

VICE CHANCELLOR'S SUBMISSION TO THE CHAIR OF COUNCIL IN RESPONSE TO THE 2019 ANNUAL REPORT OF THE OMBUD

INTRODUCTION

The 2019 Annual Report of the Ombud is unusual. It is presented as an annual report of the grievances reported to and resolved by the office, and yet it is, in substance, an evaluation of the current university leadership which I head in comparison with the previous leadership and, perhaps more astonishingly, it is for the most part a compilation of untested and unproven allegations made by the Ombud in her personal capacity against my office, the Executive in general and Deans. These allegations have been given the sanctity of fact by packaging them as a report to Council.

The allegations are uncharacteristically vague and unsubstantiated. In the report the Ombud presents her office as a complainant and judge in her own case. I was never notified of the allegations. Neither was I afforded an opportunity to be heard before the report was compiled. I believe also that none of the other officers against whom allegations have been made were notified of the allegations and given a chance to be heard.

By cloaking her untested personal grievances in the form of a formal report of the office to Council, the Ombud has abused her office in the most flagrant manner, and acted in violation of the principles that govern her office and indeed every known basic principle of natural justice. The disproportionate prominence given to the untested allegations in the report suggests *mala fides* on the part of the Ombud.

I believe that this abuse of office and disregard for the law is unprecedented, brazen, and dangerous. It has severely undermined my leadership and my dignity.

SUMMARY OF AND PRELIMINARY COMMENT ON THE ALLEGATIONS

Almost half of the report contains vague and untested allegations by the Ombud, masked as facts, against the Executive, my office, and Deans. The comments I make in response to these allegations are derived solely from my personal knowledge as leader of the Executive. I will not comment on matters that fall outside my personal knowledge. The office holders who have been named might provide their own responses.

Allegations Against the Executive

The report makes two allegations against the Executive:

- (a) *Dramatic change in attitude to the scrutiny and feedback from the Ombud*

The Ombud alleges that during the reporting period of 1 July 2018 to 30 June 2019, the situation of respect for the office of the Ombud 'changed dramatically'. The report states: 'The scrutiny and feedback no longer seemed welcome, at least from the highest office at UCT. It seems that I was naïve to assume that there would be cooperation and continuity from

the new administration, given that its executive was largely drawn from within the university.' The report further alleges 'a difficult working relationship with' and 'scepticism' from 'some members of the Executive'.

None of these allegations are substantiated. The Ombud appears to be evaluating and comparing two 'administrations', which, firstly, is outside her mandate and, secondly, unfair. As can be seen from pages 8 to 13 of the report, there is no evidence showing how many recommendations were made against the Executive as a whole or against my office, and how many were implemented and how many were not. As far as my office is concerned, I am aware of only two cases which the Ombud raised with me and about which we had different opinions. I will come back to this under (c) below. If these are the only cases about which she is complaining, then her allegation of dramatic change in respect for her office, lack of cooperation or skepticism towards her office is a gross exaggeration, if not a complete mischaracterization.

If there was indeed *dramatic change* in respect for the Ombud in 2019 as the report suggests, the Ombud had several options including the following:

- (i) At the time she concluded that there was *dramatic change*, she could have brought this to the attention of the Executive as a collective.
- (ii) If her recommendations were not being respected by my colleagues, she could have brought this concern to their attention directly and sought an explanation why her recommendations were not being followed.
- (iii) If this did not bring about improved compliance, she had the option of bringing her concerns to their line manager or my office.
- (iv) If she was concerned that my office was not respecting her recommendations, she had the option of letting me know about this concern and asking for my explanation.
- (v) If my explanation was irrational, she had the option of bringing her concern to the Chair of Council.

Throughout 2019 until now, the Ombud did not raise with me the problem of *dramatic change* in attitude to her office, and of systematic recalcitrance and disrespect for her office by the leadership. The Ombud did bring to my attention, on separate occasions, a handful of instances where she was engaging with some office holders on particular issues. I duly advised her on how to deal with those instances.

My office has not harboured any skepticism about the office of the Ombud. On the contrary, I have enthusiastically promoted, respected and protected the office, precisely because I fully understand the important role it plays in promoting and advancing a culture of fairness in decision making, combating maladministration and promoting respect for one another in the University. I have thus encouraged and invited the office of the Ombud to engage with the Executive and other office holders to improve cooperation and mutual understanding. I deny that my office has maintained 'a difficult working relationship' with the office of the Ombud.

- (b) *The Executive does not understand the role of the Ombud*

The report makes this allegation by referring to an unspecified ‘occurrence’ the Ombud, by her own admission, claims to have taken place outside the reporting period. Nevertheless, the report alleges that this occurrence ‘reflects the current executive’s seeming aim to silence, erase my office or change its mandate was the request to explain the interface between my role and academic decisions’.

The report does not describe the ‘occurrence’. Neither does it describe the facts supporting the striking allegation that the Executive does not understand her role. The report projects on the Executive an intention to ‘erase her office’. This is a serious allegation that is unsupported by facts. Since the report cites in the pejorative sense lack of understanding by the Executive of her role, it does not explain why it is bad for the Executive to invite her to explain her role or why she does not consider it her responsibility to raise awareness or improve understanding about her office throughout the University including among the Executive.

My office is not aware of, and has not taken or supported, any action to erase the office of the Ombud.

Allegations Against My Office

The report makes three specific allegations against the office of Vice Chancellor which I occupy. Unlike all others, these allegations single out my office and the report assigns guilt on me in the most unfair fashion and contrary to the cardinal principle of confidentiality that governs the office of the Ombud. I believe that naming and shaming do not form part of UCT’s dispute resolution mechanisms especially the Ombud’s which is supposed to provide alternative dispute resolution that avoids adversarialism and taking sides but promotes amicable solutions.

(c) *Lack of trust in the office*

The report falsely accuses my office of ‘supporting transgressions and advocating for wrongdoing’.

The report states:

In a brief “meet and greet” encounter following the appointment of the VC, I told her that I had noted that there was a case she suggested be brought to my attention and another that she seemed to have finalised. I told her that my view on both cases was that there were considerations that were not explored fully. I proposed that we meet so that I could explain my views. I do not know what this might have triggered since she became angry and made false assertions about my office and its mandate. She underlined her views by stating, in referring to two specific cases which we were discussing, that she was ready to meet these students in court.

According to her account, the Ombud went to see me on the pretext of a 'brief meet and greet'. However, she introduced into this brief meeting two critical cases on which she presented her views. By her own account, her view was that the decisions were wrong.

The Ombud's account paints a problematic picture of how she handled the two cases. Her account shows that her office did not notify my office of the two complaints and that she did not give me a chance to be heard before she made her 'recommendations'.

In her report, the Ombud notes: '... my office does not judge, a point that I reiterate every time I engage with members of the University. Engaging with respect and suspending judgement are among the main characteristics of my office.' Yet on this occasion, the Ombud's account shows that she judged in these two cases and judge she did, way before she had met and spoken with me.

Within the confines of confidentiality, I will attempt to provide some general details about the two cases.

Contrary to what the report suggests, I engaged with the Ombud constructively about both cases. With respect to one, the student eventually received a positive outcome. With respect to the second, the student did not receive a positive outcome. There is nothing inherently wrong with this.

One case concerned a PhD student who had been excluded on academic grounds. When the student appealed to the Vice Chancellor (VC), the appeal was delegated to me as Deputy Vice Chancellor (DVC) responsible for research at the time. After considering the letter of appeal, I upheld the student's appeal. Subsequently, the Faculty brought to my attention that the student has plagiarized the entire letter of appeal. The Faculty's claim was found to be true. Because the appeal letter was plagiarized, there was no appeal and so I retracted my initial decision since it had been procured by fraud. The Ombud brought this case up during the meet and greet when I became VC. She was adamant that my decision was wrong. She had not heard from me before she came to this conclusion. While I disagreed with her position during this meeting, much later the Ombud brought up this issue again. This time she invited the student to the meeting, which was in her office. By this time, the student was able to demonstrate that her circumstances had significantly changed which provided a reasonable basis for reconsidering the student's status. Indeed, this engagement resulted in a decision to re-register the student.

The other case concerned a doctoral thesis which had been flagged by an external examiner for plagiarism. When the Doctoral Degrees Board (DDB) considered the examiners' reports, it denied recommending the candidate for the award of the doctoral degree. The supervisor appealed the decision to me in my capacity then as chair of the DDB and DVC responsible for research. Upon considering the appeal for leniency, I decided to turn down the appeal, citing as the reason the fact that the plagiarism was significant and unacceptable. This matter would later be referred to two other DVCs and back to the DDB. On separate occasions, all of them duly considered the candidate's appeals and found that they could not approve the award of a doctorate for a thesis which had been plagiarized substantially.

Ignoring all this meticulous decision making, the due process that had taken place and the applicable rules, the Ombud sought to make me change the decision of the DDB. She did this without first seeking my views on the case. As Vice Chancellor at this stage, I was being asked to reverse the decision made by the entire DDB and to approve a thesis for the award of a doctoral degree that had been found to have been plagiarized. I found it difficult to accede to the Ombud's instruction. Firstly, I had become *functus officio* since I had considered the matter when I was DVC. I could not re-claim jurisdiction in the matter simply because I had now become Vice Chancellor. Secondly, my predecessor had already considered the matter and referred it to a different DVC, who had upheld the decision of the DDB. Thirdly, to award the degree in this case would have violated University rules and practices including the main yardstick for awarding a doctoral thesis – that the thesis must make an original contribution to knowledge, and the plagiarism policy. Neither my office nor the office of the Ombud can compel the DDB to take a decision that is inconsistent with University rules and policies. In this case, the Ombud strayed way out of her jurisdiction by accusing the DDB and my office of making a wrong decision on plagiarism. My understanding is that her office can look into the fairness of the procedures, but her office cannot substitute her decision for that of the lawful decision-maker, in this case the DDB.

If these two cases are the source of the Ombud's wide-ranging allegations against the Executive and my office, then they lack merit in substance, not just because of the glaring violations of procedural rights that have taken place. As the facts revealed above show, in one case the engagement with the Ombud resulted in a positive outcome for the student. In the other case, there were justifiable grounds for not following the recommendation of the Ombud.

I deny that in my meetings with her I made false accusations about her office. I agree that I was firm in my belief that the University had treated the students fairly and that if challenged in court, the University was entitled to defend both cases.

(d) *Bullying, silencing and unfair treatment*

These allegations fall into two broad categories. One has to do with the Ombud vocalizing her own grievances and the other with her purporting to channel other people's grievances. Neither are substantiated.

The report states: 'During this reporting period a number of work-related complaints came to me about professional interactions with the VC where people felt bullied, silenced, undermined, rebuked and/or treated unfairly. Their pain was visible. Some affected bystanders also came to express fear and told me how they were impacted individually by different incidents.'

The report further alleges: 'Not one of those who brought these issues wanted me to approach the VC as they feared retaliation. The bystanders said they would not want to

experience what they saw first-hand happen to others. The visitors said that their compelling commitment to the university was what kept them going despite these experiences.'

This is by far the most serious allegation made by the Ombud. I am entitled to believe that these allegations are made in bad faith. Lofty and emotive words are used to describe them, and yet no evidence and details are given to support them, no verification or vetting of the allegations took place, and the absence of a credible verification process is seemingly justified by further unproven allegations.

These allegations are highly prejudicial. Yet they are presented in a manner that makes it impossible for me to respond to them. As far as they relate to the complaints of members of staff other than the Ombud herself, it can be said that the Ombud has chosen to weaponize confidential information she has received in her official capacity by trying to use them to bolster her own grievances against my office. She knows that her office is bound by confidentiality and cannot be compelled to reveal the details of the allegations so that I can consider and respond to them.

The Ombud seems to have sat on the allegations (both her own and those of others) for a considerable period. She has a wide range of tools for dispute resolution, all of which she has ignored. UCT policies prioritize amicable resolution of disputes. By weaponizing her grievance mechanism, she has raised a reasonable suspicion of vindictiveness, bad faith, and abuse of office.

I deny that I have bullied or silenced the Ombud. Neither have I treated her office unfairly. There is no evidence, and I deny, that I have victimized any person who has lodged a complaint against me to any office in the University. While I disagreed with the Ombud about the two cases the report refers to, such disagreement cannot be conflated with unfair treatment or silencing of her office.

(e) *Making negative remarks about her office*

The report alleges that I made negative remarks about her office on several occasions. She 'wonder(s) how these views might impact the University's capacity to deliver on fair outcomes where her office is involved as well as potential watering down of my effectiveness and the gains of the office over the years'.

This allegation is, like all others, unsubstantiated. I have not made negative views about the office as alleged. Nor have I influenced any of my colleagues and other members of the University community to disrespect the office of the Ombud. I repeat my earlier comments that, contrary to what is alleged, I have avidly supported, promoted, and protected the office of the Ombud.

The irony is that while the Ombud accuses me of making negative remarks about her office, her report makes numerous unpleasant remarks about my office and leadership including the following:

- That my leadership does not understand the Ombud's role;
- That my leadership is worse than the previous leadership;
- That my disagreement with her has to do with egos; and
- That I become angry easily and without justification.

I am surprised and disappointed that the Ombud views my office and leadership in this unflattering manner.

Allegations Against Deans

The report makes an allegation of 'push-back' from 'some Deans'. This allegation is also not substantiated. The Deans are entitled to make their own responses to this allegation. From my side, I can say that I have never incited or aided any Dean to 'push back' against the Ombud. If anything, I have taken steps to improve cooperation and mutual respect between the Ombud and Deans.

VIOLATIONS OF THE LAW AND INTERNAL POLICIES

The Ombud's annual report reveals numerous violations of the law and UCT's rules and policies.

My office is created and regulated by statute. Thus, Council is bound by the Promotion of Administrative Justice Act 3 of 2000 (PAJA) as far as the affairs of my office are concerned. To the extent that these affairs touch on my contract of employment, the Labour Relations Act 66 of 1995 and other employment-related laws are relevant.

Fairness

I believe that fairness is a fundamental principle of South African constitutional law. It is built into section 23(1) of the Constitution which provides that everyone 'has the right to fair labour practices' and section 33 of the same Constitution which provides that everyone 'has the right to administrative action that is lawful, reasonable and procedurally fair'.

Fairness forms the bedrock of UCT's founding documents for the office of the Ombud and all other dispute resolution policies. In *Janse van Rensburg NO v Minister of Trade and Industry NO*, the Constitutional Court said: 'Observance of the rules of procedural fairness ensures that an administrative functionary has an open mind and a complete picture of facts and circumstances within which the administrative action is to be taken. In that way the functionary is more likely to apply his mind to the matter in a fair and regular manner.'¹

¹ 2001 (1) SA 29 (CC) para 24.

The report reveals the following violations of the basic tenets of fairness:

(i) *The right to be notified of the allegations*

The Ombud did not notify my office of her personal grievances before she published them in the report. According to section 4(1)(i) of PAJA, giving 'adequate notice of the nature and purpose of the proposed administrative action' is a minimum requirement of procedural fairness'. In this case a highly prejudicial report was issued without observing this minimum principle of procedural fairness.

(ii) *The right to be heard*

The right to be given a reasonable opportunity to be heard is another minimum requirement of procedural fairness (see section 4(1)(ii) of PAJA). In this case, the Ombud did not give me or other persons she accuses an opportunity to be heard.

(iii) *Bias*

The rule against bias forms one important pillar of natural justice. It is given specific codification in section 6(2)(a)(iii) of PAJA. A classic case of bias is when a decisionmaker turns herself into a complainant and judge in her own cause. This principle is codified in many UCT policies including the Ombud's Terms of Reference which state:

The Ombud shall avoid involvement in cases where there may be a conflict of interest. A conflict of interest occurs when the Ombud's private interests, real or perceived, supersede or compete with his or her dedication to the impartial and independent nature of the role of the Ombud. When a real or perceived conflict exists, the Ombud should take all steps necessary to disclose and/or avoid the conflict.

The Terms of Reference also provide: 'The office of the Ombud shall not take sides in any conflict, dispute or issue but shall consider the interests and concerns of all parties involved in a situation impartially with the aim of facilitating communication and assisting the parties to reach mutually acceptable agreements that are fair and equitable, and consistent with the policies of the University.'

The Terms of Reference further state: 'Independence is essential to the effective functioning of the office of the Ombud ... to ensure objectivity, the office of the Ombud shall function independently from administrative authorities.'

The report is reeks of partiality. All allegations made against my office by other parties and the Ombud herself are taken and presented as fact by the Ombud. More problematically, the Ombud has used the grievances of other people to unfairly augment her own, in a marked demonstration of bias, partiality and conflict of interest.

Abuse of Office and Violation of her Terms of Reference

The Ombud has taken advantage of her lofty position to clothe her own grievances in the authority of her office, knowing fully well that she is a complainant and that she cannot serve as a judge in her own case. About reporting, the Terms of Reference for her office state: 'The office of the Ombud reports general trends of issues and provides organization wide feedback while recommending system change when appropriate without disclosing confidential information.'

This report violates this rule. As noted earlier, much of the report does not report general trends. It makes personal allegations of the Ombud against certain offices.

The Ombud has also violated the following principles recognized by the Terms of Reference for her office:

- Principle A which requires her office to act 'independently' and 'objectively'.
- Principle B which states: 'The office of the Ombud holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality.'
- Principle C which requires her office 'not to take sides in a conflict, dispute or issue'.
- Principle D which states that the office of the Ombud 'shall not investigate, arbitrate, adjudicate or in any other way participate in any internal or external formal process or action. Whenever practical, the Ombud shall seek the resolution of the problem at the lowest level within the organization'.

In addition to laying down these principles, the Terms of Reference state that the office of the Ombud 'will have no authority to impose sanctions or enforce or change any policy, rule or procedure'. They also state: 'Use of the Office of the Ombud shall always be voluntary and not a compulsory step in any grievance or University policy'.

The Ombud has failed to act impartially. She has breached the cardinal principle of confidentiality by revealing the specific offices against whom allegations have been made and at some level the nature of the allegations against those offices. The report is particularly prejudicial to my office which is the target of the most stinging allegations. The name and shame approach smacks of abuse of office. The Ombud did not at any time attempt to 'investigate, arbitrate or adjudicate' any of the complaints. Neither did she seek the resolution of the allegations 'at the lowest level within the University'. As noted earlier, there were many intervention points she could have explored within the University. Instead, she has chosen the most spectacular and public, precipitating a crisis that should not be there. Perhaps the Ombud has an explanation for taking such extreme action and for these flagrant violations of her Terms of Reference. If she has none, I am entitled to presume that she is acting in bad faith.

Bad Faith

Bad faith has no place in decision making. Section 6(2)(e)(v) of PAJA makes this clear. In *Public Protector v South African Reserve Bank* (2019 (9) BCLR 1113 (CC); 2019 (6) SA 253 (CC), Mogoeng CJ said that ‘the meaning of bad faith or malicious intent is generally accepted as extending to fraudulent, dishonest or perverse conduct; it is also known to extend to gross illegality’ (at para 71). He further said (at para 72):

The correct approach to determining the existence of bad faith is therefore one that recognizes that bad faith exists only when the office-bearer acted with the specific intent to deceive, harm or prejudice another person or by proof of serious or gross recklessness that reveals a breakdown of the orderly exercise of authority so fundamental that absence of good faith can be reasonably inferred and bad faith presumed. ... Abuse of office undermines the efficacy of State machinery and denies justice and fairness to all people and institutions.

By making allegations she knows to be unproven and untested, by disregarding all minimum procedural rights, and by lending credibility to these allegations through the platform of the annual report to Council, there is every reason to believe that the Ombud is acting in bad faith.

Bad faith is also manifest in the highly divisive comments she makes in the report. The Ombud draws sharp distinctions between the ‘new’ leadership and ‘old’ leadership and unfairly labels the new leadership as non-compliant and recalcitrant. In some parts, the report draws innuendos from the fact that there were more visits to her office in 2019 than in the previous year. Yet spikes in visits have been reported in previous reports as well. The report notes the prominence the office has received within the University and beyond but does not consider whether this is one of the reasons why members of the University community are reporting more cases to the office. The report does not show how many of her recommendations have not been implemented or that the office has sought explanations for non-compliance and that such explanations are irrational.

The report seeks to divide the community of Deans by making allegations against ‘some Deans’, not all. She does the same with the Executive. For example, the report says:

Notwithstanding the skepticism from some members of the Executive, this being my ninth year in the role, I have continued to enjoy support and strengthened collaborations from many members of the university across different levels, and the office and the work of the office continue to gain traction. I especially value hearing that people heard about the office from previous users of our service. Word of mouth is a vote of confidence in the service. We are also seeing a growing number of repeat visits.

By singling out my office, the Ombud has demonstrated an intention to undermine my leadership in the most public way without having regard to my dignity and procedural rights.

The Ombud has committed all these violations knowing that her Terms of Reference state that ‘The University will endeavour to protect the Ombud from subpoena by others, both

inside and outside the University.' Hers is a protected office. The Ombud cannot be called upon to defend her allegations. The people she accuses are doomed without recourse.

In short, the Ombud has acted in a perverse manner and her actions have caused irreparable harm especially to my office which has been publicly lynched, undermined, and demeaned – unfairly and unjustly.

UNLAWFULNESS

As noted earlier, the Ombud's Terms of Reference specifically state: 'The Office of the Ombud shall not have authority to adjudicate, impose remedies or sanctions, or to enforce or change policies or rules.' To the extent that the report publicly assigns wrongdoing to my office and others, she has exceeded her powers. To the extent that the Ombud in her individual capacity is entitled to bring her own grievances, she has no right to submit them to herself and then to incorporate them into the Ombud's annual report to Council.

What seems to have precipitated the drastic action taken by the Ombud seems to be her disagreement with me about the two cases the report cites. University rules define the authorities who have legal authority to take certain decisions. The Ombud is a mechanism created by Council to conduct informal dispute resolution. The office cannot serve as a substitute for the role of my office, Deputy Vice Chancellors, Senate, Deans, Committees, and other offices which exercise statutory or delegated authority under specific rules and policies of the University.

This is why the Terms of Reference for the Ombud provide:

- 'The Ombud will be entitled to inquire informally about any issue concerning the University and affecting any member of the University Community'.
- 'The Office of the Ombud has the authority to discuss a range of options available to the visitor, including both informal and formal processes. However, the Office of the Ombud will have no actual authority to impose sanctions or to enforce or change any policy, rule or procedure.'
- 'The Office of the Ombud shall not have authority to adjudicate, impose remedies or sanctions, or to enforce or change policies or rules.'

The Ombud exercises soft power. These include 'listening and providing a respectively and safe place for people to discuss their problems freely ... explaining university policies and procedures, making referrals to other offices and coaching visitors on how to help themselves ...'.

There are good reasons why the Ombud was created with such soft powers. These have to do with respect for the rule of law. Only those who have been entrusted with powers to make certain decisions are by law qualified and authorised to make those decisions. An unauthorized person cannot exercise legal powers, or the authorised person cannot exercise his or her powers under dictation from an unauthorized person.

The Office of the Ombud may not, for example, overturn a decision of the Doctoral Degrees Board pertaining to the award of doctoral degrees. The office could inquire into the fairness of the process and make recommendations, but it is the authorised persons who must make the final decision. The recommendations themselves must be consistent with UCT rules and policies. The Terms of Reference state: 'The Ombud assists parties in reaching resolutions that are consistent with the ideals of the University', and that the office shall assist parties to 'reach mutually acceptable agreements that are fair and equitable, and *consistent with the policies of the University*'.

The Ombud describes her approach to the office as far as legality is concerned as follows:

Yet my office does not judge, a point that I reiterate every time I engage with members of the University. Engaging with respect and suspending judgement are among the main characteristics of my office. These characteristics apply across the board in my engagement, whether you are the person initiating a complaint or the person complained about. Yes, the role involves giving feedback that the recipient may not be ready for. However it should not be perceived as threatening – especially given that the office of the Ombud has no formal powers to apply sanctions – and hence there is no need to behave defensively to avoid a threat, embarrassment or anything else associated with being "wrong". I am aware that feedback from my office may lead to looking at what was previously seen as a "closed" issue yet again in the light of my recommendations. This may require suspending the basic notions about ourselves and who we are. I will be the first to say that is a frightening proposition to the ego.

Here, the Ombud presents a contradictory picture of her office. She admits that her office does not make binding decisions, yet she expects office bearers to implement all her recommendations. The Ombud says she does not judge, yet she judges as her report so strongly shows. All of this is inconsistent with the requirements of lawfulness and legality. My office and that of the Ombud are bound to operate within the law and not to exceed the allocated powers. There may be differences of opinion from time to time on the application of these principles. But such differences should not be cause for vengeful action by either my office or hers. There is evidence that the Ombud has engaged in vengeful action – the report proves this. There is no evidence that my office has done so – the report provides none.

CONCLUSION AND MY POSITION

What appears to be the annual report of the Ombud is in fact not a report. It is an amalgam of a report and personal allegations of the incumbent against certain offices including mine. To the extent that the report contains unproven and untested allegations it is ultra vires and invalid.

The report has already caused considerable harm to my office and leadership. As far as I know, all the impugned office holders have been condemned without a hearing and some without their knowledge to date. In this response, I have highlighted some of the fundamental principles of fairness and lawfulness that have been violated. These include the principles

governing the office of the Ombud. These flagrant violations rouse in my mind a reasonable suspicion of bad faith on the part of the Ombud. I believe that she has abused her office, knowing fully well that her office is immune from subpoena and other processes regarding the complaints she has received and handled.

The Ombud has disparaged my character, humiliated my person, and undermined my office without regard to my procedural and other rights. These violations are serious and irreversible. I therefore make the following demands:

- That the report is withdrawn unconditionally so that all offensive parts are removed.
- The revised report must meet my approval before it is submitted to Council.
- The Office of the Ombud should make a written apology to my office.

I would like to believe that the Ombud has opened herself up to possible disciplinary action. In my opinion, she has acted in a perverse manner and violated all the fundamental principles that govern her office. Her actions are divisive and have precipitated an unnecessary tension and crisis. I will leave it to your office to decide how best to proceed in the light of these violations.

I am open to mediation between my office and the office of the Ombud if the Chair of Council has reason to believe that this is a plausible way of repairing my relationship with the Ombud, provided that the process takes place in a context of mutual respect and fairness and is facilitated by an independent person external to UCT, whom I must pre-approve.

The office of the Ombud has a duty to build rather than break relationships, to unite rather than divide, to seek amicable resolution rather than name and shame. The office should never be weaponized against any member of the University.

**Prof Mamokgethi Phakeng, PhD(Wits); DSc (honoris causa, Bristol); MASSAf; FAAS; GCOB
Vice Chancellor**

8th March 2020