

*'In 2014 and 2015, issues were raised in the College of Wardens (the College) regarding over-allocation in residences, the frustrations of wardens at the residences arising out of the mismanagement of over-allocations, and the risk to the reputation of Student Housing and Residence Life (SH&RL) and UCT as a whole. The issues were formally raised in the first College of Wardens report on the allocations issues residences had faced in 2015 and their recommendations for the 2016 cycle. See Annexure A which was endorsed by the College and sent to the Director of Student Housing and the Deputy Vice-Chancellor in early 2015. The College has never received any response to this document and to our knowledge none of the recommendations were ever implemented.'*¹¹²

Indeed, it appears that the issue has been an ongoing one:

'The issue of over-allocation in residences has been in place for a number of years, with the events of the

¹¹² Letter to the Honourable Archbishop Njongo Ndungane (undated), contained in submission by David Jacobs, 8 March 2018.

*past several years confirming that planning for and management of over-allocations in residences has failed dismally – the 2016 issues faced are not new to residences and has been the experience of wardens and students for a few years running.'*¹¹³

It seems as if management approaches worsened the problem, with a sharp turn downwards at the beginning of 2016:

*'In 2015 it was claimed that the over-allocation resulted from the move to a 1.2 persons over-allocation to a 1.8 persons over-allocation. In 2016, a 2 persons over-allocation was used, despite the chaos caused by the 1.8 persons over-allocation last year.'*¹¹⁴

Moreover, the situation was worsened by what can only be characterised as a failure of implementation:

'In 2016, students turned up at residences and were turned away because their details did not appear on the Residential Management System (RMS). Some wardens, however, had taken students to SHAAS (Student Housing Admission and Advisory Services) with their offer letters, only to find that these offers had been revoked with no valid reason and no communication to wardens or students. In

¹¹³ Price, Max. Report For Joint IF-Council Committee, p. 2.

¹¹⁴ Ibid., footnote 2.

*some instances, students were placed in residences but a substantial proportion was not. The number of students who may have received offers, arrived at residences and left after being turned away due to a housing offer cancellation, is presently unknown because neither SHAAS nor SH&RL kept adequate records. This issue is of crucial importance in the light of widely circulated allegations of homeless students who had otherwise received residence offer letters.*¹¹⁵

These reports suggest that already as far back as 2014, the allocation of residential spaces to students was in shambles because UCT management and the state themselves were responsible for constructing the crisis around residence accommodation, as is set out below. This issue is of crucial importance not only out of concern for students but because of what it reveals about the state of UCT management at the time and the systemic crisis around accommodation. Critical absences are apparent from the above statements:

- The fact that we have not been able to find that any evaluation was made of numbers of homeless or potentially homeless students in the period 2015-2016. Thus, we cannot find a logical reason for the increase in over-allocations, which remains unexplained.
- The fact that student offers of a place in residence were revoked with no reason given or communication with concerned parties.
- The fact that management cannot provide information on how many students were left stranded due to the above sequence of events.

These gaps in information are deeply disturbing and are of critical importance since housing in residence implies the provision of food as well. Being excluded from residence is therefore a double exclusion: accommodation and access to basic needs. Both impact negatively on a student's ability to study. The playing field was not level.

In response we have the following statement from management:

'We also wish to bring to your attention the fact that SH&RL had been in daily consultation with Senior Executive Task Team in order to manage the

¹¹⁵ Ibid.

*accommodation challenges the university was facing at the time. Daily stats were provided. SH&RL and SHAAS was therefore not working in isolation and managing the "crisis" on its own.'*¹¹⁶

It appears that these daily stats were not provided to wardens, resulting in a serious breakdown in communication. While standing by its system of over-allocation, management did, however, acknowledge that there was a systemic problem:

*'... since late 2016, the Executive established a Rapid Response Task Team which includes DVCs and student leaders, and is tasked with identifying potential problems early, such as individual students that somehow have fallen through the cracks of the admissions, housing or financial aid bureaucracies, and attempting to address their problems ...'*¹¹⁷

The fact that there are 'cracks' which students can 'fall between' points to problems with the system. A well-organised system does not have cracks; it has resilience, that is, the capacity to respond to the unexpected with reasonable thought and action. We shall return to the concept of 'cracks' below. In order fully to contextualise these instances, however, it is important to observe that management's perception of the situation was widely different from that of the College of Wardens:

*'... the over-offer rates for new and returning students in 2016 were similar to those in 2014 and 2015 when all students were eventually accommodated, and also illustrate that in terms of the application and eligibility criteria as per the Student Housing Admissions policy there were sufficient beds available for those to whom offers had been made.'*¹¹⁸

The IRTC notes from these statements that there were widely divergent views on the accommodation situation, with UCT management on the one hand characterising it as students who fell through the cracks and the College of Wardens on the other as an over-offer which seemingly

¹¹⁶ Submission by Price, Max, Foster, Neil & Grant, Willis. IRTC Statement on Student Accommodation, 19 June 2018, p. 1.

¹¹⁷ Ibid., p. 3.

¹¹⁸ Ibid.

they were able to resolve. This illustrates that since critical players on campus possessed such widely divergent views should give rise to deep concern because it points to structural systemic malfunctions. If actors in a system do not share the same perception of reality, one must expect 'cracks'. These cracks occur at the point where perceptions differ.

It is clear that management recognises the existence of these structural problems and conceded that:

*'One additional point to make about what contributed to the events around 15 February was the view of student leaders involved in the protest, which they made strongly in their confrontation with SH&RL management as well as members of the Executive, that while black students with no housing offers could not be accommodated, there were foreign 'Semester Study Abroad' students and white students who had homes in Cape Town, that were being accommodated in residence. It should therefore be pointed out that this is in line with historic policy, that 150 Semester Study Abroad students and 322 first-time entering under-graduate local students of all races are accommodated (housing offers made primarily through the Institutional auto-offer facility).'*¹¹⁹

UCT, like many universities, has a historical system of preference where students whose parents had lived in residence received first preference for accommodation in the same residence. This preferential system may in the current context be perceived as racially discriminatory since, prior to 1985 (and then only as a result of student protest similar to that which occurred in 2016, namely the erection of a shack at the foot of Jameson steps) university residences did not admit black students as a result of apartheid policies. It is therefore unlikely that a black student would benefit from this preferential system. These practices in the current context would need to be re-examined to ensure equity in the future. Of importance for our analysis here, however, is the fact that management did not recognise the racial discriminatory practices inherent to these processes. Again, a mismatch between the perceptions of those who made the decisions (SH&RL

¹¹⁹ Ibid.

management), the ones who had to implement it (College of Wardens) and those who had to suffer its consequences (students), is apparent. In this sense, therefore, the 2016 housing crisis was inevitable. When participants in a system hold different perceptions as to what constitutes fact, and worse, when decision-makers do not see a fact which is plainly before them, the system cannot operate effectively. To have increased the admission of black students without having fully considered the impact and peculiar circumstances of vulnerability, especially homelessness, poverty and food insecurity, to mention but a few. UCT in dealing with student accommodation and consequent services was not just incompetent. The university also acted inhumanely in respect of the black students affected.

What the ITRC cannot countenance is that university management in charge of housing continued to defend this policy, regardless of the perception of privilege benefiting one particular race group while depriving the other, particularly in the context of a shortage of accommodation which impacted on impoverished black students most severely:

'In summary, analysing the causes of the 2016 accommodation crisis, it is inaccurate to state that in 2016 the problem was the over-allocation of places by Student Housing, or to oversimplify the problem by saying the management of housing allocation was badly managed. It was rather the unexpected large number of returning students who arrived without any housing offer – the majority because they had actually exceeded their time in residence. It was secondly, the occupation of residence places by students following their deferred exams which resulted in places not being available for those who had been promised places. (This was a problem we should have anticipated and planned for.) There was also the unexpected uneven nature of the take-up of first year offers – with some residences having an unexpectedly high uptake and others a low uptake, with delays and severe inconvenience to students in the process of being reallocated to a different residence. And there was the perception that poor black students were being denied places while international (read wealthy) and local white

*students were being given preference. While this was not a change from past practice, in the context of the unusual shortage of accommodation and the heightened politicisation of the campus following a year of student protests in 2015, this was targeted as a cause of the problem.*¹²⁰

The response of the university management to the housing crisis highlights the complexity underlying the crisis and also indicates the total lack of planning and ineptitude in dealing with a structural problem going back as far as 2014. Students are the heartbeat of any institution dedicated to teaching and research. They do behave unexpectedly, being young and inexperienced, and that is why, though every system of administration requires resilience, a university administration needs it more than most. The systems in place at UCT were clearly not able to deal with the changing nature of the student population and the challenges that young black students face in accessing university accommodation.

Objectively, UCT has failed to explain the perceptions around 2016 proving to be a flashpoint. The lack of understanding around white privilege in the preferential policy accorded to a white body of students, that is, *precisely that there was no change from past practice* given the racially discriminatory history of UCT, was and remains a problem. The 2010-2014 Strategic Plan deliberately set out to ‘... have a first-year intake, which would be an average of national and Western Cape demographic profiles of university-eligible school leavers.’¹²¹

Any effort, therefore, to achieve this goal would require an expansion of university residence services and paying attention to student nutritional status. Reducing fees or reducing historic debt was not enough. Access is not synonymous with equity. In this country, in 2012, ‘28.3% were at risk of hunger ... and 26.0% experienced hunger’.¹²²

More than half of our population are fully or partially

¹²⁰ Ibid., p. 4.

¹²¹ Price, Max. Distinguishing UCT: UCT’s Strategic Planning Framework 2020 Vision Vice Chancellor’s Office, 2017, p. 5. We shall not comment on the fact that such measures were still deemed to be necessary 20 years after the advent of democracy.

¹²² Shisana O., Labadarios, D., Rehle, T., Simbayi, L., Zuma, K., Dhansay, A., Reddy, P., Parker, W., Hoosain, E., Naidoo, P., Hongoro, C., Mchiza, Z., Steyn, NP., Dwane, N., Makoae, M., Maluleke, T., Ramlagan, S., Zungu, N., Evans, M.G., Jacobs, L., Faber, M. *South African National Health and Nutrition Examination Survey*. HSRC Press, Cape Town, 2013, pp. 145-146.

food insecure. Black people generally struggle with homelessness, with over 20% of the population living in shacks.¹²³ Many black students would not have relatives or friends in Cape Town who could provide a home within decent commuting distance and the required necessities for study: a warm and dry space with access to electricity and the internet. It should have been clear to university authorities that improving the demographic profile on campus must involve measures to address a history of economic disparity or else chaos would ensue. Proper and sustained attention to student housing should have accompanied the introduction of measures to increase black admissions. In dealing with this issue, the university should have paid much more attention to the material conditions of black students if they were to be successful in their studies, since this is precisely what blacks historically were deprived of. Blaming the students in this context is outrageous and quite dishonest, particularly given how management deliberately and systematically sought to increase student numbers on campus without the slightest acknowledgement of the realities of their daily lives.

The IRCT notes that management appears to continue to hold the view that these racially discriminatory practices are acceptable:

*‘This is a very small number (7%) of the total of 6 800 beds and in terms of the policy is valued as a way of offering the international students a more integrated experience rather than living only with other international students on their own outside the university, and similarly there are reasons for wanting to have some Cape Town resident students in residences to promote local integration and also because we lose some of the best students because they want to have a live-in residence experience for a year or two.’*¹²⁴

That only 10% of the population benefits from racial discrimination is no reason to argue its continuing existence in the nation, and similarly we should be deeply alarmed that the size of the number benefiting from racially profiled value judgements is considered of relevance to this discussion. Possibly this management

¹²³ <https://africacheck.org/reports/do-400-000-whites-live-in-squatter-camps-in-south-africa-the-answer-is-no/>

¹²⁴ Ibid., footnote 3.

approach was evident to students and that is why perceptions were raised that white students occupied places in residence in excess of their proportion of population. There is no evidence that a single white student was refused a place in residence in 2016, and this fact alone should give pause for reflection. Why should the integrated experience of an international student outweigh the need of a black student to be dry and warm while studying? How does housing management gauge the academic excellence of the students who receive preference (as in the case of ‘some of the best students’)? Is there any reason other than race that these value judgements are made? We doubt it.

These statements are the more perturbing because housing administration itself was in a state of internal crisis, as was evidenced in June 2015 at a workshop held with all stakeholders on SH&RL which set out the challenges afflicting the office.¹²⁵ (Sample: ‘Clear guidelines in relation to Conflicts of Interest’).¹²⁶ No action was taken to respond to the report, and nothing continued to be done until late in 2016.¹²⁷ It cannot be said that management was not aware that there were problems, and that a system which had worked fine in enforcing the ‘old boy’s network’ during a time of white privilege was proving hopelessly inadequate to meet the demands of constitutional democracy.

Perceptions exist amongst the black student population that the office of SH&RL is mainly white and male.¹²⁸ Within this environment, perceptions of white supremacy have in fact become quite normalised. These perceptions do not give rise to fears of system failure because the people who hold them are benefiting from the system. As such, it is saddening to note that the report commissioned by UCT on student housing policy does not consider race to be a problem. The administration of student housing does not reflect either the population it is bound to serve or the South African population generally.¹²⁹ A problem that is

¹²⁵ Thomson, William. Department of Student Affairs – Student Housing and Residence Life: Tokiso Facilitated Workshops, October 2015, Submission of Shanaaz Sunday, 13 September 2018.

¹²⁶ Ibid., p. 2.

¹²⁷ Submission of Shanaaz Sunday, 13 September 2018.

¹²⁸ <http://www.dsa.uct.ac.za/dsa/contacts>

¹²⁹ Mall, Anwar et al. 2015 - 2016 Student Housing Admissions Cycle Report to the Senate Executive Committee – March 2016, Department Student Housing and Residence Life, UCT. There is no mention of gender or other intersectional considerations.

not seen will not be dealt with. Instead, a purely technical solution has been proposed to solve the problem of institutional racism:

‘As a result of the work of the HATT [Housing Allocations Task Team] a real-time capturing system of student admissions into residences was established, and was successfully utilised in 2017.’¹³⁰

It is ironic that this kind of technical approach should be lauded in UCT’s Transformation Report, since what is being demonstrated is that transformation has not happened, either at the level of understanding or at the level of implementation. If absence of student protest is to be seen as an indicator of success, such could be ascribed to many other factors (not least the existence of the IRTC). Instead what has happened is that a technical solution has been used to paper over the cracks in what is fundamentally a social problem: racism.

It is instructive to note that student housing was not reported on at all in the 2017 Transformation Report.¹³¹ The introduction and application by the HATT of a real-time capturing system is a technical solution, but it does not resolve the underlying issues of a racially discriminatory housing policy for black students. The adoption of a technical solution suggests that it has ceased to be a problem in the eyes of management. It would have been interesting to know whether white students occupied places in residence in excess of their proportion of the population subsequent to 2015-2016, yet beyond 2016 there has been no update on how this situation has changed as a result of the technical solution, if at all.¹³² Similarly UCT’s strategic planning process does not contain an indicator for student accommodation. It is mentioned under ‘High Level Objectives: Physical and Technological Infrastructure’¹³³, but there is no indicator measuring this commitment in the monitoring and evaluation framework. Presumably people who have homes do not notice this gap in oversight. The absence of information is telling. Those who are already privileged continue to be further privileged on campus, and executive silence is complicit in

¹³⁰ Price, Max. Transformation Report, UCT 2016, p. 19.

¹³¹ Feris, Loretta. Transformation Report, UCT 2017.

¹³² Mall, Anwar et al. 2015 - 2016 Student Housing Admissions Cycle, pp. 12-15.

¹³³ Price, Max. Distinguishing UCT: UCT’s Strategic Planning Framework 2020 Vision Vice Chancellor’s Office, 2017, p. 17.

allowing this to happen. The cracks remain but hopefully nobody sees them.

The events of 2016 caught student housing management apparently completely by surprise. They continue to hold the perception that students acted unexpectedly, they have been dealt with, and that a technical solution is an acceptable alternative to the need for deep change on their part. This perception appears to be widely shared in the higher echelons of management. This absence of true perception is the root cause of the system generating 'cracks'. That this problem remains in 2018 sharply reduces the chances of restorative justice being done and, importantly, being seen to be done.

What is life like in the cracks? We cannot ignore the traumatic experiences of those who were excluded from being able to access the accommodation system. Homelessness, like any other kind of oppression, is ultimately personal. Politics and ideological constructs can explain but not experience what is in the final analysis of a suffering imposed on the individual black body and soul. Yet the converse also holds true:

*'Knowledge from below serves as a counterpoint to the power to define and limit what constitutes racism, which is located within racism as a structure of invisible/visible violence. This power centralises and favours whiteness as it marginalises and balkanises the oppressed ... Manifest experiences of racism are not simply personal and "anecdotal". Patterns of experience provide insight into why students made the symbolic violence of coloniality, the structural violence of the neo-liberal university, and the psychological violence of white supremacy that induces their stated pain and "inability to breathe", central issues around which more concrete issues were raised.'*¹³⁴

In other words, giving space to the individual stories of oppression should not in any way detract from an awareness of broader systems and institutions. On the contrary, it should contextualise them, increasing our awareness of the systems of violence which serve to keep us engrossed in suffering.

¹³⁴ Henkeman, Sarah. 'Structural Violence', IRTC Submission, 9 March 2018, p. 3.

*'When first-year student Simphiwe Sigaba came to UCT in 2016, it was to be the beginning of a great future. Instead Sigaba said she was allocated a place in the Forest Hill residence, but when she went to sign in on February 1, she discovered her name had been scratched off the list and someone else had been given her room without prior notice. "International students have to stay with each other, so there'll be two in a flat. What happened was, in that flat, there was only one, and they wanted to put [in] another one. They removed me and then they put an international student there," Sigaba said. Moholola said international students were not being favoured. "This is totally untrue; no international student is being prioritised. If any student has a housing offer, we are obliged to place her/him in a room," he said. The Mail & Guardian has seen photographs with the details of a residence block and Sigaba's name crossed out to accommodate another student, identified on the page as an international student. It remains unclear who deleted her name.'*¹³⁵

What if she had had no friends? Gender-based violence is an ever-present reality in South African women's lives, and it should not be our educational institutions which put students at risk. The apparently random way in which rooms were allocated, with administrative arbitrariness seemingly the order of the day, should alert us to a system in crisis.

This example could be multiplied many times during the days leading up to the events of 16 February, 2016. Nevertheless, for present purposes it is sufficient to observe that the structural violence of racism preceded violence on the part of students.

UCT policies provide that accommodation should be provided to students. UCT remains under an obligation to ensure equal access to student accommodation for all eligible students, especially those who are granted bursaries and those who lack alternative accommodation.

The status of UCT as a public institution, funded by public money, is subject to the legal framework that governs public institutions. That, as such, it is obliged to observe

¹³⁵ Pather, Ra'eesa. 'Students Are Shackville's Collateral Damage', *Mail & Guardian*, 19 February 2016, available at <https://mg.co.za/article/2016-02-18-students-are-shackvilles-collateral-damage>

the provisions of the constitution is not a matter which was discussed at all in official university documents. The fact that there is no indicator in the strategic plan for measuring how UCT delivers on its constitutional obligations attests to the fact that there is a sublime unconsciousness about the role of the university as a social actor, subject to the provisions of the social contract which was agreed to in 1994 and given written ratification in the form of the 1996 Constitution. Therefore we cannot but agree with the observation that:

‘Responsibility, culpability and “guilt” within an adversarial context steeped in a history of (racial, social, and economic) conflict cannot vest only in one party. Indeed the agreement begs the question as to “who the victim is and who the perpetrator” in a situation which did not start with the defacing of a statue.’¹³⁶

The failure of the university management to demonstrate awareness of its responsibilities as a corporate citizen of this country – the more so as a public institution supported by taxes – is indeed a shortcoming for which it should acknowledge culpability. Each one of us who fails to uphold the provisions of the social contract which is the basis for our current civil peace is in fact endangering the collective agreements on which our democracy is based. As such, culpability for the events of 2015-2016 must rest also on the shoulders of decision-makers at the time. Recognition is due to the students who brought this matter to public attention: *‘Protests also revealed that counter-strategies employed by transhistorically victimised people become the main focus for censure in institutions where blackness is already pathologised and criminalised; and where Eurocentrism and whiteness are revered and enabled.’¹³⁷* As a description of what was occurring in the SH&RL office in 2016 this can, unfortunately, not be bettered. Though one may deplore the manner in which the matter was raised, there is no escaping the moral justness of the students’ cause:

‘.. “culpability” regarding the events which unfolded ... does not just vest in those who threw stones and

¹³⁶ Kriger, Robert. ‘Expediency is Not Democracy But its Anathema’, IRTC Submission, 9 March 2018, p. 1.

¹³⁷ Henkeman, Sarah, op cit, p. 6.

objects, burnt paintings and set fire to buildings, but primarily “in the state” here represented by an institution such as UCT which for more than a decade evaded addressing the real and stated concerns, discriminations, violations of constitutional rights et al which had been set out before its governing, executive, management and academic bodies in multiple forms, submissions, grievances, resignations and actions. The institutional responses to date have been that of obfuscation ...’¹³⁸

When appeals and complaints are not heard, the social contract must be protected by peaceful protest. This right, indeed the necessity, for responsible citizens to act so as to redeem the social order, has been upheld by the recent Constitutional Court opinion on restricting limitations on the right to protest.¹³⁹ Of particular interest is the manner in which the Constitutional Court draws our attention to necessity for shared values:

‘This has been echoed by this Court and the Supreme Court of Appeal on multiple occasions; freedom of assembly is directly linked to the rights to freedom of speech, freedom of religion, dignity, freedom of association, and to stand or vote for public office. A most recent example of the intersection between the right in section 17 and other rights is Hotz 105. In that case this Court acknowledged that protest (albeit in that case a violent protest) was employed by students to assert their right to further education. In this case, the applicants relied on their right to assemble peacefully to demonstrate that their other rights regarding access to sanitation were not being fulfilled by the City of Cape Town. To limit the right to freedom of assembly therefore poses a real risk of this proliferating into indirect limitations of other rights.’¹⁴⁰

If we cannot agree that the right to peaceful protest is fundamental to our ability to protect other constitutional rights, then we are unable to share a polity based on

¹³⁸ Ibid., p. 5.

¹³⁹ *Mlungwana and Others v S and Another* (Equal Education, Right2Know Campaign and UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association as Amici Curiae), (2018) ZakC 45 Case CCT 32/18.

¹⁴⁰ Ibid., p. 30, para. 71.

a social contract. The management of a teaching and research institution must at all times be aware of their especial and particular responsibility to inculcate these values through action. Young people are smart. They watch what you do, not what you say. That is why universities are not just public institutions, but public institutions with a serious responsibility towards building for polity which, with all its faults, is a vast improvement on the system we abolished in 1994.

In this regard it is concerning to note that the IRTC has received submissions to the effect that:

‘The impact on students who have faced external charges has been significant. Some of this is already reflected in the report on the cases that you have heard. I witness to this day how academic progression, mental well-being, freedom of speech is affected by the stress and the fear of police questioning, and court appearances. Most chilling is that some students have said they will not protest again, speak up or raise issues. I submit that the experiences of students have been punishment already. It seems likely that some of these very students now face internal charges.’¹⁴¹

In other words, there is a risk that not only did one section of the university community fail to uphold the constitution, but its actions may have had the effect of deterring students from exercising their constitutional rights. This bodes ill for the future of this country, and certainly represents an inappropriate use of public funds. As such one can only hope that university management revisits the constitution and reflects on the way its administrative practice implements the founding document of this nation.

As the student protests revealed, without a sense of shared values, the social contract fails to be sustained. For almost a month during October 2016, the university could not carry out its functions of teaching and research. It is necessary, therefore, in the strongest terms to deplore the communication UCT management made through their actions:

‘This decision by UCT management led to students and staff being assaulted, having teargas shot at them and being arrested. In criminalising the actions of people who are asserting their rights in a university – which should be a site where vibrant debate and freedom of thought and expression are defended – the university management exposes their true values. It is no wonder that the actions of those who sought to verbally and physically attack protesters, are protected, while those fighting the right to inclusive education are not.’

‘Management’s actions suggest a general unwillingness within some parts of UCT to entertain genuine, meaningful dialogue about transformation that will lead to real change. These actions underscore UCT management’s resistance to the development of a university that truly reflects the demographics, interests and aspirations of all who learn there, one that is sensitive and supportive of the lived realities of the majority of students. Instead the actions of UCT management reflect the conservatism and alignment with capital that drives the university’s commitment to remain elite, Eurocentric, patriarchal and disrespectful of the voices of those who are less resourced.’¹⁴²

2. CONCLUSION

While the violence on both sides is to be deplored, not least precisely because of the extent to which it undermines the social contract, it is nevertheless clear from the evidence that both parties have much to account for and that an approach which solely blamed the students who protested would fail to be rooted in the principle of a social contract.

Seen in this context, the observations by many white members of the university community that UCT has not freed itself from the shackles of white supremacist past ring true:

‘The demographics of UCT (still one of the most demographically un-representative universities in

¹⁴¹ Brooks, Edwina. Submission Regarding Restorative Justice, 18 April 2018.

¹⁴² Adams, Abeerah et al. Submission to the IRTC Commission, 9 March 2019, p. 2.

South Africa) illustrate UCT's failure over the past decades to truly belong to the Black majority of South Africans. Recent figures ... show that UCT's "high rating" when it comes to "research excellence" and "financial stability" etc come at the cost of this demographic deficit.¹⁴³

For this very reason the constitution places redress for the past as a priority. It is so that we can all become members of a national community which is held together by a moral consensus. When even those who benefit from the system object to its excesses, something is seriously amiss:

'As a white person who benefited (and still benefits) from apartheid, I am greatly distressed at how little has changed in South Africa, in Cape Town, and in our universities since 1994. The IRTC needs to urgently ensure that black and coloured students will no longer face discrimination. Unless it does this, UCT will continue to experience unrest. The only response to racism is to fight it. It UCT does not want a fight its future depends on moving rapidly to transform the university ... not foot dragging in endless committees.'¹⁴⁴

The problem of non-implementation, that is, of burying issues raised in the accustomed manner within the established framework in committees, enabled the perception gap which directly led to the events of February 2016. Once again these examples can be multiplied. However, what we have put forward is sufficient to underscore the point that even those who may be said to benefit from a system understand that the principle of a social contract is essential to the peaceful conduct of business for all of us.

Instead, the events of 2015 and afterwards subsequently became a textbook example of what happens when

'Individuals in the system colluded by "turning a blind eye" because there is institutionally "no place" for our stories "to land" and the senior executive was not in a "position" to attribute blame. It is not clear who is supposed to hold the VC or the university as a public institution to account. The system, via

¹⁴³ Van Heusden, Peter. Submission to the IRTC, 9 March 2018, p. 1

¹⁴⁴ Pointer, Rebecca. Alumni Submission: IRTC Process, 9 March 2018.

its circumscribed job descriptions and mandates, promotions, bonuses and other perks, provides benefits for those in its employ. Therefore outspoken people who prevent the "harmonious" enjoyment of privilege from ticking over are sacrificed. This leads to an impasse where the centrality of whiteness/ marginality of blackness remain fixed and where those who resist are seen as the enemy against whom disappearance and militarised violence are justified and legitimised ... Thus, systemic failure to take recurring patterns of racial discrimination into account serves an instrumental purpose – to frustrate those who want concrete social justice until they disappear.'¹⁴⁵

Communication is the heart's blood of any social contract. Ensuring that the contract is respected, or enforcing it in the breach requires an extensive system of communication. Therefore it is instructive to note the gap observed in the above quote: there is no official place for communication to be received and acted upon. Another way of defining this mechanism is denial. It is not that individuals do not know they are practising discrimination. The problem at UCT is that the institution's mechanisms for hearing and acting upon communication are weak or non-existent. Ultimately, the survival of the system is dependent on exploitation and does not provide sufficient guarantees for a society seeking justice. Yet justice is at the very core of the social contract into which we entered in 1994. Without it this nation shall not endure. It is important that the university administration address the issues raised in a manner which acknowledges responsibility for – at the very least – being unable to hear and act upon truthful information.

Moreover, it is important that we acknowledge the issue of how silences can be violent. Structural violence is not just about a deliberate deafness, but also about deliberate silences intended to wound. A university is a place where words are everything; it is the work of the place and the reason for its being. Members of the university community cannot, therefore, be unaware of the ways in which words are deployed, or often, not deployed. The following incident serves as a textbook example of silence as structural violence:

¹⁴⁵ Henkeman, Sarah, op cit., p. 32.

*'Words hurt, attacks in the media hurt, words and attacks that come from people who have never met you hurt. The words people don't say when they should be saying them hurts. UCT has a lot of people who know how to play with words so that they will hurt you. The Vice Chancellor, Dr Price – there were occasions where he would walk into a room and greet others and ignore me. By this I mean, I greet and he does not respond and appears not to have heard me ... yet he must have. Also he is in fact busy greeting the people in the room and does not greet me.'*¹⁴⁶

In African culture, greeting one another is part of the glue that holds us together, a means of recognising the social contract. In fact the Khoesan greeting '!Gaitses' translates as 'I see you.' It is a recognition: I see you, I recognise you as part of the same ecosystem as myself. To not greet has profound symbolism; it is tantamount to saying 'I do not see you.' It is not just that it is rude to not greet, it is that it is a form of refusal to recognise the other's humanity. Again, it is not necessary to multiply examples. Suffice it to conclude that structural/symbolic violence was rife on campus in the events leading up to 2016 and beyond.

¹⁴⁶ Houston, Lorna. Submission to Institutional Reconciliation and Transformation Commission 2018, 11 August 2018, p. 3.

Chapter 8:

MENTAL HEALTH CHALLENGES AT THE UNIVERSITY OF CAPE TOWN

Mental health is a major social and health challenge in South Africa. The World Health Organisation Mental Health Survey initiative conducted for the period of 2002 to 2004, found that 26.5% respondents in South Africa were diagnosed with mental disorders classified as severe, while 31.1% had moderate symptoms of mental disorders.¹⁴⁷ The most common disorders were major depressive disorder (4.9%) and alcohol abuse or dependence (4.5 %).¹⁴⁸

The recent Lancet Commission on Mental Health report highlights that mental health disorders are rising in every single country in the world and will cost the world's economy \$16 trillion by 2030.¹⁴⁹

The number of mental health challenges is also growing in South Africa. It is estimated that one third of all South Africans have mental illnesses – and 75% of them will not get any kind of help. According to the Mental Health Federation of South Africa, more than 17 million people in the country are dealing with depression, substance abuse, anxiety, bipolar disorder and schizophrenia – illnesses that round out the top five mental health diagnoses.¹⁵⁰ There are differences in terms of severity, however; some of these disorders are severe while others are moderate.

Many factors contribute to the increasing levels of mental health problems in South Africa. These include the history

of apartheid,¹⁵¹ poor socio-economic conditions,¹⁵² violence,¹⁵³ crime and stigma, as well as lack of easy access to mental health services.¹⁵⁴

While mental health problems as experienced within universities such as UCT and others cannot be separated from other factors in the country as a whole, there are specific stressors and challenges that beset university students which contribute to them developing mental health problems. Some of these are: academic pressure, poor academic scores, lack of good academic support structures within the university, lack of adequate mental health services, poor family relations, relationship difficulties, lack of accommodation, lack of food, and financial difficulties. All of these, in one degree or another, were cited in the interviews with the IRTC as the main sources of mental health problems amongst students at UCT.

¹⁴⁷ Ibid.

¹⁴⁸ Williams, D. et al. (2008). 'Twelve-month mental disorders in South Africa: prevalence, service use and demographic correlates in the population-based South African Stress and Health Study', in *Psychology Med*, 33 (22), pp. 211-220.

¹⁴⁹ Patel, V. et al. (2018). The Lancet Commission on global health mental health and sustainable development. *Lancet*, 392, pp. 15553-15598.

¹⁵⁰ It is important to note that statistics around mental health issues are not easy to quantify with accuracy as different studies provide different figures. There is a need for well-coordinated surveys and studies to be conducted on the prevalence of mental health disorders in South Africa.

¹⁵¹ Gobodo-Madikizela, P. 2012. 'Remembering the Past: Nostalgia, Traumatic Memory, and the Legacy of Apartheid', in *Peace and Conflict: Journal of Peace Psychology*, 8(3), pp. 252-267.

¹⁵² Kaminer, D. & Eagle, G. 2010. *Traumatic Stress in South Africa*. Johannesburg: Wits University Press.

¹⁵³ Bowman, B., Stevens, G., Eagle, G., Langa, M., Kramer, S., Kiguwa, P. & Nduna, M. 2015. 'The Second Wave of Violence Scholarship: South African Synergies with a Global Research Agenda', in *Social Science & Medicine*, 146, pp. 243-248.

¹⁵⁴ Freeman, M. (2018). 'Global lessons for deinstitutionalisation from the ill-fated transfer of mental health-care users in Gauteng, South Africa', in *Lancet Psychiatry*, 5 (9), pp. 765-768.

Some students experienced certain departments within the university as too alienating, hostile and unsupportive towards black students. A sense of exclusion and alienation were also mentioned as other contributing factors to students feeling mentally and emotionally exhausted.

Academic exclusion was also cited as one of the stressors that make students feel suicidal, as described by this student:

'... the current practice at UCT is to academically exclude people automatically based on fixed criteria and then allow students to appeal their exclusion. Failing had already pushed me close to the edge and exclusion on top of that may have been too much.'

The process of academic exclusion was felt to be highly insensitive and could well push students over the edge and lead them to committing suicide. One student in his submission suggested that *'another way to make academic exclusion manageable for students would be to offer extensive support along with the news of being excluded. Someone should preferably try to phone the student before an impersonal letter is delivered to them. Counselling should be offered to the student.'*

In their submissions made to the commission, some students reported long-standing feelings of suicidal ideation. One student's disclosure stated:

'I suffered from chronic depression as an undergraduate science student. For all of that time (and until very recently) I persisted with the view that if I could press a button to make the world stop existing, I would press it without a second thought. At times I was also more actively suicidal; I went up to the knife edge adjacent to Devil 's Peak and toyed with the idea of jumping off. I am fairly sure that the biggest culprit was the depression.'

A constantly expressed view that the reason for black students leaving the university in body-bags due to high rate of suicide was that this was because of a racist institutional culture, unreasonable academic demands and the alienating environment. They also noted the growing number of black students living with depression

and other mental illnesses. How could it be valid, some students asked, that an institution was willing to pay millions on private security in four months and yet had only four psychologists to attend to 27 000 students?

Local statistics in a report released by the South African Depression and Anxiety Group (SADAG) in 2018 offered this information: 17.6% considered attempting suicide, and 31.5% of youth suicide attempts required medical treatment.¹⁵⁵ The report goes further to mention that one in four university students are likely to be diagnosed with depression and anxiety-related challenges. Given these figures, more than 20% made one or two suicide attempts.

From interviews conducted with university students and staff at UCT, the overwhelming impression is that the protest action during #RhodesMustFall and #FeesMustFall has left the university population feeling traumatised. Both students and staff members asserted that they still get haunted by traumatic memories of violence that took place during protests. Students and staff members alike said that they needed counselling to deal with these memories.

Another contributing factor experienced at the university was the violence that ensued between the police, private security guards and the students. The police were blamed for perpetrating violence against the protesting and non-protesting students through indiscriminate shooting of students. This violence left many students and staff members feeling traumatised.

Protesting students were also blamed for perpetrating violence against non-protesting students as well as staff members who were working during protests. Many staff members narrated traumatic memories of emergency alarms being switched on during protests and being called names by protesting students.

Collectively, both students and staff members were emotionally affected during protests. It is therefore important that structures and mechanisms are put in place to assist everyone to heal from these traumatic experiences. The UCT Student Care Line was established as a result of increasing levels of mental health issues among students, but generally students feel that this service is not

¹⁵⁵ <http://www.sadag.org/> Accessed on 30 October 2018.

sufficient adequately to meet the increasing demand when it comes to mental healthcare.

Concerns were also raised about the capacity of the Student Counselling Centre to cater for the mental health needs of all students in the university. Some students described waiting for between two and four weeks before they were able to see a mental health practitioner due to the high demand for services. They claimed that capacity at the Student Counselling Centre was too low.

UCT has undertaken to hire many mental health practitioners, including psychiatrists, to offer mental health support systems within faculties in addition to the services offered by the Student Counselling Centre. The university has also increased its capacity by providing 24-hour telephone counselling in partnership with SADAG. On the whole, it is clear that university, despite all the limitations and criticisms, is working hard to address the mental health needs of its growing student population.

In many of the submissions to the commission concerning mental health services the point was made of the necessity of seeing and understanding mental health challenges in context. They should not be separated from other contributing issues, such as poverty, lack of accommodation, alienation, racism, decolonisation and social cohesion. Students should not simply be pathologised without acknowledging their lived experiences. Alienation, racism, exclusion, discrimination, sexism, and homophobia, among others, were given as important examples of context.

Many students said that they avoid seeking help because of the stigma associated with mental health challenges. It was recommended that campaigns be organised to dispel myths associated with mental health challenges to encourage students to seek help when they are not coping.

It was also recommended during the IRTC hearings that the provision of mental health services should be extended to all staff members. Many support staff members expressed feelings of anger and disappointment that the university only cared about the students, but not about them as support staff, who also provided services to the students. Job satisfaction among some of these staff members appeared to be extremely low. It is therefore important that surveys are undertaken within the university to assess

support staff members' levels of job satisfaction and explore ways in which this may be addressed.

Some support staff members also presented with symptoms which appeared to meet diagnostic criteria of depression and anxiety-related problems, although no formal diagnostic assessments were conducted. Through various consultative meetings it became clear that some support staff members were not coping emotionally. These meetings provided a safe space for them to ventilate and express their individual feelings and emotions about their working conditions, which some described as hostile and unsupportive.

Mental health challenges also affect academic staff members.¹⁵⁶ The increase in student numbers has placed greater pressures on academic staff, some of whom now have very large classes to teach. This in turn increases their workload in terms of the test scripts, essays and exams that have to be marked within a short period of time. Increased workload has been found to be one of the major stressors amongst academics in South Africa.¹⁵⁷

The experiences of junior and senior academic staff members are not always the same and both levels must be taken into account. It was evident during the IRTC hearings that junior academic staff members were not coping as they are expected to carry a bigger workload, especially in the teaching of undergraduate students. Issues of disparity in terms of workload between junior and senior academic staff members were raised as a major stressor by many junior academics. Some junior staff members also said that they struggled to progress within academia and be promoted to any senior level due to lack of time to engage in research activities and publish articles in accredited journals. Their high workload makes it difficult for them to balance teaching and research productivity.

The problem of racism was also mentioned as a major stressor by academic staff members, especially black academics.¹⁵⁸ Some of these academics narrated personal stories of how they felt that they were discriminated against and how such experiences affected them

¹⁵⁶ Rothmann, S. & Barkhuizen, N. (2008). 'Burnout of academic staff in South African higher education institutions'. *South African Journal of Higher Education*, 22 (2), pp. 439-456.

¹⁵⁷ Ibid.

¹⁵⁸ See Chapter 6 for more detail about race and racism at UCT.

emotionally and mentally. It was explained that the racism they experienced was subtle rather than blatant racism.

Lack of support and counselling services for academic and support staff members was also raised as a concern. It was felt that attention always goes to the students when issues of mental health services are discussed in the university and that the mental health wellbeing of support and academic staff members is not taken into account. Some of these concerns were raised in the context of Prof Mayosi's passing with the view that more needs to be done in supporting staff in terms of mental health services.¹⁵⁹

The overriding conclusion in the multiple submissions is that UCT needs to improve its systems to provide mental health services to students, support staff members and academics.

¹⁵⁹ We have not addressed Prof Mayosi's death as we feel it needs its own commission of inquiry.

Chapter 9:

UCT FINANCIAL AID SCHEME AND ITS IMPACT ON NEEDY STUDENTS

Like all other institutions of higher education in South Africa, UCT is a microcosm of South African society and replicates the abject poverty and deep inequalities. It follows that these factors are present in the affairs of UCT and therefore that the university, in its education project and its attempts to serve South African society, has to contend with manifestations of poverty and inequality among its student population. It would be improper for UCT to operate as though it is an island, separate from the society that created it and whose interests it is supposed to advance. As expected, there would be a sizeable number of students who would struggle to pay university fees due to poverty and coming from an impoverished family background. The fee component of the university's operations budget has been increasing consistently in recent years due to the decrease, in real terms, of the government subsidy component.

The university operating budget for 2018 stood at R3.311 billion. Of this 44% is derived from student fees, 40% is from government subsidy and the remaining 16% is from donations and other sources.¹⁶⁰ This budget excludes student accommodation. Fees are therefore an important source of income for the university and if there is a significant portion of the student population that is unable to pay fees, the functioning of the institution would be adversely affected. With minor modifications this would have been the case going back a few years.

According to a submission to the IRTC by the Finance Department of UCT, this department manages the financial affairs of students registered at the university through the Student Fees Office. This encompasses the payment of fees, interactions with the National Student Financial Aid Scheme (NSFAS), the bursaries provided by the institution and scholarships by outside bodies. Obviously, all these have an impact on the learning environment and relationships of various elements of the university community.

The university in their submission detailed the various measures they had put in place to deal with the consequences of inequality in South Africa:

- The university has adopted a policy to support students who are academically able but financially stressed. Those students who come from families with a gross annual income of up to R600 000, and do not qualify for NSFAS funding, are provided with bursaries and study loans appropriate for their field of study.
- The university liaises with NSFAS on the particulars of students accepted by NSFAS and studying at UCT. More often than not, there is a delay in NSFAS transferring fees money to the university and to the affected students for books, meals and related matters. UCT provides such students with money for books, meals and housing and deals with the NSFAS for reimbursement. In 2018, 3 062 students were funded by NSFAS; in 2017 there were 3 407.
- In circumstances where there is a shortfall between what NSFAS provides for a student and the student's cost of study, the university covers the shortfall from its own resources, in what is called GAP funding, provided that the student shows good academic progress. In 2018 1 006 students received GAP assistance; in 2017 there were 1 134. Going further back: in 2016, 2015 and 2014, the number of students receiving GAP funding were 889, 827 and 676 respectively.
- There are students from poor families whose expected family contribution (EFC) qualifies them for UCT

¹⁶⁰ IRTC Submission, UCT Finance Department.

financial aid. Such students end up paying no more than R1 100 a year for their studies.

- UCT introduced a programme to provide free laptops to NSFAS funded entering first year students. Through this programme, 964 students and 1 000 students benefited in 2017 and 2018 respectively.
- The university has in place other measures to support students in financial stress. These include travel assistance to students from their homes to the university. In emergencies, the university has supported students to travel between the university and their homes. It had assisted 116, 110, 300, 455 and 329 students in 2014, 2015, 2016, 2017 and 2018 respectively.

In 2018 there were 3 195 students on external bursaries and other sources studying at UCT.

The IRTC heard from some students the painful but understandable truth that some students feel compelled to share part of the NSFAS or university study money with their families, given the poverty that exists back home. Such practices leave the students concerned short of money themselves and unable to meet their on-campus needs.

One student told the commission:

'This is common. I and five of my friends share our NSFAS money with our families ... it depends on what is happening at home or to us ... sometimes it is difficult to share and sometimes the family tells you they are fine and you don't have to send them anything ... I know it happens with students in other universities as well ...'

It would be unreasonable to take issue with such actions by the students concerned. In fact, their compassion and solidarity with their families is commendable. However, the university and other authorities need to grapple with this phenomenon.

There is no doubt that the measures the university has taken as outlined above contribute a great deal towards a more inclusive student population, allowing young people from financially able families and those from poor homes to study together. Although it is only one element amongst many in the inclusivity space, such as culture,

language, race, gender and others, it is nevertheless an important contribution towards making UCT and the South African society more diverse. It also contributes towards the elimination of financial background as a barrier to education.

The introduction of state-aided higher education for children from households with an income of R350 000 or less per year is a welcome and progressive step for education and training in South Africa. The commendable financial aid measures introduced by UCT would be valuable to such students and for the promotion of diversity and inclusivity at the university, at the same time as they advance the chances of academic success for students at UCT. This can only be a positive contributory element towards academic progress, transformation and a peaceful environment on the campus.

Chapter 10:

ACADEMIC AND SUPPORT STAFF PROFILE AT UCT

1. ACADEMIC STAFF

It was clearly noted in the Office of Deputy Vice-Chancellor (DVC) Transformation report¹⁶¹ that the events of 2015 and 2016 student protests required UCT urgently to deal with issues of equity and transformation. Of priority was the need for new initiatives to be found to deal with recruitment, development and retention of academic staff members, who must be supported until they reached professoriate level.

The word ‘transformation’ is highly contested in terms of its meaning, but for UCT in relation to academy and administration, transformation means creating a work environment in which all academics and students, irrespective of race, gender or class, feel a sense of ownership of all academic and administrative processes taking place within the university.¹⁶²

The total number of academic staff members at UCT in 2018 was 1 361.¹⁶³ In terms of academic levels, 247 were full professors, comprised of: 14 African South African (11 males and 3 females); 16 Coloured South African (9 males and 7 females); 18 Indian South African (14 males and 4 females);¹⁶⁴ and 135 White South African (92 males and 43

females). Two academics did not classify their categories; and 47 males and 15 females were professors who classified themselves as foreign nationals.

It is evident in the statistics above that white South African academics are overly represented at the academic levels of full professorship at UCT, followed by Indian, Coloured and African South Africans.

Some academics asserted during the IRTC hearings that the pace to address the issue of the lack of black professors was ‘painfully slow’.

In terms of gender, male academics across all racial groups were over-represented as compared to female academics. However, African female South Africans were less represented as compared to other females, with white female academics being over-represented. In their work, Mabokela and Mawila¹⁶⁵ assert that ‘*it is important to recognize that race, class, age, geographic location, disability, and sexual orientation interact to produce inequalities between groups of women.*’¹⁶⁶ Barriers that white female academics experience are not the same as those for black female academics, who continue to suffer. It is important that UCT explores ways to deal with barriers that prevent black female academics from achieving their career goals, including promotion to the level of professor.

¹⁶¹ Transformation Report, University of Cape Town, 2017.

¹⁶² Ibid.

¹⁶³ This is based on statistics received from the university in September 2018. Some of these figures may have changed since this report was written.

¹⁶⁴ The terms African, Coloured and Indian South Africans are used in the report as this is how UCT uses these terms in its official reports on Transformation and Equity.

¹⁶⁵ Mabokela, R.O. & Mawila, K.F. (2004). ‘The Impact of Race, Gender, and Culture in South African Higher Education’ in *Comparative Education Review*, 48 (4), pp. 396-416.

¹⁶⁶ Ibid., p. 398.

The same patterns at UCT were observed when statistics for the level of Associate Professorship and Senior Lectureship were analysed. White South African Associate Professors are 408 (60 males and 80 females); Coloured South Africans at 28 (16 males and 12 females); Indian South Africans at 16 (10 males and 6 females); and African South Africans at 20 (15 males and 5 females).

In terms of Senior Lectureship, White South African Senior Lecturers are 198 (75 males and 123 females); Coloured South Africans at 50 (21 males and 29 females); Indian South Africans at 30 (13 males and 17 females); and African South Africans at 29 (17 males and 12 females). In terms of gender at senior lectureship, the number of female academics was higher than males, with the exception of African black females. This confirms that male academics occupy higher positions than their female colleagues. Evidence available indicates that African South African female academics occupy the lowest levels of all academic positions in the university. It is important that specialised structures are created to support black female academics to enable them to deal with their continued sense of isolation, racism, marginalisation, exclusion and sexism as these exist within many South African universities.¹⁶⁷

At the level of lectureship at UCT, the number of African South Africans shifts significantly to a total of 88 (38 males and 40 females), but this number is still low as compared to other racial categories. Coloured South Africans are at 79 (25 males and 54), and Indian South Africans at 37 (9 males and 28 females). White South Africans, as in all other academic levels, still remain high at this level, with a total of 147 (51 males and 96 females). This was raised as a major concern by many black academics as well as students during the IRTC hearings: '*UCT needs to transform in terms of its staff profile.*'

However, it is also important to note that the number of African South African academics at the levels of senior lecturer and lecturer at UCT has been increasing, as revealed by the 2017 Transformation report. Although a lot of work is still needed to increase this number, it is an achievement that is worth celebrating. It is noted that UCT has been benefiting from the New Generation

¹⁶⁷ Mabokela, R.O. (2000). 'We cannot find qualified blacks: faculty diversification programmes at South African universities', in *Comparative Education*, 36 (1), pp. 95-112.

of Academics Programme (NGAP), an initiative pioneered and funded by the Department of Higher Education and Training (DHET). The aim of this programme is to support black South African early-career academics and give them the opportunity, during the protected period of six years, to establish themselves at universities. Universities are expected to apply to the DHET when looking to employ new entry-level academic staff and the DHET contributes financially to these posts. In the period of 2016 and 2017, UCT applied for a total of 12 posts which were given to 9 black African South Africans, 2 Coloureds and 1 Indian. While these are entry-level posts this opportunity may help these academics to qualify for promotion later in their careers.

Some academics acknowledged that UCT has good policies and offices (e.g. the Discrimination and Harassment office; Naming of Buildings Committee; Arts Task Team) but many of these policies/offices/teams do not work in practice. Some academics shared personal stories of reporting their experiences of racism (see Chapter 6) to the office of Discrimination and Harassment but up to date of the submission to the IRTC their cases had not been resolved or attended to.

Other academics acknowledged some strides have been made but some commented that '*transformation at UCT is still far from ideal to address the imbalances of the past, including academic staff profile to match the demographic of the South African society.*' It was emphasised during the IRTC submissions that attempts should also be made to retain the new generation of black academics who join UCT as assertions were made about how competent black academics get recruited but many do not stay for too long due to the toxic work environment, which many described as '*unwelcoming and hostile.*'

2. PROFESSIONAL, ADMINISTRATIVE AND SUPPORT STAFF

There are currently 3454 Professional, Administrative and Support Staff (PASS) members at UCT. Of the total number, 1 207 (34%) are African South African, 1 550 (44%) are Coloured South African, 94 (2.7%) are Indian South African, and 478 (13.8%) White South African and 50 (1.54%) did not identify themselves. Appointments of senior staff members in 2015 and 2016 show some commitment from

UCT in addressing issues of equity, although a lot of work is still needed in this regard. This is because in the period of 2015 and 2016, senior academics from disadvantaged groups were appointed to senior management positions. Examples are: Transformation, DVC for Research, deans for Commerce and Engineering, the university's Registrar, and a Director for Finance. Appointment processes are under way for the deans of Humanities, Health Sciences and Law.

Some of those who made submissions congratulated UCT for its appointments of black senior managers over the last few years, while others were critical, and sceptical as to whether these appointments would lead to any change or whether they were *'just tokens to mask UCT's entrenched racist discourses'*. Other comments were made that appointing these academics from designated groups *'does not automatically change the status quo as things still remain the same'* and one black academic claimed: *'the power in the university does not entirely lie in the university but sits with deans, faculty committees and research units which are led by white professors. All these structures have so much power about what happens in the university than to be a Dean or Vice-Chancellor.'*

An emphasis was made that *'real change needs to happen in all levels of the university, including for support staff members'*. Some support staff members complained bitterly about being undermined by both their managers and academics who, they said, treat them as *'nothing'*.

The UCT Council in 2015 decided to insource outsourced workers following the #RhodesMustFall and #FeesMustFall protests.

The process of insourcing has drastically changed the staff profile at UCT. The majority of those occupying unskilled positions are African South African (123 males and 336 females), followed by Coloured (62 males and 181 females). Noticeably, no White or Indian South Africans are hired at this level. All these inequalities in terms of support staff members are rooted within the history of colonial apartheid in South Africa. Many support staff members at this level include cleaners and gardeners.

The majority of white South Africans occupy professionally qualified mid-management and semi-skilled positions. These are some of the critical issues raised during the

#FeesMustFall movement with the support of black academics.

UCT must be commended for its decision following the #RhodesMustFall and #FeesMustFall protests to insource outsourced workers, although this process has not gone without difficulties. Some tension between unions and the university management are evident. Various submissions were made by different unions, raising questions about workers' rights and other labour-related issues, but the commission felt that this went beyond its scope. However, recommendations are made in the conclusion of this report about the need for the university management to engage with unions. The university's Human Resources office has undertaken to attend to some of the issues to promote equity, fairness, workers' rights, staff development, and the skilling and re-skilling of support staff members.

Chapter 11:

STUDENT PROTESTS

1. THE RIGHT TO PROTEST PEACEFULLY

Section 17 of our constitution, under the heading ‘*assembly, demonstration, picket and petition*’, provides that: ‘*everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.*’

Many people understandably conclude that because some of the actions during the demonstrations or protests in February 2016 and before were not peaceful, those students who were not protesting peacefully were acting outside of the constitution and therefore do not deserve the protection of the constitution. This view then proclaims that students who have behaved unconstitutionally must be punished for that is the only way in which to preserve the constitutional order.

It is true that the constitution protects peaceful protests and demonstrations and nothing else. We accept that peaceful protest according to the constitution is non-violent protest and that violence is inconsistent with peace. Of course we talk here of intentional violence.

That does not mean, however, that a proper interpretation of the constitution has the result that all those who protest or demonstrate in an arguably unpeaceful way, like burning tyres, destroying property or setting up barricades, must necessarily be punished. This is the first important point to remember.

The second aspect to heed is that peaceful protest does not mean ineffective protest. Indeed, the right to picket peacefully shows that the constitution does not contemplate ineffective protest. A picket does, absent the provisions of the constitution, indeed have a negative impact on the rights of the entity against whom the protest is. It cannot be said that all pickets and protests should have no negative impacts on the rights of, for example, the business entity affected.

If, for example, 20% of suffering students at a university decided that the constitution in its requirement of peaceful protest meant that they should all gather somewhere in the university not used by anyone else with restricted movement and proceed to sing freedom songs day after day, the authorities would have very little reason to pay attention to them, let alone feel compelled to do something about their grievances. It would be business as usual for the rest of the university and this would mean that the protesters would probably achieve little or nothing; they could, through the inaction and lack of response of the authorities, become victims of further hidden violence. The protest would in all probability be ineffective and lead to nothing except to more frustration.

In our view, effective protest must mean protest that has at least the possibility of achieving some change and the potential to lead to the redress of legitimate grievances. It is our view that the constitution contemplates that legitimate protests should have the potential to exert

sufficient pressure on bosses, authorities at universities, government entities and the like to change their views. These could hardly change without the requisite pressure. That pressure is ordinarily brought about by causing inconvenience to those who disagree. In the student protesters case this could either by blocking entrances or forming human barricades and other similar actions.

The difficult question is this: what action goes too far to be legitimate protest? We must remember that the only qualification in the constitution is that protest must be conducted peacefully and that the people participating in the protest must be unarmed.¹⁶⁸

No court has yet interpreted Section 17 of the Constitution in order to determine what its limits and possibilities are. Courts have said that violence is not peaceful and that those who bear arms during protests are not protected by the constitution. To put it another way, the real issue for us to determine is this: what are the legitimate limits and boundaries of protests if we accept that a measure of pressure against the opposition is inevitable in protest action?

We have referred to the decision of the Constitutional Court in *Hotz*¹⁶⁹ in chapters 2 and 4 of this report. The court has certainly held that burning of property and other forms of violence does not fall within the protection afforded by the constitution. But the court certainly did not say that the students/applicants in that case did not deserve constitutional protection. On the contrary, the court made it plain in the judgment that the students, because of the ‘constitutional context’ and because the students were striving to achieve their constitutional rights, should be protected by the constitution and not required to pay the university’s costs.

The Supreme Court of Appeal in the *Hotz case* makes the point, in the context of whether an interdict should be granted to the university, that the university is entitled to carry on with its activities, not to have entrances and access blocked and not to have roads blockaded and that therefore the university was entitled to the interdict. This

is a far cry from saying that the unlawful action in limiting the rights of the university is unconstitutional.

Blockades, human chains and other stratagems designed to cause disruption, inconvenience, unhappiness, discomfort or even limit the rights of the university cannot be described as not peaceful. No court has given a judgment on whether this kind of protest was unconstitutional. *The Hotz case* was so suffused with violence that constitutionality of peaceful, inconvenient protests that block roads and entrances to buildings, for example, did not reach the agenda.

The question of whether all unlawful conduct during protest action should be the object of disciplinary or criminal proceedings is discussed in Chapter 2.

It is essential for those in power, especially at universities, to manage these protests which give rise to inconvenience and disruption (indeed all protest action) with both sensitivity and care.

The legitimacy of the way in which protest action is managed by an entity, including a university, depends to some extent on the reasons for the protest action. As we have just said, all protests must be handled with sensitivity and care. However, the more compelling the cause or reason for the protest action, the less appropriate it would be for a sensitive and caring authority simply to throw the rule book and the law at protesters and to manage them with disciplinary measures, criminal charges and/or interdicts. If, for example, the entrance to the university were to be blockaded because protesters wanted the university to ensure that multiple rape charges against one of their comrades should be withdrawn, careful and sensitive management of the protest may well entail little more than the enforcement of the rule book and the law with greater rigour and force. If, however, the protest is the result of years of perceived racism, oppression, domination, discrimination and lack of caring on the part of dominant, racist and other forces at the institution, the careful and sensitive managers will have at the forefront of their approach a focus on engagement or consultation, negotiation, an effort to mediate or settle the issue and promote reconciliation. Managers should always ensure that security forces, including private security brought onto the campus, should act with restraint and every effort should be made by the authorities to negotiate

¹⁶⁸ In addition to a general limitation clause as contained in the Constitution of the Republic of South Africa, 1996, section 36.

¹⁶⁹ *Hotz and Others v University of Cape Town* [2017] ZakC 10, paras. 33 and 34.

with the students with empathy and understanding – certainly not on the basis of threats of arrest and other dire consequences.

Against this background we look at the actual causes of the protests at the university. For now, we emphasise that peaceful and unarmed protest is not limited to protests that cause no inconvenience to anyone responsible for the cause(s) of the protest or benefiting from the reason for the protest.

2. THE CAUSES OF PROTEST ACTION

We would like to start the discussion of causes in a hypothetical way. At a high level of abstraction, the causes of unrest are so many and so widely varying that the discussion of the topic might take volumes. For our purposes, though, we might be content with an approach that the causes of protest fall into two categories. The first category is that in which the causes of the protest are not real and are manufactured, with the protest designed to achieve an ulterior purpose. The second category is that in which the causes of the protests are real, emanate from real pain and suffering and are aimed at creating a better society. In this second category there are many degrees of causation, depending on the degree of pain and trouble that gave rise to it.

No one has yet suggested, nor could anyone ever suggest, that the disadvantaged black students at UCT have no cause and nothing real to complain about, that they have no real pain and that the difficulties they articulate are imagined or self-created. Indeed, it is conceded in the agreement between the executive and other role players (Annexure A) that *'we have our own particular challenges that we need to address ... related broadly to questions of transformation, decolonisation, curriculum change, institutional culture, names of buildings and symbols ...'* Interestingly, this formulation in the agreement does not include any reference to race and gender discrimination or culture domination. We are prepared to assume that the reference to transformation and institutional culture as a problem that needs to be addressed does indeed cover issues of racism, gender discrimination and culture domination. This is a significant concession, but the question still is whether these problems and issues are

recognised and addressed in real practical terms on a consistent, progressive and programmatic basis.

This evidence is dealt with in considerable detail in the previous chapters. Before we summarise the causes of the protests as reflected in these chapters, we must say categorically that the process we conducted was not a judicial one. We have not cross-examined any person, nor have we put one version against another. We have formed our opinion on the basis of our own understanding of South African reality, taking into account our collective responses to what we have heard, attempting to achieve a proper balance between an objective and a subjective reality.

Therefore, although there cannot be said to be proof in the real sense of the word, we are satisfied that most of the averments made by people who gave evidence before us are certainly not without foundation.

Chapter 3, which expands on the events of #RhodesMustFall, #FeesMustFall and the Shackville protest, shows that emotions were very high and there was a sense of determination on the part of the students to achieve some progress in achieving a laudable result. The chapter also demonstrates that the executive's response to the pleas and protest by the students was far from satisfactory. Indeed, the executive has not begun to say to us that they have recognised the problems of racism, gender discrimination and cultural domination and that they have considered it sufficiently, sensitively, transparently and responsibly. For this, in our view, is exactly what is required.

With regard specifically to the Shackville protest, there was clearly a decision by someone to break down the shack and no one has provided evidence that the executive had, before that decision was taken, negotiated sensitively and responsibly with the students. Apparently, all that was done was provide the students with a written request that they should move the shack to a field nearby, a request that could well have been perceived as an uncaring, authoritative and racist instruction. We must also say that, even though the shack was constructed unlawfully, if the student leaders had been properly engaged beforehand and the university had applied, with notice to students, for an order of court authorising them to demolish the shack, things would probably have been different. We bear

in mind that the university's application for an interdict was made after the shack had been demolished and students arrested. As it is, the approach by authorities in speaking to students through barred gates, in deciding unilaterally to break down the shack without a court order (which might amount to taking the law into their own hands) and in authorising mass arrests, reasonably reinforced the negative perception that students already had of management. The impatience and deep pain and unhappiness of the students on the one hand, and the not so appropriate response by management on the other, resulted in the fact that one event led to another and the situation escalated.

The response of the authorities would have led to a perception by students that there was and would be no change, that it would still be business as usual and that the authorities would continue in their unresponsive, insensitive, mechanical, racist and dominant way. Needless to say, these perceptions inevitably fuelled the fire of rage so that the troubles at the university worsened. We emphasise that there is an alternative approach to force and arrest in managing protest problems.

Chapter 5 is concerned with amnesty. All the applicants were obviously extremely unhappy and deeply disturbed by their experiences at the university, particularly at the time of the protests. Most of these applicants did not come across as arrogant 'know it all's' but as humble people in a conflict. On the one hand they understood that what they had done was not wholly acceptable; on the other, they thought that their actions were necessary to achieve a positive result.

Chapter 6, concerned with racism, shows that the allegations of the existence of racism at UCT were stronger and carried more conviction than the allegations of people who said that racism did not exist. This is perhaps an understatement because nobody said that racial and gender domination did not exist. It is quite clear that race and gender domination continued at the university. This was not necessarily brought about by the deliberate intention of those in a dominant position, but more by people who had worked in a culture of domination for many years and who had gotten into the habit of dominating.

We found particularly touching those statements which showed that they felt dominated and discriminated against even by attitudes of exaggerated non-racism and non-domination, which were seen as patriarchal pretence. We think that there is enough substance in the picture that has been created before us, that complaints by white people against black people were more rigorously investigated and punished than vice versa complaints, to warrant further investigation.

Chapter 7, which deals with residences, tells the same broad sad story. Residences are run in a way that marginalises and prejudices black people. We find it understandable that poor black students who have even poorer black friends would use their accommodation to help their friends. We understand also that this increases the pressure on the services provided by the university in the residences.

But what is the answer to this difficulty? Is the correct answer that those students must be thrown out of the residences and punished? Or is it perhaps better to understand this problem and manage it more carefully? We are of the view that the latter is a better approach. The practice of creating the situation where students were, on arrival at the university at the beginning of their first year, not given the accommodation they had been promised in writing in response to their application, increased the sense of alienation, grievance and anger. So did the practice of strictly applying the rules and throwing black students out of the residences instead of dealing with a difficult social problem which needed to be managed sensitively, creatively and sympathetically.

Chapter 8 shows that the practices at the university as well as other societal conditions have a serious impact on the mental health of both the students and staff, mainly black students and staff. This important factor cannot be left out of account as one of the factors adding to the complex of causes of student protests. Students and student leaders would undoubtedly have been aware of this and this awareness would have increased a sense of dissatisfaction and of being wronged.

Chapter 9 demonstrates an interesting though concerning concatenation of circumstances. On the one hand it seems beyond debate that UCT's financial aid scheme is better and reaches poor students more widely than

the schemes of most other universities in the country. On the other hand the difficulty pointed to by many (including the UCT financial aid office) is that most poor students feel obliged to send money to their families and remain in poor circumstances themselves. We were amazed that one member of the financial aid office was rather unsympathetic about this and was intent on demonstrating that it is not the university that is at fault for students having no money for food – it was the student who was at fault because she had sent money to family that should have been used for her own wellbeing. Our conclusion is that the university ought to have been aware of this difficulty and ought to have developed a strategy by which to manage the situation carefully and sensitively. The fact that students were in distress despite receiving money from the university was also a contributing factor to the protests.

Chapter 10 shows that the demographics of the staff component and the dynamic of the relationship between academic and non-academic staff, who are mainly black, is a significant factor in the equation. There is an interactive relationship between the negative demographics of the academic staff component and of the student component. In addition, poor black students and poor black staff would understandably make common cause and support each other. We find no difficulty with the idea that staff members joined the protest action and found it difficult to accept that those who did join did so under duress. The dynamic would have been very different, we think, if the academic staff and the students had been racially more representative.

The management of the university and other staff members said in defence of the existing position (after admitting that the staff demographics were far from satisfactory) that competent black staff members are driven to industry because there is more money there. This statement is, in part at least, racist. It necessarily implies (and we accept that this necessary implication might not be consciously intended) that people who are not white are by their nature more interested in material advancement than in academic development. We would suggest that most people of all races are interested in self-advancement and material progress. There is, however, a discreet element of every race group that consists of people who are interested in the development of academia

with a passion, and are prepared to advance academically both to develop themselves and to achieve this laudable end. We also think that there is some merit in the view that black people are not made sufficiently welcome at the university to entice them to either apply for positions or to stay on.

A culture of building racial equity is the antithesis of a dominant culture, which promotes assimilation over integration and dismisses opportunities to create a more inclusive, equitable environment.

The way the university is perceived needs to be changed as a matter of urgency. We believe that expert consideration needs to be given to whether there is need for a critical minimum percentage of black students and black staff to ensure that they have sufficient strength and dignity not to be trampled upon. Creating a culture of equity requires an adaptive and transformational approach that impacts behaviours and mindsets as well as practices, programmes, and processes.

We accordingly conclude that the causes of the protest action lay deeply within the history of our country, in the culture of the university and the resultant (possibly unwitting) dominant attitude of senior staff and management. We must not be understood to mean that all people and departments at the university suffer the same malaise equally. Staff of some departments and faculties may be better than others and it may well be that there are departments who have tried hard to achieve reconstruction and may have succeeded. We do not mean to ignore these people and departments but commend them warmly.

3. THE LIMITS OF PROTEST ACTION

This issue has already been addressed to some extent in the last section of Chapter 2 under the heading **OUTSTANDING CASES**.

We reiterate that it is reasonable that protest action is needed in order to bring some pressure on any administration and to cause those who are perceived to be unjust some inconvenience. As we have said before, the difficulty is to decide how far protest action can go. In other words: when can it be said that the pressure exercised by protesting students is unreasonable in the

circumstances or that the inconvenience is too much in the circumstances?

This question cannot be answered without understanding the context. It depends on the nature of the problems or grievances, the reasonableness of the conduct of protesting students before the protest began, the response of the administration once the problem has been raised, and the reasonableness of the conduct of both parties in the negotiations if any that take place.

By way of example, we apply these standards to the protest action currently being evaluated. The problem of racism, cultural dominance, inconsideration and a belief by some in their own absolute superiority (whether consciously or not) have existed at the university since inception and in South African society for hundreds of years. More importantly, there has been little change at the university in relation to these matters since the achievement of our democracy more than 20 years ago.

We have already expressed our view that the response of the authorities was neither careful nor sensitive, and that no meaningful negotiations took place until very late in the day. We must point out that the protests did reduce in their intensity after the agreement was reached. This does not mean (as we later say) that it can be assumed that the university can now continue with 'business as usual'. In the circumstances we are inclined to the view that the student protests should have been anticipated and were reasonable, at least at the beginning, and that the absence of sensitive management resulted in undue escalation.

The limit to protest action was ultimately exceeded but that excess was not deliberate or planned but was at least in some measure caused by the response of the administration and security.

It is therefore critical for this commission to make recommendations on how protest action can be limited and mitigated in the future. We turn to this question next.

4. THE APPROPRIATE HANDLING OF PROTEST ACTION

The first comment we must make is that there is no quick fix. Anybody who thought that the work of the commission and its recommendations would result immediately in a

positive, peaceful, spontaneous and caring community at the university, would be disappointed.

This, to an extent, is because, as is mentioned previously in this report, many of the black students come to the university having received a wholly inadequate education. Even the government of our country will concede that the education in most of our public schools is woeful to say the very least. A temporary answer might well be to pay special attention to and consistently improve special programmes that are offered to black students who have been victims of poor education. This must be done in a way that keeps all staff and university on board. Many of the students and academics who appeared before the IRTC spoke to an environment which was alien and not welcoming, in which the culture remains predominantly white. Those coming in are expected to conform, leaving very little room for the university to adapt to a new demographic.

We must also always remember that the process of improving the demographics at the university will take a long time. The university must make sure that it pays more than lip service to this objective. In essence, we need to create the conditions in the university community in which we are able to nurture and develop non-racism and non-sexism. This will take a long time. Indeed, it is our view that true non-racism and non-sexism does not exist in our society at large either. Some of the people who tried to help the commission expressed the view that it was unreasonable to expect the university to be different from the rest of society because, so it was said, the university is a microcosm of the rest of society.

We accept that it is very difficult to conceive of a perfectly non-racial and non-sexist community at university in circumstances where society in general remains significantly racist and sexist. But we do expect, without qualification, that the population at a university should be substantially and significantly less racist and less sexist than the rest of society. The university community should be leaders in initiating and taking forward change.

Research suggests that all organisations go through a cycle of change as they transform from a white dominant culture to a culture of race equity. These changes include increased representation; a stronger culture of inclusion; and the application of a race equity lens to

how organisations and programmes operate. A journey of this kind of change pushes organisations to become more committed, more knowledgeable, and more skilled in analysing race, racism, and race equity, and in placing these issues at the forefront of organisational and operational strategy.

There are experts who can help the university to determine processes and programmes by which the culture at the university can become more inclusive, more accepting, more respectful of the other and less racist and sexist. These experts must be employed, and continuous visible processes and programmes must be put in place with regular monitoring to determine how far along the road we have come.

Part of the process is to teach constitutional values. The values of the constitution are not the concern of lawyers nor lecturers or law students alone. We must strive towards a situation where we as a university academic corps learn the values of the constitution, internalise them, practise them and make sure that other people practise them. This, too, is a long process.

More narrowly, university management should learn not to bury their heads in the sand. They should instead anticipate student grievances and protests and develop plans to respond to them, not by way of reaction but proactively, pre-emptively, positively, realistically and sensitively. We must learn to acknowledge where we are wrong.

5. DRAFT PROTEST ACTION POLICY

An understanding of protest action and what is to be done about it is contained in a draft policy on protest, apparently prepared by the university executive and made available to us. So was an objection raised by a senior executive that the policy penalised students alone and that it should also apply to staff. This objection, as we understand it, was readily conceded. We understand the objection to mean that the policy should also equally provide for staff who involve themselves in protest.

In our view, the trouble is much deeper. The code of conduct should also make clear how management and staff should behave during student protests, not with a view to punishment of staff who might disobey, but to

ensure that management and staff do not overplay their hand and that they remain sensitive, making every effort to dissipate tensions instead of worsening them.

Chapter 12:

CONSTRAINTS EXPERIENCED BY THE COMMISSION

In its activities since the beginning of February 2018, the IRTC found itself confronted by a few constraints, both minor and significant. Some of them follow below:

1. AVAILABILITY OF COMMISSIONERS

Despite their deep commitment to the IRTC, which they regard as a form of national duty, all five commissioners have very busy schedules. Co-ordinating their diaries for IRTC work proved to be a challenge. It was probably 50% of the time that a full complement of the commissioners would be present for hearings, meetings and other engagements in Cape Town and Johannesburg. Accordingly, the commissioners agreed on a quorum of three commissioners to constitute a legitimate meeting, as well as agreeing to work through a WhatsApp group, emails, Zoom and telephone calls. Considering that the commissioners are based in four cities, namely, Cape Town, Johannesburg, Durban and Polokwane, the arrangements worked fairly well.

2. COMMUNICATION

The IRTC had its own media person to deal with all and any communication between the commission and the university community as well as external media. While the IRTC acknowledges the difficulties in dealing with the university, this was a challenge for the university too in terms of communication. Social media platforms became the main vehicle of communication between the commission and the university community. It soon became apparent to the commission that only a small percentage of the UCT community had a clear understanding of what the IRTC was about and how to interact with it. Some had

their own idea of what it ought to do, far removed from the ToR of the commission. The majority of members of the institution had only a very vague knowledge of what the IRTC was about.

The IRTC discovered that many of the academic staff at the university had not been kept informed by management of the outcome of disciplinary processes that the university had embarked upon as well as the clemency offered to students. The lack of communication by management and the executive has given rise to a distinct lack of trust in management and executive.

The small percentage of those who were intimate with the issues the IRTC was about were mainly those acting in a representative capacity, in leadership positions or activists. These persons were very engaged indeed and passionate about the work of the IRTC. However, this did not mean that they were always easy to reach for purposes of interactions with the commission. With the help of some activists on campus, more and more people became engaged, especially towards the end of the hearings. It is safe to say that, ultimately, quite a sizeable number of constituencies on the campus were able to relate with the commission, make submissions or attend hearings.

3. ORGANISATIONAL SUPPORT AND RESOURCES

The steering committee and the university administration appointed an independent secretariat for the IRTC and

various individuals were available to assist the commission whenever necessary. There were occasional lapses with a variety of issues, such as venues for meetings or hearings, or payment of the media person, or the purchase of services from service providers that irritated from time to time. The commission did not regard these as a political ploy to thwart its work, but either as inefficiencies inherent in the university administration or lack of understanding of what needed to be done with the novel entity that the IRTC represented. With the intervention of senior people in the institution, these were always resolved.

UCT ensured that flights, land transport, accommodation and other services which facilitated the work of the commission were provided. The chair of Council, his deputy and other members of the steering committee or university administration were always available for consultation whenever necessary.

4. AN ATMOSPHERE OF FEAR AND MISTRUST

This was the most astonishing and disturbing element the commission encountered during its interactions with different members of the university community. We heard members of the university community, from academics to PASS staff, to students who talked about living in fear on campus and not being able to trust other students, fellow employees or even the commission itself. Some talked about being bullied by their superiors and working under constant fear of being victimised for flimsy or no reason.

PASS members appear to be more vulnerable to bullying by their immediate authorities, academics and university management. During the protests and after, they have become fearful of students as well, having been caught in the middle of the contending students and university management. Some talk of having become so jumpy that any noise on campus brings flashbacks that cause them to lock doors or take whatever defensive action they deem necessary.

A foreign doctoral student talked of being shocked to see a supervisor shouting at a fellow doctoral student in a thoroughly unacceptable and humiliating manner. She said such a thing would be completely unthinkable in her European home country. She was by no means an exception. This seems to be a culture of behaviour that is present in a number of faculties.

Some said they dreaded waking up in the morning to report for duty due to the toxic environment in the university. Others spoke about being depressed, being on medication and occasionally being booked off sick by their doctors due to problems at work. No doubt, this would have an impact on the productivity of the university workforce, as well as contributing to the mental wellbeing of the university community.

Universities are generally expected to be an arena where the freedom of thought, ideas and expression reign supreme. It is therefore highly concerning that an atmosphere of fear and anxiety could exist at a prestigious institution like UCT. In addition to being bullied by people in positions of authority, some members of the university community, especially PASS, spoke about being bullied, intimidated and insulted by rude students. Even those who supported the cause of the students, or were neutral, were not spared the rudeness of some of the protesting students. Some remain traumatised to this day. Their relationship with students changed from cordiality to fear.

The commission is careful not to concern itself with occasional tensions and disputes that would occur at most workplaces. The general atmosphere of fear, apprehension and mistrust at UCT appears to be extraordinary, going beyond the usual workplace dynamics.

Attempts by the commission to establish the existence of a cabal, structure or organisation, secret or otherwise, which could be responsible for the creation of the atmosphere of fear and mistrust at the university, did not yield any results. It is not clear whether this is due to the reluctance of people to speak out or not. But it could be that a culture of bullying and abuse of underlings had taken root at the university over time in the past.

Combined with the frequently expressed view that UCT is unwelcoming and strait-jacketing, an atmosphere of fear and mistrust cannot be good for the university. UCT should be alarmed by it and take the necessary steps to determine its origins and eradicate it.

Chapter 13:

PATH TO AND PROCESS OF RECONCILIATION AND TRANSFORMATION

1. INTRODUCTION

Archbishop Desmond Tutu once wrote:

‘These goals of restoration and reconciliation have value beyond state borders of countries emerging from violent pasts. Justice, freedom, human security – none of these globally held ideals can be attained by one individual or one group at the expense of another; they are by their nature indivisible.’¹⁷⁰

The South African Reconciliation Barometer (SARB) – a public opinion survey conducted by the Institute for Justice and Reconciliation (IJR) since 2003 – revealed that most South Africans think that reconciliation is still needed. However, *‘Six in ten South Africans, furthermore, feel that reconciliation – most commonly associated with forgiveness, moving on and peace – cannot fully take its course while those who were oppressed under apartheid remain poor.’¹⁷¹*

Reconciliation is a complex and multifaceted concept, which can venture at multiple levels of human interaction, be it individual, interpersonal, socio-political¹⁷² or institutional levels and has been understood and

developed differently in different contexts. Following years of oppression, South Africans coming to terms with their past have frequently found themselves in a situation of rebuilding the antagonised social fabric, which has been broken by years of racism, discrimination, disadvantage, injustice and violence. As Lederach once wrote, *‘an enemy is rooted and constructed in our hearts and minds and takes on social significance as others share in the creation.’¹⁷³* Reconciliation is therefore an adaptive and dynamic process of healing and building, and the process of change and redefinition of relationships.¹⁷⁴ According to Lederach, reconciliation combines the elements of truth, justice, peace and mercy that cannot operate independently from one another.¹⁷⁵

In the South African context, Archbishop Desmond Tutu translated the notion of forgiveness into the concept of *ubuntu*:

‘Ubuntu is very difficult to render into a Western language. It speaks of the very essence of being human. When we want to give high praise to someone we say, “Yu, u nobunto”; “Hey so-and-so has ubuntu.” Then you are generous, you are hospitable,

¹⁷⁰ Tutu, Desmond. 2007. ‘Reflections on Moral Accountability’, in *International Journal of Transitional*

Justice, 1(1), pp. 6-7.

¹⁷¹ <http://www.ijr.org.za/home/wp-content/uploads/2018/03/IJR-Barometer-Report-2017-WEB-final.pdf>

¹⁷² <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>

¹⁷³ Lederach, John Paul. *The Colonel, The Journey Toward Reconciliation*, 1999, Herald Press.

¹⁷⁴ Lederach, John Paul (2001)/ ‘Civil Society and Reconciliation’, in Crocker, Chester A., Hampson, Fen Osler & Aall, Pamela (eds.). *Turbulent Peace: the Challenges of Managing International Conflict*, Washington DC, USIP, pp. 842-47.

¹⁷⁵ Lederach, J.P. (1997), *Building Peace*, United Institute of Peace, Washington, DC.

*you are friendly and caring and compassionate. You share what you have. It is to say, "My humanity is inextricably bound up in yours." We belong in a bundle of life.*¹⁷⁶

There has been much confusion and misunderstanding about what the terms 'reconciliation' and 'transformation' mean, and how they relate to each other. Some have seen both these terms to be independent of each other. On this approach, reconciliation is taken to mean forgetting the past, accepting that everyone in society (or at least the majority) has recovered from the dire debilitating consequences of apartheid, is rid of racist and sexist tendencies, and that, as fairy tales would have it, we will all live happily ever after. They also say that transformation will take a long time, and will inevitably occur, provided there is reconciliation and goodwill. The view also goes that people, especially black people who do not fully reconcile in the way described earlier, negatively affect transformation.

We do not and cannot say that this view is held by the powers that be at the university; nor can we say that white or black people at the university hold this view. We state this viewpoint simply to use it as a standard or a point of departure.

We firmly reject this approach as naive, wrong and counter-productive. We discuss our approach to reconciliation and transformation against this background.

The terms 'reconciliation' and 'reconstruction' were employed in the Interim Constitution, 1994. We refer to the use of the word reconstruction because the concept of 'transformation', with which we are concerned, is not referred to in our constitutional structure. We are convinced, however, that the reconstruction of our society as contemplated in the constitution is sufficiently equivalent to 'transformation' about which this commission must make recommendations.

The interim constitution, under the heading 'National Unity and Reconciliation', reads:

'This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice,

¹⁷⁶ Tutu, Desmond. *No Future Without Forgiveness*.

and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

'The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

'The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles, in violent conflicts and a legacy of hatred, fear, guilt and revenge.

'These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.'

The members of this commission are of the view that these paragraphs are apt to capture in approximate though real terms the position which continues to confront us in South Africa today and at UCT (although there is no doubt that there has been some improvement). We fervently trust that the path to reconciliation and transformation (or reconstruction) detailed in this chapter and the recommendations made in this report will likewise be a bridge between the deep divisions and discrimination of the past at UCT, during which many people (both students and staff) suffered greatly after 1994, and a future of understanding, reparation and *ubuntu*. We would also hope that the implementation of this report will contribute towards the achievement of some of the objectives the final Constitution (1996) proclaimed in its preamble:

'Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

'Improve the quality of life of all citizens and free the potential of each person ...'

In the view of the members of this commission, both our constitutional setting and common sense dictate that reconciliation and transformation are interactive dynamic concepts that are interdependent and interrelated; interrelated in the sense that while it may be very difficult to achieve reconstruction or transformation absent some advance in the process of reconciliation, reconciliation without reconstruction or transformation is quite impossible. The interim constitution makes it clear (and rightly so) that what is required is true understanding among the people of our country and reparations. It is this true understanding and empathy that is the essence of reconciliation, while reconstruction or transformation is an aspect of reparation, or, as section 9(2) of the constitution puts it, *'the advancement of persons or categories of persons disadvantaged by past discrimination'*.

Reconciliation cannot be achieved where there is no acknowledgement of wrongdoing or of what has happened and a real effort to address it. Reparations without the acknowledgement is meaningless for those whose rights have been violated. We must emphasise that reparation or reconstruction goes far beyond financial provisioning. Real reconciliation and reconstruction entail both a material and a non-material element; transformation and reconciliation entail care and concern for the human condition, which includes social, psychological and humanitarian elements.

2. THE PATH TO TRANSFORMATION AND RECONCILIATION

In a broad sense, therefore, the path to transformation and reconciliation has at least five elements. We cannot claim to be exhaustive.

The path lies, firstly, in a continuous effective and meaningful process by which each and every member of the university community begins to develop a progressively better understanding over time, of apartheid and its devastating consequences for humanity and human existence in our country. The devastating effects upon black people was undoubtedly the suffering, disempowerment and poverty caused by the prejudices

and unacceptable actions by dominant white people. But white people too were negatively affected. Virtually the whole white community, subject to some exceptional people, had inculcated into it, over centuries, notions of their superiority over people of other races in virtually every aspect of life. It is our considered view that this approach and attitude acquired, justified and cemented into position over centuries cannot be totally eliminated in a short time. The process should consist of programmes for both black and white members of the university community, preferably not in isolation of each other. It is only if we truly understand the past that we can plan the future remedy.

Secondly, reconstruction should comprise programmes of affirmative action as required by our constitution based on an understanding of the past. It will not do to treat all members of the university equally, regardless of race, sex, gender, sexual orientation and the like, as if equality already exists in our society. An approach of this kind would simply deepen inequality. As implied earlier, the university must put in place viable and workable programmes aimed at advancing persons or categories of persons disadvantaged by past discrimination in order to achieve substantive equality, equality in substance rather than mere formal equality. The university needs also to ensure that these programmes are acceptable to privileged persons or categories of persons within the university community.

Thirdly, the university must ensure that all its personnel, academic and non-academic, including management, are trained to treat students from disadvantaged communities with particular sensitivity, understanding and respect. We have little doubt, for example, that a statement by a lecturer to the effect that, according to past experience, only half the students would pass a particular course, is more than likely to offend and disorientate a student from a disadvantaged community or a student from a poor background, more easily and to a far greater extent than any other student. And it is not only necessarily personnel who are members of advantaged communities who need help to internalise and exercise a sensitive approach to students from disadvantaged communities. All personnel will need to develop a more sensitive and understanding approach.

A related difficulty as we understand it concerns the relationship between staff who come from disadvantaged communities and other staff. The latter will also need to acquire the appropriate sensitivity in their relationship to the former. So must academic staff be sensitive and careful in their relationships with non-academic staff, senior staff with their juniors, management with other staff as well as members of the university corps in their relationship with those who do hard manual work on campus.

The fourth broad element arises from the fact that much of our society has not yet embraced the values of our Bill of Rights, based on respect for human dignity, equality and freedom. The university has to ensure that it is a leader in the process of the transformation of our society as a whole. The same goes for developing a culture of accountability, openness and responsiveness. Staff appointments, promotions, dismissals, as well as all decisions made at every level of the university, should ultimately comply with these ethical standards. These values and principles should not, in our view, be sacrificed at the altar of efficiency and academic excellence. It is essential for us, as difficult as this might be, to integrate genuine reconciliation and transformation with efficiency and academic excellence.

The final broad aspect relates to institutional culture. Our constitution, in providing for the right to culture and to equality, is antithetical to the process of a dominant culture at any particular time swallowing up minority or less dominant, more vulnerable cultures. It stands to reason that the university, having been virtually an all-white institution for more than a century, would have practised and venerated a particular culture which would have become integral to the institution and therefore institutionalised as the culture at the university. Apartheid would necessarily have had this consequence. The tendency to continue to look backwards and try to preserve that dominant culture that has existed for decades is, to a degree natural but certainly not helpful.

This tendency would inevitably lead to a feeling (which could be both strong and destructive) that the dominant majority culture looks down upon the culture of others. In particular those members of the university community who do not adulate the same culture would feel threatened, resentful, unwelcome and alienated.

This would apply to students and personnel. There is the further complication that those students and members of staff who come from disadvantaged backgrounds and who, for one reason or another, show their acceptance of the dominant culture, rightly or wrongly might not be looked upon with favour by other members of their community at the university.

The answer is certainly not that all people who come to this university must be assimilated into the existing dominant culture. This approach may, with some justification, be seen as paternalistic. The challenge is to meaningfully realise the idea of unity in diversity. The university should lead the process of the emergence and development of a truly South African culture based on respect and acceptance between people. Important elements of this changing culture would be about supposedly mundane but really important things like how and what we eat, how loudly we speak, how we pronounce our words and one another's names, how we dress, what conversations may be appropriate at meetings, social functions, dinners or picnics, and many other day to day matters of this kind. Culture is dynamic and we trust that the university will find the resources, the capacity and the expertise to develop a new culture with diverse elements acceptable to all. We specifically recommend in this context that the university should, through appropriate research led by the departments of Sociology and Political Science and other relevant departments, find practical ways of embracing and celebrating diversity on campus. Diversity should be viewed as an asset, as opposed to a burden. To this end, we propose that UCT considers collaboration with other South African universities, including short teaching exchanges of scholars among themselves, say, for six months at a time. This would not only be a service to itself, but to the entire South African society.

Before we specify some of the more general recommendations that are integral to the path of reconciliation and reconstruction, we emphasise the importance of ensuring that each of the more specific recommendations in the rest of this report are implemented in the spirit of what has been said above.

Recommendations

We emphasise that the recommendations below are not a substitute for the recommendations contained in each of the separate chapters in the rest of this report. This section is really an effort to highlight the overall recommendations and to state the specific recommendations in a more general way.

1. DIVERSITY

- i. The university should, led preferably by the departments of Sociology, Political Science, and any other department, conduct research to find practical ways of embracing and celebrating diversity on campus.
- ii. These findings should be shared with the entire university community and ways of implementing and those findings accepted by the university community should be implemented creatively on an ongoing basis. We anticipate that research and implementation will proceed side by side.

2. DECOLONISATION

- i. It is necessary for the university urgently to acknowledge the need to enter the discourse in our country on decolonisation and coloniality in conjunction with all other universities in the country.
- ii. The departments of History, Political Science and Psychology might be involved in this process, in collaboration with civil society bodies like the Mapungubwe Institute for Strategic Reflection (MISTRA), who have been doing work in this area.
- iii. The decolonisation debate should be conducted in the university and the process of decolonisation

should go ahead to the extent agreed by the university community.

3. INCULCATION OF CONSTITUTIONAL VALUES

- i. Steps must urgently be taken to sensitise members of the university community on the South African Constitution, particularly the Bill of Rights.
- ii. This might initially take the form of posters in strategic places and short messages attached to official communication by the university.
- iii. Ultimately, constitutional values should form an integral part of the university's vision and mission and every effort should be made to ensure that the university community as a whole embraces, lives and propagates the values of the constitution, leading the rest of society in that direction.
- iv. It must be accepted that the constitution is not a matter for lawyers alone and the university's orientation programme at the beginning of every year should include significant sessions on the values demanded by our Bill of Rights.

4. STAFF APPOINTMENT, RECRUITMENT, DIVERSIFICATION AND AFFIRMATIVE ACTION

- i. Staff appointment and promotion processes, including processes of selection committees

at all levels, should be as consultative and as transparent as possible in an effort to prevent feelings of exclusion and allegations of bureaucratic appointments. Selection committees should also be representative.

- ii. UCT must urgently strengthen its recruitment, promotion and nurturing of black and women academic staff, including a search for South African black and women academics abroad.
- iii. The university might have to set targets for itself over a ten-year period, with milestones in between.
- iv. The university should make every effort to create an atmosphere in which black and women staff feel welcome and that all possible measures are taken to advance all people disadvantaged by past discrimination on whatever ground.
- v. Research into the circumstances in which black academics did not continue to work at or join the university after being accepted must be undertaken. This will help the process of identifying problem areas.

5. STUDENT RECRUITMENT AND AFFIRMATIVE ACTION

It is essential that there is a critical mass of black students at the university so that they do not feel overwhelmed and alienated. Affirmative action and recruitment processes to achieve this end are necessary.

6. FREEDOM OF THOUGHT AND OPENNESS

- i. In order to tackle the atmosphere of fear enveloping UCT, we recommend that the Humanities faculty should conceptualise and lead a programme to promote openness, dialogue and freedom of thought and speech in the institution.
- ii. Academic freedom as well as freedom of thought and expression must be encouraged everywhere in the strongest possible terms.

7. EMPLOYMENT EQUITY

- i. The achievement of employment equity must be an objective of the university, expressly stated and practised in every sphere of activity in which the university engages.
- ii. This process must be implemented transparently with the publication of regular detailed reports and regular evaluation.

8. STUDENT RESIDENCES OR HOUSING

- i. There is a chronic shortage of student accommodation which has impacted black students more negatively than any other race group. The university and government should immediately review the crisis they have created in university accommodation and should urgently negotiate in order to determine how much student accommodation is necessary and make provision for this as soon as possible
- ii. Residential accommodation must be allocated transparently and in a fair and equitable manner with due regard to the undeniable fact that poor black people living far from the university are much more in need of accommodation than other students.
- iii. The university must at all times make sure that there is a space reserved for every student who has been allocated accommodation and there is no 'over-booking'. The university should have a plan for how to meet the demand for housing, based on the number of applications received.
- iv. The system of allocation must ensure that a student allocated accommodation is not turned away when they arrive at the university because it has been given to somebody else because of the practice of over-booking.

9. MENTAL HEALTH SERVICES

- i. The university must ensure appropriate mental health services are available to all staff and students who need them and to reduce the stigma associated with mental health issues.

- ii. Every effort must be made to create the conditions in which mental health conditions are not exacerbated.
- iii. The university must appoint an external committee of psychologists, psychiatrists and other health professionals to determine the complement of mental health staff to be available at the university on a full- or part-time basis and to ensure that existing policies are updated to take care of the mental health issues at the university.

10. IMPLEMENTATION AND MONITORING

The university must ensure that all its policies aimed at addressing racism, sexism, sexual harassment and all other forms discriminatory practices against all vulnerable individuals or groups are implemented in practice, with complete attention to every detail, and that outcomes and incidents are regularly monitored and evaluated.

11. OUTSTANDING CASES

We recommend that all outstanding cases against students arising out of protest action during 2016 and 2017 be resolved according to the recommendations concerning these cases in Chapter 2.

12. FAIR DISCIPLINARY PROCEEDINGS

The university must develop and implement a programme to make reasonable and equitable legal representation available to students to defend themselves in disciplinary proceedings brought against them by the university.

13. SECURITY PERSONNEL

- i. The university must immediately develop a comprehensive policy on the functions of all security personnel on campus, in particular the modalities for employing private security companies.
- ii. The policy should make it clear that:
 - Their primary function is the protection of students, staff and property;
 - Security personnel must be trained in the applicable norms and standards regarding

the appropriate methods of handling and management of protest action, including the skills of negotiating with students and of any other circumstance requiring their intervention;

- The use of force and firearms are expressly prohibited and can only be used if there is no available alternative to secure safety and bring peace to the campus and in terms of agreed guidelines.
- iii. The university must ensure that it vets and screens any security personnel deployed on the university campus so as to ensure that no personnel implicated in human rights abuses or alleged to have perpetrated human rights violations are allowed on the campus.
- iv. The university should take all effort to ensure that the private security company contracted to provide security at the university has developed relevant human rights guidelines for its personnel.
- v. The university must ensure that it has full control of security personnel on campus and that they are adequately trained to perform their functions on campus and that steps are taken against any member of security personnel who has not performed according to the requirements of the university.
- vi. An appropriate contract obliging the execution of university policy by security personnel, stipulating the consequences of non-compliance, must be entered into.

14. COMMUNICATION

- i. The university must establish effective channels of communication between the university departments as well as between the students and management. A relevant policy document should be developed in this regard.
- ii. In case a similar body to the IRTC is set up in the future, the university must make sure that it communicates clearly, timeously and transparently about the functioning of this body to students and academic staff.

Acknowledgements

The commissioners feel honoured and privileged by being given an opportunity to play a modest part in the quest to build a better UCT. IRTC wishes to thank the student formations, Black Academic Caucus, PASS members, various unions, deans, UCT management, the two Vice-Chancellors (Dr Price and Prof Phakeng), University Council, the steering committee and others who assisted the commission in so many ways.

The majority of those who appeared before the commission were cognizant of the fact that UCT is a microcosm of South African society with its many fault-lines, which include racism, sexism, poverty, inequality, homophobia, violence *et cetera*. Most shared with the commission their views on these matters and how UCT could contribute to the decrease or eradication of these fault-lines. Some were convinced of the fact that although calm has returned to the campus at present, the fundamental issues remain largely intact, requiring attention and resolution by the university. The commission values these many inputs, which went a long way towards an explanation of the complex situation at UCT.

The commission based its work mainly on written submissions by the various role players as well as public hearings. The conclusions and recommendations were made possible by these written submissions and oral presentations during the hearings. It is for these reasons that the commission is indebted to all who took the trouble to write to the commission and/or appear before it.

The commissioners appreciate the trust that many showed in the commission. Even those who were fearful of reprisals by their superiors felt secure enough to make confidential submissions to the commission, trusting the commission to ensure their safety.

The vast majority of those who appeared before the commission were genuinely aggrieved but desirous of a better and happier UCT. It appears attempts to transform the university would find a lot of soldiers within the UCT community.

UCT is a public institution where people from various cultural, linguistic, religious, racial and economic backgrounds will have to co-exist in one space. There is no escape from this reality. And diverse communities are a lot more complex to manage than monolithic ones. South Africa and UCT must learn and endeavour to build, sustain and manage such a society.

Co-existence and harmony are different from sameness and any attempts to assimilate those who are different often breed conflict. In a diverse society, different groups live and even embrace one another without a desire to wish others away. The acceptance of diversity can be an enriching experience for all concerned. In interactions with the commission, all these issues were raised in different forms by members of the university community and the many diverse views contributed towards the richness of the work of the commission.

However, there was very little or no substantive inputs of decolonisation. Considering that the topic is active and highly contested in South Africa presently, it is not entirely surprising. And although the commission received interesting submissions on climate change, investments and other issues, these fell far from the core inquiry of the commission. We hope these would be pursued elsewhere.

The IRTC wishes the University of Cape Town well on its journey towards a transformed, welcoming, tranquil and diverse future.

Addendum

TO IRTC FINAL REPORT

FROM JUDGE ZAK YACOOB

1. The objective of this addendum is two-fold;
 - To explain my position in relation to the grant of amnesty and
 - To show my approach to Chapter 6 on Racism.

Approach to Amnesty

2. I place on record that I was absent from the commission at the time when the determinations for amnesty were made. Nevertheless, I agree with everything said about amnesty in Chapter 2, under the heading Outstanding Cases and in Chapter 11.

Racism

3. I am afraid I cannot agree with much of the theoretical bases or the definitional approach set out in Chapter 6 nor can I agree with many of the factual conclusions drawn. It is not appropriate that I traverse these matters in detail. It is enough to say that:
 - Racism exists at the university;
 - Nobody could deny it;
 - The executive and the staff were not sufficiently sensitive to the existence of racism;
 - This sensitivity is vital;
 - People of all races in South Africa are guilty of racism in different ways but it is true that poor black people suffer the most from racism;
 - This racism is an all-pervading cancer which is a consequence of apartheid and is capable of destroying South African Society and;
 - Racism at the university is capable of destroying the university.
4. I agree with everything said about racism in Chapter 11 of the report and with all the recommendations that deal with it.

Acronyms & ABBREVIATIONS

CPS	Campus Protection Services
DHET	Department of Higher Education and Training
DVC	Deputy Vice-Chancellor
EFC	expected family contribution
HATT	Housing Allocation Task Team
HDI	Historically Disadvantaged Institution
ICTJ	International Center for Transitional Justice
IJR	Institute for Justice and Reconciliation
IRTC	Institutional Reconciliation and Transformation Commission
MISTRA	Mapungubwe Institute for Strategic Reflection
NGAP	New Generation of Academics Programme
NPA	National Prosecuting Authority
NSFAS	National Student Financial Aid Scheme
PASS	Professional, Administrative and Support Staff
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
RMS	Residential Management System
SADAG	South African Depression and Anxiety Group
SARB	South African Reconciliation Barometer
SETT	Special Executive Task Team
SHAAS	Student Housing Admission and Advisory Services
SH&RL	Student Housing & Residence Life
ToR	terms of reference
TRC	Truth and Reconciliation Commission
UCT	University of Cape Town
UJ	University of Johannesburg
VC	Vice-Chancellor
WITS	University of the Witwatersrand

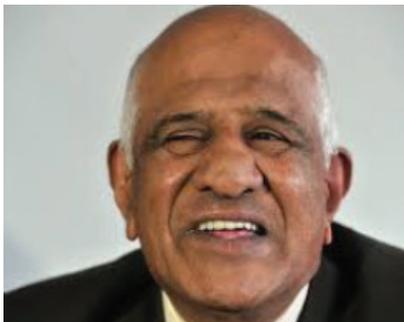
Members

of Institutional Reconciliation and Transformation Commission

MR MOSIBUDI MANGENA,
CHAIR OF THE COMMISSION



JUDGE ZAK YACOOB,
MEMBER OF THE COMMISSION



DR YVETTE ABRAHAMS,
MEMBER OF THE COMMISSION



DR MALOSE LANGA,
MEMBER OF THE COMMISSION



MS YASMIN SOOKA,
MEMBER OF THE COMMISSION



Annexure A

Agreement with the SRC Candidates/ ShackvilleTRC and other student formations

Higher education in our country is at a cross-roads. There are national issues, particularly related to fees, access and affordability, that need to be resolved as a matter of urgency. At UCT we have our own particular challenges that we need to address alongside these national issues related broadly to questions of transformation, decolonisation, curriculum change, institutional culture, names of buildings and symbols, rape culture and gender identities.

Our university has further been characterised by ongoing protests related to these issues which have resulted in interdicts, suspensions, expulsions, arrests, the use of private security and police action.

The 2015 academic year was put into jeopardy and there are concerns that the 2016 academic year will also be compromised.

The executive and students have been in ongoing negotiations to find a way forward.

From the side of management, we believe that there is sufficient common ground for us to reach agreement on a set of principles which can break the deadlock and move the university forward in the best interests of all the constituencies.

Agreement on these principles can lead to a de-escalation of the tensions, end the cycle of protests and counter-actions, limit the need for private security and create the conditions where the 2016 academic year can still be completed by all students. Such an agreement can also provide the framework for solutions to the longer term challenges that the university faces that can lead to the emergence of a new, inclusive identity in a transformed, decolonised UCT.

Towards this end, the executive offers the following to the SRC Candidates/Shackville TRC/Other Student Formations as the basis of an agreement:

1. CLEMENCY AND EXECUTIVE ACCOUNTABILITY

a. In the spirit of restorative justice that takes into account the prevailing context of student protest at UCT and nationally, and to ensure the successful completion of the 2016 academic year, and understanding that the rights to protest as outlined in the Constitution are protected, clemency is granted on the basis of the following principles:

- i. signing a declaration (attached) by specific individual students who have been subject to Student Disciplinary Tribunals that will provide clemency for specific offences which relate to the protests around February 2016.
- ii. formally acknowledging wrong-doing and committing not to repeat such actions in the future by those granted clemency.
- iii. accepting that if the student is in breach of the Student Code of Conduct after November 6 2016, the University shall be entitled to charge the student as provided for in the University's student disciplinary procedures.
- iv. agreeing that if there are disruptions of exams, academic activities, the residence system (inclusive of the dining halls and other recreational spaces) or the normal functioning of the university, and where no clear evidence

is demonstrated that concerted efforts were taken to prevent such actions, the University may approach the mediators to request revoking the clemency.

- v. understanding that the IRTC/Shackville TRC will request submissions from all constituencies on the clemencies granted and make recommendations on the granting of amnesties (or the continuation of clemency) and what the nature of these amnesties will be.
- b. *The University Executive, Chief Investigating Officer and Shackville TRC will make available to the IRTC/Shackville TRC a full list of pending internal and external charges against students related to student protest action up until November 6.*
- c. *A moratorium on disciplinary tribunals relating to the list of cases pending the recommendations of the IRTC/Shackville TRC on acceptable forms of protests and appropriate disciplinary procedures and sanctions by the university. The IRTC/Shackville TRC will make recommendations on how to deal with each outstanding case in the spirit of restorative justice.*
- d. *The executive will also subject its actions to investigation and recommendations by the IRTC/Shackville TRC and respect the outcome of this process.*

2. INSTITUTIONAL RECONCILIATION AND TRANSFORMATION COMMISSION/SHACKVILLE TRC

- a. *On the basis of the agreement reached on commissioners (some of whom have already indicated their willingness to serve on this commission) UCT will establish the IRTC/Shackville TRC with immediate effect.*
- b. *The commissioners will immediately begin consulting with the various stakeholders to determine the terms of reference, which need to be in place no later than two weeks after they begin their work. Without limiting the terms of reference, the IRTC/Shackville TRC will:*
 - i. look into what is referred to as the ‘Shackville protests’ of February 2016, including any related and subsequent protest actions
 - ii. invite submissions from all constituencies on the amnesties granted and make recommendations on how the University should deal with such matters in the future (iii) make recommendations on institutional culture, transformation, decolonisation, discrimination, identity, disability and any other matters that the University community has raised over the past 18 months or may wish to raise.
- c. *The university will host university-wide meetings/seminars to launch the IRTC/Shackville TRC process. These meetings/seminars will be led by skilled external facilitators with the purpose of explaining the origins and role of the IRTC/Shackville TRC process and the principles of restorative justice.*

3. A COHERENT POLICY ON FUNDING HIGHER EDUCATION AND ADVOCACY FOR FREE DECOLONISED EDUCATION

- i. Support for investigating the principle and implementation possibilities of fee-free higher education (recognising that there may be competing views and solutions and that the university may not settle on a single consensus position). The executive has expressed in principle support for the ideal of fee-free higher education while recognising that the details – time-frames, relationship to macro-economic factors, coverage, implementation and sustainability need investigation.
- ii. A commitment to further dialogue and action, to examine the possibility and implications of fee-free higher education. An initiative along these lines in the School of Economics is starting and includes a representative nominated by the SRC Candidates group. All parties and individuals interested in participating in this programme will immediately be invited to contribute. The University will also support a formal ongoing research programme into the economic policy framework for higher education. The University will find resources to establish a dedicated unit to function, including engaging in debates and lobbying at national level. It will ensure that its influence on national policy is used to ensure all positions are heard and properly considered.
- iii. The UCT Executive and Council will work with the leadership of all universities and student formations to engage government to fund appropriately the higher education sector. We also call on government to begin implementation in 2017 of a financial aid system that will reduce the effective costs of study for missing middle students. The Executive will further make clear that the submission made to the Fees Commission represented the position of the UCT Executive and that there are many other positions on fees which need to be acknowledged.
- iv. Support in principle for the call to decolonise the university's institutional culture and the curricula and other matters brought forward, while recognising that decoloniality is not understood in the same way by all, and therefore its interpretation will have different connotations especially across faculties.
- v. Putting in place programmes, activities and time-frames on how the concept of decolonisation can be approached by the University community as a whole
- vi. A commitment to bringing the University community into conversation about these issues, listening deeply, accepting that there is a problem that needs addressing by us all.

4. FINANCIAL EXCLUSIONS AND FEE-BLOCKS

Note: This applies to undergraduate students but the question of fee-blocks for postgraduate students will be investigated by management as soon as possible.

- i. The executive commits to the principle that as far as possible students on financial aid and/or eligible for financial aid (inclusive of GAP students) who are academically eligible to graduate or to progress to the next academic year of study, but who are prevented from doing so due to affordability, will be allowed to graduate or progress. These students will have rights as any other student.
- ii. The executive further commits to identifying policy changes that could reduce financial exclusions by continually engaging with stakeholders. Where these policies arise from outside UCT, such as the NSFAS rules, if on review we disagree with these rules, we will join students in advocating for these rules to be changed.
- iii. We will actively seek donor funds to cover the outstanding fees of those that NSFAS cannot cover, where such debt is impeding graduation or progression to the next year of study.

- iv. If there are degrees that are currently withheld for financial reasons, the University undertakes to release these degrees for economically marginalised and poor students on the understanding that there will be a commitment to repay this debt.

5. COMPLETION OF THE 2016 ACADEMIC YEAR

- i. The decision to restart the academic programme with a limited opening of the University and a blended/online learning programme on October 17 was a response by the executive to a crisis situation.
- ii. There are many students, and in particular final year students, who need to write their final exams before the end of the year for a variety of reasons, including job offers, career decisions, rental leases. Not providing an opportunity for students who want to write their exams would have serious and long-lasting consequences, including dire financial consequences for the University.
- iii. No student will be forced to write in November or be prejudiced for opting to write the deferred exams. Writing the November exams will be on a completely voluntary basis.
- iv. The executive recognises that these are not ideal conditions and that there are students who will be adversely affected by the limited opening and blended/online learning programme.
- v. The University has therefore committed to a full deferred exam programme in January 2017 including, but not limited to, mini-teaching semesters, consolidation phases and the availability of lecturers and tutors where possible to ensure that students who chose not to write at the end of the year are given the best possible opportunities to be successful in January 2017.
- vi. In recognition of the difficult conditions under which the academic year proceeded, including the presence of private security, suspension of face-to-face classes, and intermittent shutdowns, the executive also commits to working with faculties to put in place mechanisms and programmes which will improve the prospects of academic success of all students.
- vii. The University will put in place plans for the use of the residences, food and transport arrangements which will ensure that students in need who chose to write the deferred examinations are not placed in an adverse financial position.
- viii. An online facility will be provided which students can access which will enable those who qualify financially to secure a place in the residences for the period of the deferred exams, mini-semesters and consolidation phase.
- ix. An online facility will also be provided for those students who qualify financially to make arrangements with the University for travel as a result of them writing the deferred exams and attending the mini-semesters and consolidation period.

6. THE USE OF PRIVATE SECURITY AND POLICE IN MANAGING PROTESTS

The Council has already appointed a committee jointly with the Institutional Forum to develop a protocol for the use of private security. This committee will solicit views from all stakeholders in formulating a protocol and consult on the proposed protocol before submitting it to Council. It is envisaged the draft should be complete by year end. In the interim, if an agreement is reached on these principles which leads to a de-escalation of conflict, the executive is open to removing private security as soon as possible.

Establishment of Rapid Response Task Team

The executive commits to constructively engage with the Shackville TRC and other student formations for the effective implementation and operationalisation of this agreement.

The executive further commits to the immediate setting up of a Rapid Response Task Team made up of representatives of the executive task team and representatives of the student formations to monitor the implementation of this agreement and to ensure that any obstacles that may impede the implementation of this agreement are removed as a matter of priority.

Status of the Agreement

The agreement is signed by the executive and SRC Candidates/Shackville TRC. The parties agree that the mediators to this agreement will oversee its implementation and be called upon to adjudicate if any party to the agreement believes that there have been any violations. The mediators will recommend what processes are to be followed in any such instances.

Note: The above Terms of Reference are provisional and may be further refined by the commissioners once they have been appointed.

CRITERIA FOR SELECTING COMMISSIONERS:

- Commissioners must be persons with integrity and a commitment to social justice.
 - Commissioners must ideally have support from the wider campus constituencies.
 - Commissioners should have no formal association with UCT, but may include alumni. Thus, *inter alia*, no current staff, students or members of Council are eligible.
 - Commissioners should preferably have experience in restorative justice processes, eg have been part of the Truth and Reconciliation Commission.
-
- Ideally, the commission should include at least one person with legal expertise, eg a judge, with an appreciation for social justice and transformative constitutionalism.
 - At least one of the commissioners must have understanding of, and experience in, dealing with conflict, trauma, institutional and systemic violence.
 - At least one commissioner must have experience in civil society activism and/or advocacy.
 - Commissioners should be from diverse backgrounds and must possess demonstrated sensitivity to issues of race, gender, ability and LGBTQIA+ identities.
 - Commissioners must be able to be flexible with regard to time commitments and available to participate fully in the IRTC process.

The following proposed framework for the commission's work was submitted by the Alumni Constituency. All other stakeholders are invited to submit their recommendations on how the commission should approach the ToRs.

ALUMNI CONSTITUENCY'S PROPOSED FRAMEWORK

1. PRINCIPLES

The IRTC process should be guided by the following principles:

- a. *Violence must be recognised as more than physical. It is inappropriate to look only at the actions of students who embarked on protest action that led to criminal charges against them, without also examining recurring invisible violence and racism perpetrated by individuals within the institution.*
- b. *Linked cultural, structural and psychological violence have historical roots. In exploring restorative justice, this needs to be taken into account. This requires investigating acts and processes of invisible and visible violence perpetrated at UCT since 1829.*
- c. *This means that the process requires a trans-disciplinary, intersectional lens to understand built-in triggers of institutional racism that caused students to protest.*
- d. *Peace researchers have found that violence flows in a cultural-structural-direct manner. We offer the following clarification of term based on the literature on violence:*
 - **CULTURAL/SYMBOLIC VIOLENCE:** e.g. multiple and simultaneous 'othering' of black, LGBTQIA, poor students, and staff marked by:
 - i. ascribed and internalised superiority and inferiority;
 - ii. epistemic violence by marginalising black scholars and scholarship, amongst other exclusionary practices.¹⁷⁷

Veteran peace researcher Johan Galtung argues that cultural violence justifies and legitimises other forms of violence.

- **STRUCTURAL/INSTITUTIONAL VIOLENCE:** e.g. inequality is structural violence. Institutional racism is marked by intersecting and interacting forms of inequality as outlined by students and staff.

¹⁷⁷ Some signatories provided well-known examples. We refrain from mentioning names here, but focus on the manifestations and patterns.

- **EMOTIONAL/PSYCHOLOGICAL VIOLENCE:** many of us are personally aware of black people who left UCT and current staff who experience denial of institutional racism. For example, lived experiences are written off as ‘anecdotes that cannot inform policy’ and/or that are not worthy of paying ‘real’ attention to. This has an emotional and, over time, a psychological impact (eg depression, which some of us argue is due to ‘unresolved social grief’ (due to the continued presence of denied aspects of the past)). These manifestations have a cumulative effect and results in black people being pathologised or criminalised for expressing justified anger and or protests.
- It therefore follows that the university cannot on the one hand admit that institutional racism remains a problem, and on the other hand neglect to name and deal with manifestations of racism that precede student violence. If that is its intention, it will make itself guilty of absolving white perpetrators from blame, and criminalising mainly black students.
- Many researchers have argued that present/unrelenting (but denied) experiences rooted in the past are overlaid onto ‘historical trauma’ which is passed down trans- and intergenerationally. This is processed and/or dealt with differently by different people; and it is many times masked (constellation of historical trauma responses).
- It has been suggested that people who mainly ‘externalise’ generally become high achievers, activists, advocates and/or fighters. People who ‘internalise’ generally self-medicate (slow suicide), commit suicide and/or present with different socially patterned conditions from mild to severe. No research currently exists to show the range of responses that are not fixed within the two extremes reflected in the literature.
- **PHYSICAL/SOMATIC VIOLENCE:** Apart from the fact that the above interacting aspects of violence lead to visible physical manifestations of violence/counter-violence, it can instead also have a (hidden) somatic impact on some individuals.
- Oppression-related physical illnesses are well recorded in research, but the link is seldom made to the full ‘invisible/visible structure of violence’, as those who mainly define these symptoms and causality are usually not oppressed people (and/or people who have not yet integrated a view from the standpoint of the oppressed as counterpoint to their disciplinary knowledge which has not yet been subjected to decolonisation).

2. TERMS OF REFERENCE

In order for these principles to be met, we propose the following terms of reference for the IRTC:

- Commissioners should be required to take the full picture of invisible and visible violence into account by recognising the university’s symbolic, institutional and psychological violence as a precursor to student counter-violence. By this we mean that the IRTC needs to recognise that even though there are no formal ‘criminal’ charges against the university as yet, it *is* a party to the conflict. The university’s tardiness and benign view of tardiness on the part of university staff who did not implement its ‘transformation policies’ for 23 years caused untold harm, which is routinely denied but persists to this day. This contributed to slow but invisibilised escalation amongst black students and staff over time, until it erupted and spiralled from 2015 onwards.
 - It therefore follows that students with charges and/or other possible punitive actions considered against them should not be regarded as ‘offenders’ with the institution as their ‘victim’ (according to Criminal Law definitions).
 - Students’ view of why they engaged in ‘rule breaking’ behaviour must be seen in the context of ongoing invisible violence (institutional racism and secondary victimisation via delayed and non-existent processes) by the institution.
- Commissioners need to play a facilitative role i.e. they should ideally actively and empathetically ‘listen for’ clues in narratives about how MANIFESTATIONS of violence fit with PATTERNS of invisibilised and institutional *racism as violence*; how these patterns fit within the institutional culture that isolates and alienates othered groups; and how the institutional culture is a microcosm of the societal culture of invisible/visible but denied societal violence.
- In sum, commissioners should not treat anyone before them as either a victim or an offender, as defined by Criminal Law, but as a stakeholder, (whether council, senate, executive, staff, student or alumni) who will help to render manifestations-patterns-cultures visible. This will help the entire university community make sense of the intersection

and interaction of cultural/symbolic; structural/institutional, psychological/emotional, and physical/somatic aspects and forms of violence.

This 'structurally/institutionally aware' framework suggested above, will:

- Serve as an analytical framework that is aligned with an expansive view of Restorative Justice that takes transhistorical violence into account.
- Be refined as more narratives emerge to sort these narratives or parts thereof under different key themes that emerge from the data, and ideas that emanate from these themes. This allows for cross-cutting themes to emerge and will mitigate the polarising effect of competing narratives
- Be used as a template to write up their report/recommendations based on a comprehensive model of findings that go beyond preconceived key and sub-concepts. This should leave a clear trail of evidence that shows how the recommendations are grounded in the data collected from multiple sources, and within a generative framework designed to take South Africa's unequal, transitional context into account.

3. CRITERIA FOR SELECTION OF COMMISSIONERS

- Commissioners should submit a transparent portfolio of service that shows their work, thoughts, and context and that they understand the nature of violence from the standpoint of the oppressed as a counterpoint to understandings by institutional beneficiaries.
- Commissioners in this portfolio should submit their understanding of the structural issues around interactions, agency, and impact of the various role players in the process (students, academic staff, PASS, SRC, BAC etc).
- Commissioners should declare their allegiances as it is accepted that everyone comes with ideological positions and filters. We believe that it is useful to be a transparent diverse group rather than a 'one size fits all' commissioner.
- At least one of the commissioners should have an understanding of indigenous Restorative Justice and another should have an understanding of religious Restorative Justice practices.



