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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 2015 OF 1998

DEPARTMENT OF EDUCATION

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

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, do hereby in terms of section 47 (2) of the Higher Education Act, 1997 (Act No. 101 of 1997), publish the report of Professor J. J. F. Durand, the independent assessor (appointed under section 44 of the same Act) on the investigation conducted at the Vaal Triangle Technikon, as set out in the Schedule.

S. M. E. BENGU

Minister of Education

KENNISGEWING 2015 VAN 1998

DEPARTEMENT VAN ONDERWYS

WET OP HOËR ONDERWYS, 1997
(WET No. 101 VAN 1997)

Ek, Sibusiso Mandlenkosi Emmanuel Bengu, Minister van Onderwys, publiseer hiermee kragtens artikel 47 (2) van die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997), die verslag van Professor J. J. F. Durand, die onafhanklike assessor (kragtens artikel 44 van dieselfde Wet aangestel) oor die ondersoek ingestel by die Vaaldriehoek Technikon, soos in die Bylae uiteengesit.

S. M. E. BENGU

Minister van Onderwys

SCHEDULE • BYLAE

INVESTIGATION OF THE SITUATION AT THE VAAL TRIANGLE TECHNIKON BY THE
INDEPENDENT ASSESSOR, APPOINTED BY THE MINISTER OF EDUCATION

A. TERMS OF REFERENCE

The general purpose of the investigation has been to advise the Minister on—

- the source and nature of the discontent at the Vaal Triangle Technikon; and
- steps required to restore proper governance, including the promotion of reconciliation, at the Vaal Triangle Technikon.

More specifically, the assessor has been charged to inquire into and report to the Minister on any issue which he may deem of importance, including the following:

- The reason for the deterioration in the relationship between various constituencies and structures at the Technikon;
- the reason for the serious lack of confidence in the governance structures of the Technikon, in particular concerning—
 - the inability of management to drive the transformation processes properly;
 - perceived problems relating to senior appointments made at the Technikon;
 - financial management decisions made by management, e.g. the new early retirement scheme; and
- the role and functioning of the Council; and

to make recommendations on—

- the restoring of effective/proper governance at the Technikon; and
- what action, if any, ought to be taken.

B. REPORT

1. The current problems at the Vaal Triangle Technikon ostensibly started with the suspension of the Rector, Prof. A. T. Mokadi, at the end of October 1997. Prof. Mokadi's suspension is undoubtedly the burning issue of the day that has led, especially since the student unrest of April 1998, to a rapid deterioration of relationships on the campus and a crisis of confidence in the governance and management of the Technikon.

2. I am, convinced however, that the roots of the unfortunate situation at the Vaal Triangle Technikon go back further in its recent history. The process around Prof. Mokadi's suspension became a catalyst to bring some of the attitudinal and managerial weaknesses to the fore that eventually led to a situation in which the campus can seemingly only function in some sort of state of emergency whereby order and discipline can only be maintained by means of a court interdict.

3. The Vaal Triangle Technikon's problems started when it was forced to face the challenges of the nineties and the need for transformation. The demographic change in its student population out-paced the abilities of the Council as its governing body and its management to adapt and to bring about the necessary changes quickly enough and radically enough to satisfy the demands of the wider community it was now serving. The change-over from a traditionally white Afrikaans institution to an institution in which black students outnumber their white counterparts by eight to three has been difficult enough to accept and, more importantly, to assimilate, a problem shared by other similar institutions in South Africa. In the case of the Vaal Triangle Technikon, the problem has been exacerbated by the quick succession of its Rectors, the unfortunate way in which some of them left and the consequential lack of strong leadership.

4. The one bold move by the Council, or appointing as Rector a charismatic and dynamic black person, but who was then still very young with little managerial experience and totally inexperienced in the management of a tertiary institution, now seems to have ended in a disaster. It should be noted in this regard that the Council who made the appointment was a fully democratically elected Council in terms of the Technikon Act of 1993, the first, to my knowledge, among the South African Technikons. It is unfortunate that the initiative taken by the Council has not produced the results they had expected.

5. Conflicting testimonies make it impossible to gauge whether Prof. Mokadi received the necessary support to overcome his inexperience. It is clear, however, that he started his term of office with great drive and enthusiasm and within a few months a Transformation Charter, negotiated with all the different groups and stakeholders on the campus, was accepted. Soon afterwards cracks in the relationship between himself and the Council and other members of staff, even those that originally supported him, started to appear. His style of management was seen by many of his colleagues as personalised, impatient and autocratic. On the other hand, and significantly, he built up excellent relationships with the workers on campus and with the students, who found him most accessible.

6. It not only falls outside the scope of my terms of reference, but is it also immaterial for the purposes of this report to determine whether the allegations that were eventually made against Prof. Mokadi are true or not. These are matters for the disciplinary process currently under way and are *sub iudice*. However, the way in which these allegations were brought to the notice of the Council and the process that followed have developed into a deeply dividing factor on the campus.

7. There are many indications, circumstantial as well as factual, that the process against Prof. Mokadi was orchestrated against him over a period of time and carefully timed to coincide with his trip to the USA. Despite the fact that the allegations against him ostensibly resulted from a meeting of all staff, subsequent events make it clear that the driving force behind it was NUTESA, the majority union on campus mainly consisting of administrative and academic staff. It is significant that the threat to the Council by the staff to go on strike if Prof. Mokadi was not suspended was soon followed by NUTESA declaring a dispute against the Technikon in which they demanded his suspension.

8. The threat of a strike by the staff with the examinations just around the corner appeared to have made it possible for NUTESA to rally the support of the students who, through their SRC and Inter-organisational Forum, supported the call for the suspension of the Rector. Less than three weeks after the suspension and the threat of an examination stoppage having disappeared, the students started to have second thoughts and began to withdraw their support.

9. The role that the Council played now also came under close scrutiny. It was noted that the Council seemingly succumbed to the threat of a staff strike. With undue haste, while Prof. Mokadi was still overseas, they started proceedings against him. It should be noted that a few members of the Council strenuously objected to this. It also did not escape notice that some of the protagonists in the process against Prof. Mokadi were also members of the Council and took part in the voting. One of them who originally, in his capacity as a representative of the staff on the Council, presented the list of allegations against Prof. Mokadi, and who chaired the meeting of the staff when these allegations were made, even seconded the motion for Prof. Mokadi's suspension. Last but not least, the long drawn out disciplinary process against Prof. Mokadi after the initial urgency and speed with which he was suspended, created the impression among many that the Council, once having seen him off the campus, could not bring itself to a serious effort to finalise the matter. This perception probably does not do justice to the Council. Members of the Council were, if anything, over-cautious in their later handling of the matter and even once or twice tried to bring the matter to some kind of amicable solution, especially after a meeting with the Minister of Education.

10. Prof. Mokadi was suspended on 31 October 1997. The disciplinary hearing under a senior advocate only started on 16 March 1998 and has not yet been concluded. The possibility of a conclusion before October 1998 is slim. In other words, almost a year has elapsed since his suspension. Whatever the reasons for the delay, it is an unacceptable situation. The ultimate effect of this long drawn out process cannot be overestimated. It created the opportunity for the rallying of forces in the opposing camps, the students and their organisations—the SRC, SASCO, PASMA and AZASCO—and NEHAWU, the union consisting mostly of the workers on the campus and a few administrative staff, supporting the suspended Rector on the one hand and NUTESA opposing him on the other hand. The management is perceived to be siding with NUTESA, although the Acting Rector insists that he is trying to be as neutral as possible.

11. The Council is inevitably seen as part of the forces ranged against Prof. Mokadi. It is immaterial whether due procedural processes were followed by the Council or not. It falls outside the scope of my terms of reference and it is ultimately the responsibility of the presiding officer in the disciplinary hearing to decide about the correctness of the procedures followed and whether the Council acted in good faith. What is important for the purposes of my report is that, for reasons already mentioned, many see the Council's conduct as being in bad faith. The attorneys of the Technikon insist that the good or bad faith of the Council will only be determined by the outcome of the disciplinary hearing, implying that if the verdict goes against Prof. Mokadi, the good faith of the Council's actions will be established. Although I agree that the outcome of the hearing will impact on the way the whole process will be perceived, I still find the attorneys' contention a narrow legalistic approach that does not take into account the social dynamics that surround this case.

12. In the meantime the students of the Technikon, especially the black students that come from a disadvantaged background, are experiencing the same kind of problems that have become part and parcel of the South African tertiary education scene: financial problems and huge debts, lack of proper accommodation for a large number of students, etc. The Technikon's administration is trying to solve these problems to the best of their ability. They are, however, unable to persuade the student leadership, notably that of SASCO, and their large following that they are serious in their intentions. The actions taken against the Rector and his continued absence from the campus are clouding the issues. The Council and management furthermore made, in my opinion, some serious blunders (see paragraph 15) which further led to a complete breakdown in trust between them on the one hand and the students and the NEHAWU oriented staff on the other.

13. The student unrest of April 1998 that originally started with the dissatisfaction of Food and Clothing students in the Faculty of Humanities concerning their academic courses eventually led to serious clashes on the campus, vandalism and the destruction of Technikon property. Even more serious was the alleged abduction of members of staff by students, SRC members included, supposedly to demonstrate the seriousness of their demand that certain members of the management were no longer acceptable on the campus. The campus was closed for two weeks and criminal charges were laid against the alleged abductors by the affected staff. A court interdict followed, forbidding meetings of any kind, including normal social and even religious gatherings and only allowing for formal academic classes. This interdict is still in place, giving the campus a normal appearance to the casual visitor, but which is in fact a very abnormal campus with student activities confined to class attendance and virtually nothing else. Support for or against the lifting of the interdict is by now following altogether too familiar lines: a significant number of the students and NEHAWU who support Prof. Mokadi and call us for the immediate lifting of the interdict, while NUTESA wants the interdict to remain in place until Prof Mokadi's case has been finalised. In the meantime a certain number of student issues are kept alive, but they are completely overshadowed by the Mokadi controversy.

14. Unfortunately the April crisis brought another perception more into the open. There had been, from the beginning of the Mokadi problem, the suspicion that the Council, or more correctly, members of the Council, were too much involved in the management of the Technikon. The way in which the April unrest was dealt with strengthened this perception considerably. The impression was created that almost all the important managerial decisions were taken by the Executive Committee of the Council. The daily presence on the campus of some members of the Council, notably that of the Deputy Chairperson, whenever there was a crisis, strengthened this impression. The number of full day pay-outs to some members of the Council during the times of unrest tells its own story. The division between the governance of the Technikon by the Council and the management of the institution by the office of the Rector as the Chief Executive Officer has become distinctly blurred. There is an ever-growing impression that the management has abdicated and that it is only able to manage the campus by means of an outside force (the court interdict and the police) and by the intervention of the Council, more specifically, the Executive Committee of the Council.

15. The serious lack of confidence in the governance structure of the Technikon among many has been further strengthened by gross errors of judgment and downright blunders pertaining to some very controversial appointments made by the management. In a number of cases, members of the staff or of the Council were promoted to or appointed in senior posts at the Technikon, all of whom are known opponents of Prof. Mokadi and who played a significant part in the events culminating in his suspension. It is very difficult not to see in these appointments a reward for services rendered. One instance in this regard is extremely disquieting. A member of the Council was appointed in a senior post and has since taken up his position despite the fact that he has been accused of rape and assault and has been released on bail. The Deputy Chairperson of the Council took part in the appointment without her participation being required by the normal appointments procedures. Comparisons are made between his case and the way in which the Council dealt with Prof. Mokadi on the grounds of seemingly less serious offences. Despite an outcry in the Technikon, the community at large and the media, the management stuck to their guns and went ahead with the appointment.

16. The developments over the past ten to eleven months and the aforementioned conduct of the management have resulted in initiatives of the management and the Council being viewed with profound suspicion even where these initiatives were directed towards transformation and the implementation of an affirmative action policy that had been accepted even before Prof. Mokadi arrived on the scene.

17. In March 1998, a new Transformation Plan, initiated by the Acting Rector, was adopted by the Council. The new plan made provision for the acceleration of the transformation process through an early retirement scheme, because the filling of posts vacated in consequence of normal resignations did not keep pace with the transformation that had already taken place in respect of student numbers. The idea was that incumbents over the age of 55 could go on early pension. This would make room for affirmative action appointments. In addition, provision was made for those who had gone on the early pension scheme to be appointed on contract to train the new appointees. The contribution of the Council was calculated to constitute R4,6 million. As adjustments to the original plan were made, the contribution of the Council would accumulate to R7,6 million. Again there was an outcry. The groups supporting Prof. Mokadi voiced their concern that the Technikon's money was being wasted on "golden handshakes", mainly for white members of staff, while the students had difficulty in making ends meet. In the media the Chairperson of the Council explained and defended the scheme, but to no avail. A member of the Council representing the business community expressed his doubts about the scheme, mainly because staff members went on retirement even before the posts were advertised to ascertain whether there was indeed the possibility of affirmative action replacements. Eventually, because of the negative reaction to the scheme, proposals by the Acting Rector to reduce the contribution of the Council to R3,6 million were accepted at a meeting of the Executive Committee of the Council on 10 July 1998. The new financial plan was deliberated with the NUTESA Executive a week later and approved. There is no evidence that the matter was also negotiated with NEHAWU. The Management has consistently excluded NEHAWU in matters such as these, giving as the reason for the exclusion that NEHAWU is a minority Union. Whatever the so-called transformational arguments for the scheme by the management, the reaction to it again emphasises the serious lack of confidence in the governance of the Technikon among certain sections.

18. While all these debates, accusations and counter accusations are taking place, often in the media, the image of the Technikon is suffering. Many people who are not directly involved in the conflict, have voiced their concern about the damage all this is doing to the Technikon. They all fear that the Vaal Triangle Technikon is losing out in the labour market and that business and industry are already starting to look elsewhere for the recruitment of new staff.

C. RECOMMENDATIONS

I recommend that, with the view to normalising the situation on the campus of the Vaal Triangle Technikon and bringing to an end the existing crisis of confidence, the Minister of Education advise the present Council as follows:

1. To address seriously the problem of the long delay in the disciplinary process against Prof Mokadi and to see to it that the whole matter is brought to a speedy conclusion;
2. to stop all appointments in senior posts that could possibly lead to further controversy;
3. to stop all further retirements in respect of the early retirement scheme;
4. to see to it that vacancies already caused by the early retirement scheme are filled on a permanent basis, preferably by affirmative action candidates if available, and that no further contracts be ended into with those who have already retired;
5. to refrain from any direct involvement in the management of the Technikon and to restrict itself to its duties as the governing body of the Technikon;
6. to normalise campus life by lifting the court interdict as soon as possible; and
7. immediately to start the process of changing the Statute of the Vaal Triangle Technikon with the view to restructuring their governing structures in terms of section 72 (4) of the Higher Education Act of 1997, and to present it to the Minister for approval as a matter of great urgency.

FURTHERMORE

As the changing of the Statute would lead to the dissolution of the present Council and the establishment of a new Council, I recommend—

1. that, irrespective of the outcome of the disciplinary hearing or the recommendations of the presiding officer, the new Council decide the future employment of Prof. Mokadi in order to normalise the operational requirements of the Vaal Triangle Technikon;

2. that the new Council forthwith appoint on a contractual basis somebody from outside the Technikon (possibly by way of secondment) to fill the role of a Chief Executive Officer responsible for the general management and supervision of the Technikon until such time as clarity is reached about the position of the suspended Rector; and
3. that the to be appointed Chief Executive Officer address the problems experienced by students at all levels.

FINALLY

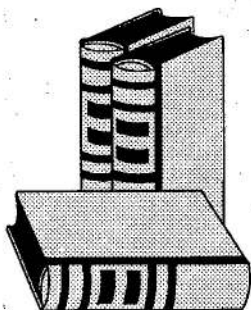
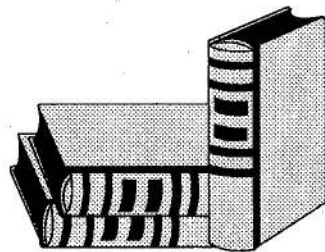
In terms of section 39 (3) of the Higher Education Act, the Minister may impose reasonable conditions in respect of the allocation of public funds to a higher education institution. Section 42 of the Act gives the Minister the right to withhold payment if a council fails to comply with the reasonable conditions imposed. It also falls within the discretion of the Minister to amalgamate or close institutions to make them more effective in terms of section 24 and 25 of the same Act.

I consider the recommendations in respect of the Vaal Triangle Technikon not only essential, but also reasonable for the future effective running of the Institution.

I therefore recommend that the Minister consider his options in terms of the Higher Education Act, in the event of the Council of the Vaal Triangle Technikon within a reasonable period of time fail to comply with these conditions or any other reasonable conditions that the Minister may wish to impose.

J. J. F. DURAND

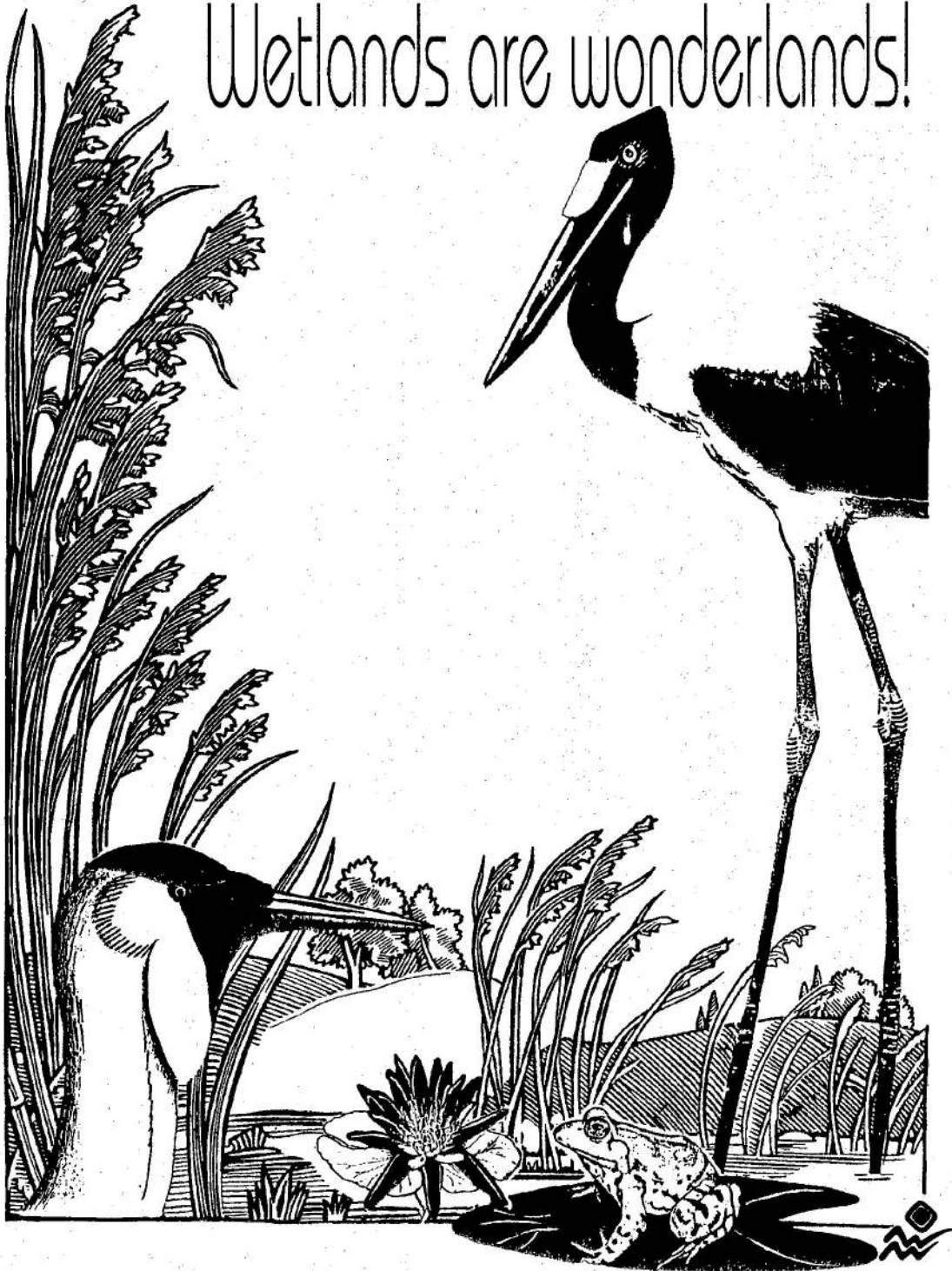
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