

Summary of comments made by members of Senate (March 20-May 20, 2019) regarding the final IRTC report, published March 18 2919

The set of detailed comments (Appendix 1), and three reports from Profs Seekings, Moultrie and Corder (Appendices 2-4) are appended to this summary for submission to the IRTC Steering Committee

1. Please comment on aspects of the IRTC report that you especially appreciate or applaud, and which should be acted upon going forward.

Positive comments focused mainly that the recommendation of the IRTC report (pgs 69-71) were largely sensible and reflect known concerns in the UCT community. Of particular note, in no particular order, are the need to

- Finalize outstanding student disciplinary cases
- Improve the efficiency and fairness of administrative systems
- Improve communication across the University
- Develop and implement a code of conduct for private security on campus
- Review support for mental health on Campus
- Review UCT's housing policy, including the policy of overbooking, administration and communication
- Create an environment on campus where everyone feels included and diversity is celebrated.

Several members of Senate commented that initiatives addressing these recommendation were already underway to address several of important concerns.

2. Please comment on any aspects of the IRTC report which you feel are unsatisfactory.

Members of Senate who responded to our request for feedback, found many aspects of the IRTC final report unsatisfactory. The sheer scale of this comments (30pgs) far outweighed the positive comments on the IRTC final report (4 pgs).

The major concerns (in no particular order) include

- Concern over the small number (80) of submissions received by the IRTG; with no acknowledgement in the report that there are 25 000+ students and 5000 + staff of campus. The Commission did not consult broadly enough; the findings represent a minority view and can't be given much credence. The only student views presented are those of the protesters.
- The Commission itself was experienced as partial and bullying of academic and PASS staff who made submissions. Staff who appeared before the commission were traumatized by their reception by the IRTC.
- This report shows little evidence of scholarship which we would expect for a University-commissioned document. It suffers from ideological determination, the use of anecdotes as evidence, and the singling out of particular Departments without testing evidence.
- There are many factual errors, for eg, with regard staff appointment procedures, conduct of private security, etc; no fact-checking; even some of the submissions might have been bogus. For example Mr Harold Ferwood is quoted on pg 33 (ref 101) on the conduct of

private security during the protests. Mr Ferwood is neither a UCT student nor a staff member and is likely a pseudonym.

- A partisan approach to selecting and interpreting submissions that were made to the IRTC, and the context in which they were analysed. Disproportionate weight seems to have been given to submissions that were from a particular group (students and others, not necessarily UCT staff members). For example, prominence (7 citations) is given to a submission from a Staff Associate.
- Silence on the external political context in the Chapt 3 which describes the events of 2015-2016, e.g. Lindsay Maasdorp/BLF/Guptas and PASMA
- Unfair tone and unbalanced criticism of management and their role in the protests throughout the document. Blame is laid at the feet of the Dr Price and the executive, while protesters are exonerated.
- The report glosses over the experiences and trauma that the protests caused to UCT staff members.
- Widespread concern that amnesty was granted for violent acts, and the conclusion in the report that violent protest and assault can be acceptable. Concern expressed that this will lead to a climate of impunity on campus.
- It is disappointing that the IRTC did not engage more deeply on the draft code of conduct on protest. Although the draft code is referred to on pg 62 (5. Draft protest action policy), the policy is described off-handily as “apparently prepared by the university executive and made available to us”. The Commission fails to acknowledge that they received a specific submission from several member of Senate May 7, 2018 explaining the history of the draft code, and specifically asking the IRTC to comment on its value and how it can be improved. The secretariat was reminded on August 20 that these members of Senate were still willing to discuss the background to the Code of Conduct with the IRTC, and we quote “If you would like further discussions as to the reasons why such a policy may be both necessary and helpful for the university, we would be more than willing to meet with the Commissioners.”. Despite these multiple submissions, the IRTC never met with the members of Senate. The IRTC merely notes that the draft code of protest lacks guidelines on how staff and management should behave during student protests.
- Many members of Senate rejected Chapt 6 on Racism, and support Justice Yacoob’s statements on this chapter. The accusation that Tim Hoffman’s submission regarding the loss of his research vehicle due to arson (pg35-36), with its lack of acknowledgment of Black Pain, was an example of subtle racism, was rejected by many members of Senate.
- The Report suggests that the Commissioners have no understanding of the complexities of many of the issues (eg housing), or the external constraints (eg government funding) that management at UCT has to deal with.
- Concern that the Departments of Political Science, History, Psychology and Sociology are singled out in the Recommendations (pg 69) to lead institutional change and decolonization- several members of Senate noted that this should be a collective effort in which all Departments and Faculties play a role.
- The IRTC report has failed to build reconciliation on campus, and has damaged UCT’s reputation as an academic institution.

Appendix I Feedback from members of Senate regarding the IRTC final report published on March 18, 2019

Senate members were asked to comment on 1) what aspects of the IRTC report they applauded, and 2) what aspects they found unsatisfactory.

A questionnaire was set up to gauge feedback from Senate in the period March 20-March 22, 2019. Forty-seven members submitted their opinions. Following the Steering Committee meeting on March 23, the questionnaire was re-opened, and a further 19 members of Senate gave feedback by the deadline of May 20, 2019 (ie 66 members of Senate responded to the VULA questionnaire).

Members of Senate were also given the option of sending their comments by email, directly to Prof Illing. Twenty one emails were received.

Profs Seekings, Moultrie and Corder sent detailed reports to Prof Illing (see Appendices 2, 3 and 4)

In summary, 90 Members of Senate gave feedback on the IRTC report (26% of Senate membership)

36 respondents found something positive to say about the IRTC report

83 respondents were critical of the IRTC report

<p>1. Please comment on aspects of the IRTC report that you especially appreciate or applaud, and which should be acted upon going forward.</p>	<p>51 responses & 3 emails 34 +ve VULA response 2 emails +ve 17 -ve VULA responses (italics) 1 -ve email</p>
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- a. The recommendations of the IRTC are generally good, in my view. I particularly like 8.2 "The university conducts research on the best ways to embrace and celebrate diversity and adopts creative polices, initiatives and programmes in this regard." This approach is important, as are practical recommendations in other paragraphs.
- b. Most of the final recommendations are fairly sensible, and are probably being done at UCT anyway. There are some that are going to be difficult/impossible to achieve, but that is in the nature of a report written by external people.
- c. I agree with all the recommendations made in the report - I find them very thorough and constructive. The chapters on racism at UCT and mental health are excellent, and the comments on an existing climate of fear and bullying are important. It is now up to UCT to respond and change.
- d. General recommendations on transformation and decolonisation, dealing with mental health issues, access to accommodation etc.
- e. I appreciate an independent view of the issues at hand
- f. The general recommendation that we should strive to make UCT a tolerant, kind and open institution that rejects authoritarianism, bullying, racism and sexism.
- g. I found the report easy to read, and open about complexity of matters realted to institutional racism, protests, and how clemency and amnesty were managed. The recommendations seem feasible to implement to create a more inclusive university.

- h. The IRTC report provided a broad framework of the many factors not just at the level of UCTs or SA higher education institutions, but also nationally and globally that contributed to the #RhodesMustFall/#FeesMustFall #Shackville protests, although seemed to focus disproportionately on the factors mitigating findings against repeated violence during these protests and ignored many, many strengths of the institution and the vast majority of its students and staff who choose day after day, year after year to advance and transform our university. With hindsight and the recent exposure of the extent of state capture it is possible to see how high levels of impunity have fuelled anti-social and destructive forces in South African society. One of the few institutions which can stand as a bulwark against the erosion of social good are universities. UCT is one of the best in Africa. Failing to include this critical aspect in the IRTC's very broad mandate resulted in it paying minimal attention to considering how the health of the institution for future generations can be safe-guarded.
- i. There are some aspects of the report I applaud: the recruitment process at UCT is flawed. the transformation committees at our institution needs to define transformation more clearly. I was hired as a junior lecturer in 1997 when three positions in the same department, in the same discipline was advertised. Two whites were appointed as senior staff. I was the only one with a doctoral degree and university teaching experience. I am a black South African. Were it not for my family who urged me to accept the appointment, I would not be here.
- j. • The emphasis on the Bill of Rights and education on this is a good recommendation. • The level of unhappiness experienced by black students and staff members is important to understand. • Better systems to deal with sexual abuse are important. • Legal support for students undergoing disciplinary hearings is a positive recommendation. • Racism does exist at UCT as it does in everywhere else. • The recommendations on private security are appropriate. • Education on cultural norms would be good – such as the statement on “greeting” on page 46. • Black academics need more support and care not to overload them with committee work in an attempt to make every committee have the correct representation. Maybe they can have access to a life coach to help them work through issues. Senior academics should carry the appropriate work load and not overload junior staff members
- k. The chapter recording the events of Rhodes / Fees / Shackville is excellent and presumably an accurate account of events. This is useful because as a factual record it is essentially free from opinion. Regrettably, this is perhaps the only chapter of the report which can be described in this way.
- l. Overall, I agree with the recommendations 8.1-8.14. I particularly support the recommendation 8.2 to research best ways to embrace and celebrate diversity. It's clear that much needs to be done among white staff and students to understand White Privilege and Black Pain. This should be done in a non-alienating and non-threatening way. I have participated in some talks and workshops where this topic has been handled very sensitively, albeit powerfully. I also strongly endorse the proposal to strengthen mental health services to include the provision of support services for staff, many of whom have suffered, and continue to suffer greatly.

- m. The inadequacy of administrative systems is highlighted and needs to be addressed. Most of the recommendations reflect known concerns.
- n. Proposals to make the university more sensitive to the needs of Black students to be welcomed.
- o. Recommendations provide basis to move forwards
- p. The recommendations on mental health, fostering inclusivity, embracing diversity etc.
- q. The support they have for the students Their appreciation of what happened
- r. On matters of background and many factual details it is quite informative. In engaging with complex problems of politics, society and university life and ethos it is useful. In seeing things from the protesting students' side it is thought provoking. But there are many "buts"... (covered below in (2)).
- s. The IRTC addressed the issues within their brief.
- t. I think the recommendations are reasonable. I do not believe however that affirmative action in student selection (Item 5) should be further strengthened. Existing measures are already appropriate and effective. In health sciences they are excessive in my view.
- u. The recommendations are useful and welcome. They are broad and span topics that are deeply relevant to improving inclusivity at UCT.
- v. For me, ALL the recommendations should be acted upon and with immediate effect. However, time-lines and milestones must be established. Allied to this, they must be put into the short-to-medium. There should also be an open dialogue regarding this report across the university. It is imperative that ALL facets of the university are engaged. This is a very important undertaking which should be commended and supported across the university.
- w. the general tone of the recommendations.
- x. The recommendations by and large look good and, where UCT has not already taken action, should be implemented. I am particularly shocked to learn that residence placement practices seem to have been quite unreformed - there seem to be very important recommendations made in this regard.
- y. The review seems comprehensive and well compiled. It is imperative that UCT, as an integrated community (across race, gender and role within the university), develops its approach to a de-colonised future as well as its response to potential future protests in times of "peace" and this begins to address these aspects, with more work needed by all. The work to redress the over-allocation of accommodation and the mental health support is greatly applauded
- z. The IRTC has taken a broad view of UCT and this has resulted in a report which covers many aspects and many issues. They are to be commended for tackling such a wide range. The report highlights several "systems failures" (eg. in student housing allocation) which can be (and in some cases already have been) addressed. In this it is a valuable aid to the university in determining where to put resources.
- aa. I support the recommendations of the commission. Many of them have already been implemented, or are in the process of being implemented and should be acted upon going forward.
- bb. Over-booking of residences is an issue. Transformation has been too slow
- cc. I am sure that the IRTC had good intentions in mind.

- dd. Some recommendations are supported (but were obvious): 8.2 yes 8.3 yes 8.7 the intolerance of the protesting group in debates and meetings suggests that this is a good idea but was it possibly recommended with something different in mind? 8.8 preferential treatment should go (if it exists). Is providing accommodation in the University's core business or should private and government providers not deal with this? 8.9 within its means... 8.10 agree. As soon as there is violence or threats to rights of others, the SAPS should be called. Private security costs lots of money and is not effective. Cases of criminality should be prosecuted in the magistrate's courts. 8.11 agree. 8.12 agree 8.13 within our means. We should not attempt to have serious criminal cases (assault, rape, arson, ...) heard in disciplinary court – my understanding is that University disciplinary courts are “civil” balance of probability type of courts that consider the interests of the University. 8.14 duplicate of 8.12 and we must not attempt to deal with rape internally.
- ee. The IRTC process did bring to light feelings of some people on campus and raised issues that need to be addressed, particularly with regard to the climate on campus and bureaucratic inertia which may have also contributed to the grievances that were aired during the protests.
- ff. On page 73, retired Constitutional Court Justice Commissioner Justice Zak Yacoob states: “I am afraid I cannot agree with much of the theoretical bases or the definitional approach set out in Chapter 6 [on racism] nor can I agree with many of the factual conclusions drawn. I really appreciate this honesty and insight.
- gg. Noting that there race based issues at UCT, and recommending that these be evaluated. See for instance: 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 overrepresented 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.
- hh. I appreciate the acknowledgement of racism in the University, its structures and practices. I think that these issues have and continue to be swept under the carpet for too long. Gong forward, complaints or accusations of racism should be dealt with on a case by case basis. And particularly students who lodge complaints should be protected (whether the accusations prove to be true or not). We cannot continue to deal with racism on a general basis (white people in general or black students in general). I was surprised to see how few students as a percentage of the Universities budget are supported by NSFAS and external bursaries. Students and their families seem to be paying a lot to support the University financially. The University should display this dependence debt more clearly and openly. And donors plays a relatively smaller role as well.

Appendix 1 Feedback from Senate via VULA questionnaire and email

- ii. Most of the laudable recommendations of the IRTC (e g emphasis on inclusivity and support for mental health of students), while entirely indispensable, have been recognised by the University leadership for some time, and policies and actions are already in place, although there is naturally MUCH more that needs to be done, and urgently. I found nothing new on the positive side in the report.*
- jj. Nothing.*
- kk. Any aspects that are laudable are already being implemented, for example our mental health policy, recently passed at Senate. The report makes many obvious or banal suggestions, as in recommending we track employment equity progress (of course we should, and we do). There are countless such examples, but I cannot identify a single feature that is both insightful and/or unique, while also being something we're not already doing.*
- ll. I found little merit to the report. I guess it could have been worse and at least the recommendations were lame rather than absurd*
- mm. It is hard for me to find much positive about this report.*
- nn. None. There are no useful insights in the report which are novel (in as far as UCT is not attempting to deal with them already). The report should be entirely rejected for the reasons set out below.*
- oo. very little*
- pp. Very little: I find it to be appallingly biased. Some of the only aspects that I can applaud are the observations that academic staff had not been kept informed by management of much of what was happening, and in particular disciplinary processes. It makes some laudable recommendations for actions that are in fact already mandated by various policies at UCT, so we can possibly be grateful that they have reinvented these.*
- qq. See response to 2)*
- rr. Chapter 9 provides overview of UCT financials and financial aid but does not provide full account of what was submitted to the commission.*
- ss. I appreciate the University's commitment to the IRTC process and the fact that resources were made available for the work of the Commission. None of my colleagues participated with submissions for a variety of reasons many related to perceptions of the Commission and the pre-determined focus of its work.*
- tt. very little as the process was poor; not inclusive and without a proper transparent agenda. the time at meetings was too short and the advert for them very short which in my opinion obstructive*
- uu. Those who committed wilful depredations should have been fully disciplined or subjected to a court action. This has set a precedent for impunity. It will have consequences beyond the current lull in violent actions.*
- vv. Nothing*
- ww. I don't approve of the IRTC at all.*
- xx. In general, I found the report very disappointing: very little effort seemed to have been made to go beyond constituents who came forward - typically those who had complaints to make. While there are indeed things at UCT that need to change, many efforts have already been made to address things, and these seem to have been missed.*

yy. *It is laudable that an IRTC was set up in the first place. When it was, I was hopeful that it would serve the same purpose for UCT that the TRC did for a South Africa emerging from the human travesty that was apartheid. That it would ultimately unite us. I was mistaken.*

Favourable comments received via email to Nicola Illing

1. I would like to stress that none of my points of criticism are intended to undermine the very real and profound issues that are being addressed by the commission. UCT has a lot of changing to do – I wish I could say more but.... 10am deadline!!!!
2. I welcome the finding of institutionally entrenched racism and of over-reliance on pvt security. I think that the findings in regard of the former open real possibilities for institutional change properly supported throughout the University hierarchy.

In relation to protest and pvt security; I support the argument that security should have been more vetted.

3. *I'm happy with the recommendations but to be absolutely honest many of this were ideas already in place and could have been written down in absence of a hugely expensive and lengthy exercise that the commission was.*

2. Please comment on any aspects of the IRTC report which you feel are unsatisfactory.	64 responses (VULA) 16 responses (email) 80 -ve responses 1 email response found nothing unsatisfactory
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- a. I couldn't stomach reading further than the Executive Summary. This is a one-sided, blatantly partisan whitewash of the actions of the small group of violent thugs at the heart of the protests during the period 2015-2017. It has astonishingly little to say about the severe impact of the protests on the broader academic community: the other 25,000+ students who weren't involved in the protests and UCT's 5,000+ academic and PASS staff. This is not a report that can be seriously engaged with by UCT's community as it attempts to elevate to dominance the radical views of a tiny fraction of the community.
- b. I reject much of what is in the report. It is a one-sided report based on input from a small sector of the university. It will alienate many.
- c. I disagree with the finding in 7.4 of the Executive Summary, in particular that UCT management "predominantly preoccupied with removing students from the sites they were occupying without giving due consideration to their needs, motivations and reasons for their action." My observations of the interactions indicated extensive consideration of needs, motivations and reasons of protesting students.
- d. I think that the commission greatly underestimates the problem of student housing. In particular they do not seem to understand the low take up rates of offers and how difficult that makes allocating places at residences. I do not think that it is a good idea to impose racial quotas for academic staff recruitment. If I was the HOD of Physics, I

would be very unhappy with parts of Chapter 6. Statements by unhappy staff members are included that need some response by the department. After these apparently damning statements the reports states "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." I find this unsatisfactory - was the Physics department given a chance to respond? Does it agree with these statements? At the bottom of page 35 the report states "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 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." Seriously? As one of the people making such a submission about damage, I take exception to this. In my submission I did not blame any particular group for the damage done to a department vehicle and the collateral damage done to our air handling plant. I do not know who was responsible. Surely it would have been racist of me to talk about 'damages suffered by black students' because that would imply that I held a particular group of people responsible. The truth is that police investigators were unable to identify those responsible.

- e. The report's recommendations will lead to the imposition of an ideological straitjacket on teaching and research as well as the stifling of academic freedom on the campus
- f. I feel that other disciplines in the Humanities could contribute to institutional change. The report seems to focus on Sociology and Political Science - but there is so much more going on in the Humanities Faculty which could be useful (including also the performing arts). And in other Faculties too. In the end this needs to be a collective effort.
- g. Amnesty given to students engaging in violence and damage to property on campus. This does not bode well for the future. The students in question did not even have to show remorse or apologise. Threats of violence or violence itself should not be tolerated. Disrupting classes should not be tolerated - students should protest in a different way without infringing on other students' right to receive education. "The doors of learning shall be opened".
- h. 1. Little justification is provided for many of the observations and recommendations made in the report.

1a. Consider the comments about security personnel and the need for changed policy. A good place to start would be to show that the recommendations for change would implement procedures, criteria etc. that do not currently exist. This is not done, and I think close inspection will show that not much will change if the recommendations are enacted.

1b. There is a quite unfair tone throughout the document regarding the role of management at UCT during the protests. All sorts of claims are made that are not

justified, and that seem simply wrong from my own recollection of the events in question. For instance, UCT management policy is said to "have created" the housing crisis. That is just unfair. I don't see any evidence that the commission has considered possible counter views from management, by the way.

2. The section on theoretical frames for understanding race and racism at UCT seems fixed in a particular view of these issues, drawing especially heavily on Black Consciousness writings. It is strident, and deeply ideological, to say the least. There are other views and frameworks, but they are not even recognised

3. The strangest things are said from time to time in the report, especially in the recommendations. A recommendation is made to the effect that depts of Soc and PolStud should spearhead researching and implementing ways to celebrate diversity, but then the report adds that any other dept can get involved too... Apart from the strange wording, no reason is given why these departments in particular are selected. Is it obvious? I would personally be worried about the outcome if those depts spearheaded such a thing.

4. The report foregrounds decolonization and the urgency for decolonizing ourselves, and again flags particular departments, but this time suggests Hist, PolStud (again), and Psych. I suspect it is because of the presence of academics in those departments whose views on decolonization are now well known, and for that reason only. What is completely missing here is any attempt to define decolonization or at least tackle some of the known difficulties ... the report completely overlooks the writings of Prof Wahbie Long, of UCT, who has written about the problems repeatedly. What is it, for a start? In general, I find the document very disappointing. It is a university reflecting on some of its problems, and yet there is so little evidence of scholarship in it. It also smacks to me of extreme partisanship and ideological determination.

- i. Reading through the report one can't help thinking the key message appears to be: 'white bad, black good' i.e. nothing whites do is good enough, whilst blacks can be excused for anything they do that might ordinarily be regarded as bad. So, the acts of blatant 'black on white' racism - accompanied by violence or threats of violence - is excusable; whilst nothing that many white academics are doing for black students - and many of us specifically see this is part of the reason we stay in the country, specifically at UCT - is good enough. OK, I get that apartheid / colonialism etc. was awful - but then so was the mfecane, and no-one speaks of that. This too, is racism. Transformation is reduced to a numbers game - 'whites over-represented, blacks under-represented' - as though this is all that is important. How about academic excellence? Ivy league universities in the USA and UK are overwhelmingly staffed by people other than white nationals - way out of proportion to their national demographics. Isn't it good that the next generation of black scholars are trained by the best available talent? OK, I get that apartheid / colonialism privileged the training and appointment of whites over blacks but , as Dr Mamphela Ramphele said to the collected body of white male engineering staff

at the beginning of her tenure as VC of UCT, 'You must stay to educate the next generation so that this never happens again'. We stayed - and now we are being punished for our commitment. I did not grow up in South Africa, I was not born a South African (I applied for and received citizenship as an adult). I could have gone anywhere - but I chose to teach at UCT and make a difference. I am beginning to regret this; it clearly is not appreciated. Instead, the report notes the high proportion of white male academics at Professorial level as though this was some sort of evil; what did they expect seeing that most of us have been at UCT a quarter-of-a-century or more and we answered Dr Ramhele's call (I hope, for the sake of UCT, that you don't regret it once we are all retired in a few years time)? Meantime, as a consequence of 'transformation' and - in the workplace - BBBEE, our children cannot get jobs in South Africa and are forced to emigrate. At least 20% of white South Africans now live overseas - particularly London, Perth and Auckland - where they are usually welcomed with open arms for their skills and work ethic (leaving the false impression that whites have low levels of unemployment and high income levels back in South Africa - this is a biased sample, white South African are a rapidly aging demographic). Meantime, 'transformation' has reduced South Africa to near junk status where Eskom can't even keep the lights on. I note Pravin Gordhan's comments on this subject yesterday with considerable interest. Closer to home, a brilliant young white South African academic cannot get a permanent position in a critically needed subject (water treatment!), however a less-experienced black Ugandan male is immediately offered one in another post. How is that just? The report extensively alludes to the Bill of Rights enshrined in the Constitution, but conveniently glosses over '3) The state may not unfairly discriminate directly or indirectly against ANYONE ' (my emphasis), choosing rather to focus on 'restorative justice' as though State Capture - so well identified in the Zondo Commission - that has crippled growth thereby blocking access to the economy by the poor, was not a highly significant factor. Had the government prioritised economic growth, six-percent per annum would have seen a four-fold increase in the size of the South African economy over 24 years. The report notes: 'so many stakeholders at UCT perceive the environment as being one of institutionalised racism.' Yes, I am not surprised - but don't for a moment think that this is all 'white on black' - the tide turned some time ago...

- j. I think that the IRTC report completely ignored the role of PAMA and Black First Land First in both funding and organising the student protests and the associated violence and destruction of property (not to mention assaulting the Vice-Chancellor and bussing in protestors from Grabouw!). These are deeply anti-white, black nationalist groups who have their own motivations for disrupting UCT. The obvious links to the Zuma faction of the ANC and its associates such as Iqbal Surve and his media empire are ignored. The IRTC should have explored the role of anti-white racism and black nationalism among the members of these groups and among UCT students as a cause of the protests.
- k. This report is a disastrous endorsement of the EFF's policy of using violence, hatred, and charges of racism and discrimination (which are not entirely unjustified in certain respects) to take over UCT and other institutions in South Africa. There doesn't seem to have been anybody with an ounce of common sense to say that once you've erased the bright line between violence and non-violence, anything can be justified at any time,

whether it's beating up the university's own guards or burning its books and paintings or intimidating the workers at the nursery school on campus. If you want a single document of the moral abyss that this country is in and the absolute complicity of its intellectuals, this report should serve.

- l. I was surprised that the faculty of humanities is highlighted as the faculty to facilitate and research matters related to institutional change and transformation. It negates that the other faculties may be providing leadership in reconciliation and transformation that could contribute to building capacity for institutional change
- m. The report could be assigned as a text to critique in a logic class, riddled as it is with non-sequiturs, un-evidenced claims, failure to corroborate basic facts, and clear bias towards simply believing one set of accounts while dismissing another. One small example: it quotes Harold Ferwood at one point, who doesn't even "exist", in that it's a pseudonymous, and clearly partisan, account which was always and only hostile to any UCT attempts to address student issues. More importantly, the report ignores most management attempts to deal with the situation (it even believes they only "started" months after they actually did. The report will be difficult to critique, because of the political implications, but courageous people should do so. It is such a partisan hack-job, and so incompetent a document, that it could in fact be said to be a disservice to the very important issues it is (supposed to be) addressing.
- n. This report reflects a process that was designed, from the start, to come to a particular set of conclusions. The document is a presentist defence of the actions of a small number of students with little apparent grasp of the 30 000 other students and 3-4000 staff who were not in sympathy particularly with the means used by some (a small minority) of students to voice their discontent. This was at least partly due to the failure of the Management to get a sense of the 'feeling of the house' during the protests, an inexplicable failure given the success of this move at Wits University where a large majority (tending towards massive), when given the chance to express an opinion, voted for the continuing of the University programme. While this report argues that management was insensitive (and by implication too draconian) comparative examination of what happened elsewhere rather suggests that Management was far too keen to placate protesters and eventually introduced processes (one of which is this IRTC process) which simply side-lined opposing views and has given retrospective legitimacy to the violence and intolerance of the protests. The process seemed intent on granting amnesty to violent students who caused significant physical and psychological damage to the current and future students and staff in this institution. This should be seen in the context of exceptionally high-levels of violence that are a feature of South African society and to which UCT formally commits itself to act against. This document argues that violence as a means of protest is acceptable. It asks nothing of violent protesters other than acknowledging particular acts. There is no demand for contrition or commitment to peace and democracy from these students going forward. In short, the report contributes to a climate of impunity which has been a strong feature of evidence in relation to state capture. The university seems to have done very little to promote the rule of law at UCT. It has not systematically pursued prosecution of students who prima facie broke many University rules, infringed the rights of their fellow

community members and were often prima facie guilty of criminal acts. This undermines good governance at UCT. The failure of the report to notice this managerial lethargy is disturbing. Under these circumstances it can only be regarded as ironical that IRTC has sought fit to recommend (8.14) that "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." Gender-based violence cannot be separated out from other forms of violence as though violent protest should be considered as a separate, and acceptable, form of infraction.

- o. It was a very disappointing and biased report. The university should not adopt it. The whole tone was that the students were justified because they believed that UCT was racist and felt pained by this. There was no recognition of the damage and pain caused by the students. The IRTC was supposed to help heal divisions yet when Timm Hoffman made a submission explaining that the burning of his research bakkie undermined the capacity of students to conduct research, absolutely no mention was made of this by the commission other than to single him out as supposedly committing an act of micro-aggression (!) for failing to acknowledge all the supposed pain and suffering that supposedly motivated those who burned the bakkie. What a disappointing, biased report. I can't believe that UCT paid these commissioners to produce this.
- p. I do not share the view reflected in Section 7.4 of the Executive Summary which states that: "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." I sat in a number of meetings in which I witnessed first-hand, university management (and in particular Dr Max Price and Professor Crain Soudien) try and negotiate with the student leadership ways to resolve difficult and complex issues. In my view they were sensitive to the student's experiences and demands and took great care to listen to and respond to the suggestions made by the students present in the meetings. I do not think that this paragraph provides an objective summary of the response of the university's senior managers to the protests at all.
- q. This is a highly biased report. It is informed by ideology, rather than evidence. There is a major risk that the University of Stellenbosch, which has not wasted time and money on this sort of thing, will soon become a more attractive University at which to work and to study.
- r. I am appalled, as a black academic staff member, that the report downplays the severe trauma and intimidation the majority of staff and students suffered at the hands of a small, violent group of students and interlopers. This was terrifying for all of us, who had to endure the disrespect, and violent intimidation forced upon us by the administration,

namely Max Price and his advisors. As someone who lived through the anti-apartheid protests at black universities, I am shocked that the IRTC appears to be unable to recognize that the state inflicted violence we suffered then is the same as the violence we suffered at the hands of this very violent group, all who were bent on the destruction of civility and open debate at a university. Now, is that not the same as what the apartheid government did? The IRTC report seems bent on political correctness, and it appears afraid to call out incivility, the lack of open and civil discussion, and the right of all South Africans to have disagreements in a peaceful manner. I am disgusted and appalled.

- s. The report should be rejected completely since it falls well short of the rigour demanded by the terms of reference of the ITRC. I have deep knowledge of a number of matters discussed in the report. Every single one of these matters has been misrepresented and contain either significant errors of fact, or are presented from only a single perspective (and apparently from a very small data set, in some cases from a single person). The conclusions drawn are thus incorrect and if accepted by UCT will result in destructive outcomes. Therefore since ALL the matters in the report on which I have either a significant or deep understanding of are patently misrepresented, then I need to conclude that ALL the inferences made in the report, based on data collected, are potentially problematic. As an example, the comments made on the ways in which residences are booked are ridiculous. It would have been easy to cross-reference this with the known no-show rate. There is a narrative about the ways in which students are promised res places which are then denied. Where is the evidence for this? There is zero context provided concerning why the protests were taking place at these times at a national level. The report appears to have been written with a pre-determined narrative and evidence to support this narrative was selected and sprinkled over it. I am *not* writing against the main conclusion that UCT still has a huge amount of work to do with respect to transformation in its broadest sense. I am concluding that the report offers no assistance to the institution in this regard, but rather undermines the present context which is the most engaged and enabling that UCT has EVER seen in its history. This report is a weapon designed to destroy and divide at a time when the vast majority of UCT is hard at work building the New UCT. I note Judge Yacoob's dissent.
- t. The chapter on racism needs to be rewritten in a less anecdotal/vague way, especially since this is a key area for improvement at UCT. We need to move away from relying on observational anecdotes which have not been examined for veracity by the authors of the report as the basis for putting in place measures to solve the problem. Racism at an individual level cannot be stopped at UCT or anywhere, but at the institutional level it can be dealt with - however, this means that we need a report which reflects a more objective view. Much of the report seems to state what has been said before, with little acknowledgement of what is in place or which attempts at solving the issues have worked/not worked. It also seems quite one-sided with little appreciation for the economic constraints and realities that face the institution. Perhaps the report would be more meaningful if it could compare UCT to other institutions. As a black person, I am concerned that if this report is used as the basis for going forward, it will fuel a divide between black and white and only perpetuate the stereotype that blacks are less able to

- succeed. This is no good for black academics. Close the informal appointment gaps which allow for people to bring in white tutors/contract workers initially and which then get extended into 5 year periods so that a legitimate expectation of appointment arises.
- u. Generally a waste of time and resources
 - v. The bias inherent in the report is evident in many places. For example, much is made of representations by presumably black staff of perceived racist practices - yet people who mentioned physical and financial damage are dismissed with "... 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". This is simply horrific - yet it continues: "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". Really?? People who are concerned with the sustainability of the university as a whole, or the security of themselves and their colleagues in the face of naked aggression and physical violence, can have their concerns dismissed because they are not sufficiently in touch with black pain?? I note they are referring to the people who instigated physical violence, and who damaged property and committed acts of arson and theft being the ones feeling the pain. How about the student (daughter of an ex-employee) who had such panic on seeing the fires on campus due to previous trauma, that she immediately left the University and is still receiving counselling? How about the staff members, mentioned in the report, who were so traumatized by witnessing young people aggressively threatening others with sticks and other weapons, that they now fear students? I am also saddened by the inclusion of a lot of what are obviously perceptions and anecdotes, as facts. Stories about how white people are promoted over black unfairly, how foreign white people are appointed when black people are available - these are anecdotal, in the absence of the issues having been reported to any forum at the University. They also display ignorance about how promotional and appointment committees work, as do certain of the Committee recommendations: ALL such committees have Equity Representatives on them; ALL recommendations have to be approved in the light of Faculty transformation guidelines ALREADY. There are negative mentions of private security throughout the report, with NO mentions of direct attacks on security personnel, that resulted in horrific injuries: how is this justifiable? A student loses her wig due to security intervention in the process of trying to assault someone in the library with a paper-cutting guillotine, screams rape, and then two security guards are brutally assaulted in "retaliation"? Where is the redress there? I personally felt grateful to security personnel when they prevented students disrupting a Senate meeting I attended, and facilitated our leaving the venue in the face of attempted student blockade - and vicious racial insults, and repeated vilification of Prof Bongani Mayosi, who was walking with us. Where is his redress? I note the report says "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." About 80 - is that ALL?? This whole over-written document is based on 80 written submissions,

and some interviews? Given the overwhelmingly sociological tone of the document, and the voluminous use of experts in racism as justifications for student activity, where are the results from the comprehensive surveys that SHOULD have been posted, so that our University (28000+ students, a couple of thousand staff) could have commented in a more representative way? I find this to be highly unsatisfactory, but it is reflective of how UCT management conducted themselves during the crises - by keeping everyone in the dark, and not, despite repeated requests, ever gauging student and staff opinion via online surveys. The constant criticism of the management for not being sensitive enough to students perceptions / feelings is also galling: they appeared to bend over backwards to accommodate the most unreasonable demands, and to repeatedly negotiate issues with an ever-changing spectrum of self-anointed "student leadership", whose demands appeared to be incoherent at best, and completely impractical at worst. To blame management for evicting people who were illegally occupying parts of the University that were essential for normal functioning "because they had no accommodation" - really? they know this? - is to show such bias toward the student position as to effectively invalidate most of their document. The Shackville fiasco, for example, was paralysing part of the Upper Campus due to the stubborn and reasonable refusal of students to move their structure - and to say that UCT should have obtained a court order, and that this would have meant students would then behave better than they subsequently did, is simply farcical. In summary, I find the document to be a deeply depressing result from a deeply flawed process. It recommends leniency and clemency for overtly criminal acts that resulted in significant damage to property, that endangered lives of innocents, as well as security personnel simply doing their jobs, and which have resulted in very significant reputational damage to the institution, as well as giving rise to a climate of fear where people are very hesitant to criticise anything because of retaliation. Promoting academic freedom seems to be a facet of the report that is deeply ironic: by its very bias, the report makes it very difficult to engage productively on any aspect of the Fees Must Fall or Shackville protests. I fear that our institution has changed irrevocably, and not for the better.

- w. • The impression of the report is that only Black students were affected by the protests. This is not true as the student protests had a profound impact on all students. White, Indian and Coloured students were essentially not given a voice and were not allowed to voice opinions. The environment became toxic and intimidating for any student who did not agree with any aspect of the protest action. Many moved out of residence to escape this atmosphere. As a result almost every student who was at UCT during this time needs access to psycho-social assistance.

• Many of the experiences of Black students are actually shared by all students and so if there was better communication they could share these experiences. The white student from outside of Cape Town also feels out of place and alienated.

• It is also not true that only Black students supported the ideology behind the protests. Many staff members and other students supported the call for free education.

- Students being given amnesty for illegal acts is not supported. Protests should take place within a legal framework and the guidelines given in Senate in line with Trade Union strikes should be implemented. It is unacceptable to allow students to break the law and then give them amnesty without making sure that this will not happen again. Students should be given information on what happens when they break the law and the rules of the University so that they take responsibility for the outcomes of their actions. If a student breaks the law on Campus or off Campus it is not surprising that the result will affect the rest of their life and their families. Society does not function if people have the freedom to break the law and then depending on their background are forgiven.
 - It is not true that UCT did not handle the students with understanding and sensitivity in the Faculty of Health Sciences. There were extensive meetings and the “Dean Team” met with protesting students rather than call security. In some instances, staff members were highly traumatised by the lack of protection from students- some students were wandering the buildings with large sticks. Some staff are still suffering from PTSD. There were also issues of safety of the students due to the high-risk activities in the Faculty. Despite this care from the Dean he was still subjected to abusive comments when leaving Senate and in other situations.
 - Sexual orientation should also be a factor in Staff appointments.
 - Decolonisation should be discussed in every faculty and not just History, Political Science and Psychology.
 - Why should the Humanities Faculty lead a program to promote openness, dialogue and freedom of thought and speech? This dialogue should happen in all Faculties.
 - While the employment equity targets are good care should be taken to support those who do not qualify for these targets. There is severe depression in many white males at UCT because they see no future for themselves in South Africa.
 - One should diversify the people in lower paid jobs at UCT.
- x. Only 80 submissions is woefully inadequate to base any substantial recommendations upon and certainly completely inadequate to gauge a representative institutional culture. This commission did not consult broadly enough and as such its findings cannot be given much credence at all. It reflects a minority view at the University.
- y. I would like to note that it is unacceptable procedurally for Senate to be given 48 hours to respond to the IRTC report. It has taken nearly a year to produce this report and it's a travesty of the process to not allow Senate sufficient time to read and respond. As a result of the timeframe I have had to read the report selectively and my response is at a general level, rather than supported by references to the actual document. I do not wish to comment on the amnesty of students. As I recall there was strong support in the SLG for amnesty though disagreement on details. If the ITRC has been able to bring this

matter to conclusion then they can be commended for this. As for the second part of the report I am disappointed, concerned but not surprised. A bit of background: I was on the senior leadership group during the time of the protests. I can testify that as a collective the SLG was aware of the deeply problematic institutional issues that needed to be addressed. There was consensus in the SLG that the student protests gave expression to the alienation, pain, frustration and anger experienced by black staff and students due to deep underlying problems of systemically entrenched racism, sexism and a range of other forms of prejudice. We agreed as a collective that this was a wake-up call for UCT to begin to face and address these challenges. The problem was how to address this – both in the short term during the crisis when hour by hour decisions needed to be made that ensured the physical safety of the campus and the ‘academic project’. But as importantly was how to address these problems beyond the crisis. For example, how to build trust across the many fault lines that emerged? How to build a genuinely inclusive community? The SLG was acutely aware that they did not have answers nor the expertise to facilitate this process, to bring about the much needed healing. Management was deeply implicated in the damage. It was at this impasse that the ITRC was first mooted. While we were cautious (and many skeptical), we felt that this ITRC might be a way forward. Clearly something had to be done. Against this backdrop, the IRTC process and the culminating report are a huge missed opportunity. I feel that the analysis of UCT’s challenges is weak, lacking in any serious in-depth conceptualization of the problems facing higher education as a whole and UCT in particular. The tone of the report is biased and patronizing. There are places that seriously misrepresent not only management but the complex dynamics that took place during this time. The report takes us down the path of tired/unhelpful binaries of management vs. students, black vs. white. It fails to take us into the more subtle terrain of how to expose attitudes and actions that erode trust in order to build a common vision. The student protests period was one of the most significant (certainly recent) events from which UCT could reflect and rise to a new level as an institution. Rather than leading to deeper introspection and reflection this report is likely to cause further polarization at UCT. Instead of giving us the opportunity to deeply reflect on our institutional culture the report feeds an unhealthy narrative of divisive binaries. It has taken a highly charged, high stakes period of UCT’s history and re-interpreted it simplistically, naively even. I am however not surprised. I, along with other members of my faculty, attended one of the sessions convened by the IRTC. It was poorly attended. The main speakers were staff who told stories of alleged discrimination that I knew were at best not the full story and at worst were not factually correct. The commissions made no attempt to prompt, to probe, to hear the ‘other side of the story’. I left the event deeply skeptical of the process and its outcome. The IRTC was meant to take us through a process that could lead to some healing and transformation. In my view it has fallen short of its task.

- z. Whilst one wants to associate with the underlying sentiments of the report - those in support of an understanding of events and a sympathy for the differing perspectives involved - it is sadly the case that the report is completely dominated by a long and drawn out diatribe about racism. Its premise is that racism is prevalent at UCT and that

racism is the root of all the Institution's difficulties. It is even stated, emphatically, that UCT's management, management systems, procedures etc are not the problems' cause (notably iro Shackville) but rather that the underlying and inherent racism is. Notably too, the chapter on racism is by far the most extensive of all the chapters ... I say that the report's premise is about racism and I elaborate. There is no hiding that that premise existed at the IRTC even prior to its work unfolding. All that has happened has been to lay out this argument and lend 'support' to it by by quoting famous people, well known activists and struggling students. There is no counter argument/opinion/refernce anywhere in the report - the IRTC's report is THE TRUTH! Except, that is, perhaps for the addendum from Member Yacoob. This is perhaps not surprising for a dissertation out of the arena of the social/political sciences but, nevertheless, is remains unconvincing. Worse, whatever case could have been brought to root out racism has, effectively, now been lost. It will be no surprise, therefore, that I cringe when the recommendations point to the Faculty of Humanities, the Sociology and Political 'Sciences' Departments should play a central role in resolving UCT's challenges. I would urge that we all face up to the simple fact that that UCT is not the best example of a well run organization - professionalism would make a lot of problems go away so that we could concentrate on some of the more complex matters of institutional culture. All the proposed new and improved policies and procedures are nought without a professionally run organization seeing to their implementation in a fair and just manner. Please, this is meant as a critique, not an attack on the Commission. Sadly, however, these long years of IRTC activity have, in my view, brought nothing new to light. I fear many key issues have simply been swept under the rug of racism. Moreover, to have spent all this time and all this money and all those pages merely to find a 'argument' for releasing many people from responsibility will, without any doubt, bring even greater problems to the institution in the coming years. Nonetheless, with sincere thanks and appreciation to the IRTC Members for being concerned enough about the University to have given so of their time to this Institution.

- aa. Paragraph 7.4, pg. 8. I find this paragraph unreasonably one-sided against management. An alternate, and arguably plausible, view is that the university management put the needs and wants of students and staff (potentially a majority thereof) who wanted to get on with the business of teaching, learning and research ahead of those whose tactics for effecting change involved bringing the University to its knees. Section 5, DRAFT PROTEST ACTION POLICY (pg. 62). I did not find the IRTC's consideration of this issue particularly helpful as it failed to acknowledge the sensible reasons for limiting protest action in, for example, research laboratories and other high-risk areas. The reasons for such limits include protecting the health and safety of staff and students - a major legal responsibility of the VC under the OHS Act. This particular issue creates, more generally, an impression that the IRTC failed to adequately acknowledge the grave responsibility of the Office Bearers of the institution to safeguard the buildings and infrastructure of the University along with the health and safety of its staff and students, and that in exercising this responsibility under the highly volatile conditions prevailing in 2015-2017, management's actions came across as

- unduly harsh and totally lacking in empathy for the plight of the protesters. In my experience, the situation was far more nuanced and less heavy-handed than this.
- bb. Given time constraints, I've mainly read the executive summary. In general, the study does not appear to have been done with an academic rigour and a methodology that sought to present the spectrum of views and experiences and draw conclusions on that basis. Many generalisations are made. Many of the shortcomings highlighted do exist, but are not universal across the institution, yet they are presented as such. "7.6 It is worth noting that not a single submission claimed that UCT is not a racist place." This is only meaningful if people were specifically asked to make submissions on whether or not UCT is a racist place. The statement leaves itself open to misinterpretation that every submission called UCT a racist place." "8.1 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." Should amnesty and clemency not be particular to the context of a particular transgression? Would we not risk creating a guideline on how to avoid being held accountable for one's actions? "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." Are disciplinary proceedings legal proceedings? Perhaps a different form of support is more appropriate? page 32: "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."
- cc. I'm sorry, but I can't bring myself to engage with this anymore. I was shouted at, sworn at, racially abused and my space at UCT completely turned upside down during the protests. I facilitated discussions between angry students and staff in my Faculty – and experienced vitriolic attacks many times in these sessions. But the report clearly indicates that this action by the students was justified at every level. Because of what/who we are as UCT. The term PTSD is sometimes used to describe the lingering effects on the staff of what took place; I'm sure that this describes how I am feeling. I do not believe that anything I (we) say will make any difference to the report as it stands. I have read significant sections of the report and the recommendations are useful and actionable. However, the associated narrative will be judged by history. I find that it makes no meaningful commentary on the lived experience of those members of the UCT staff who have been psychologically scarred by what took place. It would appear that I (we) have no value in this account of what took place. I believe that the UCT staff are now completely fragmented as a team. We used to be UCT – now we are just people doing our jobs. I feel like we are broken.
- dd. 1. It's uncritical adoption of a single view of racism and it's easy accusation of Racism as the major cause of the university's failures.
2. Violent protest of the sort we have seen is not justified and the report's acceptance of it is a betrayal of university staff.
3. Positive discrimination in promotion processes is unwarranted.

4. The only student views represented seem to be those of protesters.
 5. Many of its claims are unjustified assertions.
 6. It seems to misunderstand the appointment process. These cannot be cosy appointment of pals without a good deal of collusion or submission.
- ee. Failure to engage with and understand complexities of UCT realities. Accepting inputs without testing or critiquing them.
- ff. Firstly, I am concerned by the lack of a clear stand on when protests go too far, and a view that excesses (violence, damage to property and the infringement on other's constitutional rights) can be justified by certain grievances. The logical implication is that the rights of some (even a minority) are more important than the rights of others. My second concern is the one-sidedness of Chapter 6. I have no doubt that there may indeed be microaggression at UCT towards students, but this should be backed by evidence rather than hearsay and allegations. Furthermore, during the protests many staff members (academic and PASS) as well as non-protesting students, who were merely trying to go about their ordinary activities and may have had sympathy for the demands made, experienced highly traumatic macro-aggression from protestors, which seems to be downplayed. I suspect that many of the parties mentioned above did not engage with the Commission due to the fear of being targeted by protesting students, who seemed to be able to intimidate and enforce their views on everyone else with impunity. This to me is not the freedom of expression that is supposed to be the hallmark of an academic institution, and merely leads to the views, opinions and allegations of those who are most vocal being presented as reality and fact. Overall I believe the report raises some important points and recommendations (most of which are not new), but the process does appear to be one-sided and biased, resulting in report that does not live up to UCT's standards, in my view. I may not have the full facts here, but the short timeline between the presentation of the report and the required feedback from the Senate reps reminds me of Government publishing controversial draft legislation for comment just before the December holidays - it sends a worrying signal with regards to how much it really wishes to consider other views.
- gg. The short time frame for response. The very harsh view of UCT management. There is no clear indication of what would have been a better way forward. The twisting of academic submissions regarding their traumatic experiences during the protests. They were used as examples of micro-aggressions. This is unfair. Staff were operating in fear as the protestors were personally threatening. These should not be considered the normal day to day attitude or experience of staff
- hh. The report as a whole is unsatisfactory and does not have the depth that would be expected. The specific elements that are unsatisfactory include the blame laid on the VC and his team for the handling of the protests; the 'exoneration' of the students' and the blame laid at 'white' staff. While the VC and the executive may not have handled the protest and the preceding events in a manner that satisfied all staff, the ensuing violence and disruption cannot be blamed on them. The report does not properly

include the role of students generally, certain student bodies and certain members of staff in the continuation of the protests. It is of great concern that the report appears to condone the violence of students while condemning the actions of the security guards. It seems to provide an excuse for violence - and this cannot be accepted as it sets a precedent for the future actions of students both at academic institutions and in civil society. A more nuanced approach with respect to the role of security guards and the police would have been expected. The report also appears to gloss over the experiences and trauma of UCT staff, the loss of staff as a result of the protests and the continued impact of the protests on the relationship between staff and students. While there are elements of racism at UCT (being a microcosm of South African society), the report once again takes a view without any basis, using anecdotes and a particular theoretical basis to support its view. It is clear that UCT does need to look at its staff demographics but once again, a nuanced approach, which requires more investigation, is needed. Lastly, it is clear that at time the report does not appear to understand or take into account the manner in which the university operates and how the operation takes into account past experience. Two examples - the first being the 'over offer process' in the admissions and residence allocation and the very particular factors which caused problems in the over offer system. (As an aside, once again the use of anecdotes to illustrate the problem without, it seems, an investigation, is problematic). The second is student disciplinary process and the reasons for limiting legal representation (student and staff representation is always allowed). I have only been able to read through the report on a somewhat superficial level, given the time constraints but the above are my initial comments and impressions. The time constraints imposed for responses talks to the process as a whole in that while appearing consultative, the process is in fact not consultative.

- ii. The report in its entirety is sub-standard and reads more like an opinion piece. The contention that no submission stated that UCT is not racist seems to have influenced the commissioners thinking. Racisms incidents are individual and specific incidents and therefore once cannot rule out racism if they have not experienced or witnessed any racism. Also, individual isolated racists incidents does not translate to institutional racisms. The report is very disappointing and confirms the concern staff had that the commissioners had already made up their minds about UCT, a point raised by staff during the commission's engagement with staff.
- jj. The report does not capture much of my experience as a staff member at the Institution, the day-to-day reality of working in my micro-environment, trying to hold colleagues' distress at their experience of being unseen and also their feelings of constant threat without sufficient institutional support. Good people, trying to make a real difference in the lives of students, trying to educate them for future work, trying their best. The shift from supporting the student movement to fearing the student movement and not knowing how to assist those many many students who actively chose not to participate.
- kk. On matters of definition and especially interpretation it is not a good report and comes over as rather one-sided. It fails to acknowledge how difficult a task it is to run a university in times of decolonisation. It doesn't acknowledge how much UCT has done since say the 1980s (when I began work here) in matters of redress and accessibility. It

undervalues excellence, research and financial stability (putting them in inverted commas in one section!). Having sat on many selection committees (in the past as equity officer) I cannot agree with the claims of racial bias in selection (in all the committees I've sat on). The report seems antipathetic to Prof. Max Price and the administrative team around him. Yet they gave immensely to establishing a better campus, and were themselves victims of reverse racism and physical threats (including at a senate meeting). The report is not objective over the use of force on campus: I saw immense student provocations of staff and security personnel; but students were the first to claim that it was the security that were using force. Were security personnel interviewed? (I realise that the heads of security companies are often "of the old regime" in orientation). I note Zak Omar's concern about the chapter on racism. I think that the definition is too broad, and while the problems are very real (on and off campus), they can't be construed as racist per se. Is the current government racist because of the immense disparity between poor townships and better off suburbia where its members live? Finally we do need to acknowledge that the country has moved on since 1990 in terms of more equitable laws and processes of redress. The new middle classes are testimony to that. Unfortunately a spin off of this (and of rampant financial corruption in some sectors) is the increasing sector of the poor and marginalised. The report should also call the empowered and well-endowed government to account for these, rather than UCT or any specific university alone. I acknowledge that we have to treat the students' concerns with sensitivity; but truth is not a one-sided coin.

- ll. The dissent of one of the commissioners calls into question other more contentious aspects of the IRTCs work and its findings.
- mm. Sections of the body of the report are unreasonable. For instance the criticism of the executive and the then VC is harsh while the disruptive and destructive actions of the protesters are justified in places.
- nn. The findings appear to be based on limited/weak evidence. It is not clear that accounts were indeed verified and followed up on to determine the veracity of claims. Thus there is a feeling of results being subjective experiences. Some of the descriptions of the environment at UCT are not consistent with my own. Overall, the gravitas of the document is lacking; this is highly disappointing given the time and effort put in to producing it.
- oo. the lack of investigation on the allegations of racism. the apparent strong bias of the majority of the commission which did not result in a fact based assessment.
- pp. There is no doubt that fees must fall, accommodation and colonization issues are legitimate; the question is how to work for changes and whether violence and destruction is the way forward. The root cause includes the lack of government funding, not just the university management. Students picked on the universities as the soft target and not the government. While there was widespread for the issues that were raised, there was little support amongst staff and students for the violence and the destruction that took place at the universities. From my experience at the time, it seemed that about that less than 5% of the student body was involved directly in the protests, maybe less than 1%. The report makes no effort at showing this was

democratically illegitimate destruction and no effort was made the activist students to become democratic, even the SRC was by-passed. The report makes no mention that much of what students did at UCT was not democratic. Destruction of property and violence are illegal. For illegal activities to be sanctioned three important processes need to be considered. Firstly, how many disadvantaged students will be further disadvantaged by destruction and violence. For example, the destruction of property may reduce future opportunities for disadvantaged students. No effort was made to determine this balance; in all cases the report justified the activities. Secondly, the report made no effort to determine where there is a limit to destruction of property and interference with University business; could the whole university be destroyed by a small group with a violent agenda, could all vehicles be burned, buildings damaged, radiation leaked, art destroyed and pathogens released to the wider Cape Town area? Thirdly, how will this behaviour affect global perceptions of UCT as a university; the value of the degree, its working environment etc. UCT needs a positive global perspective to function properly, such as for degrees to be recognised, to attract funding,, for highly qualified staff to be attracted and for scientific collaboration. I found the report to be unbalanced in its global assessment of the violence and damage. Not enough was made in this report of the negative effects of the violent protests on staff and students at UCT. Many staff and students were traumatised, courses were affected, the academic year was disrupted etc. Besides the scars this has left on students and staff who are still at UCT, it has also led to the loss of good students to foreign universities, and the resignations of many staff members. On balance does the IRTC still only support this small group of students and their activities? Finally, the report is unbalanced in that only 80 submissions were made. This alone is damaging. The report is strident in its conclusions of racism and violence at UCT, without acknowledging that the majority of staff and students ignored the IRTC despite frequent requests for submissions. Furthermore, the IRTC seems to have been selective in its analysis based on these submissions, for example the testimony of Tim Hoffman who was singled out for microaggressions because he failed to acknowledge the black pain of the protesters who destroyed his bakkie, and his research programme on the rural, subsistence farming community in Paulshoek. In some cases single examples were cited, without testing the testimony. This is hardly a balanced perspective.

- qq. No recommendation on a policy regarding limits to protest - this must be rectified! I'm concerned that recommendation 8.5 does not speak to 'relevance', 'experience' or 'excellence' in matters of recruitment and promotion. I have not had the time to read more than the executive summary - the very short time-line given to provide comments is disappointing.
- rr. While it is accepted that protest cannot always occur without 'inconvenience', it is suggested that we should expect the first level of protest to happen without inconvenience, with this escalating to protest with inconvenience only where there is no effort made to engage with and address issues. While this report has focused on students and management, owing to the need to redress previous actions, it is recommended that a more integrated approach is good and that efforts must be made to keep staff in all roles in the loop, rather than leaving them voiceless which can instill

reactive responses. The report is a bit silent on re-building on integrated UCT community across racial and gender lines and academic roles and levels. This is imperative for UCT's success as the fragmented university community works against the good work being done.

- ss. At two of the consultations that I attended, members of the audience asked the commissioners what degree of fact-checking they would undertake. This question was not answered at the consultations, but the report seems to indicate that the answer was none. Submissions seem to have been accepted at face value and not interrogated for accuracy. To give just one example, pg33-35 quotes a submission from a staff member alleging racism and unfair practice in appointments. While the report says "We do not... seek to pronounce on the truth value..." it then goes on to do precisely that, making judgements on the practice of "... departmental heads exercising wilful behaviour..." and "...no oversight from senior management" However the commissioners don't seem to have asked management about the veracity of these allegations. It concerns me that recommendations in the report are based on accepting submissions as truth will potentially lead UCT along a path of trying to right practices that are not in fact the real problematic areas.
- tt. I do not support all of the findings on the then VC, Executive and Management particularly the point where the then VC is accused of perpetrating a form of structural violence by failing to greet someone in a meeting. The Commission has not identified or set out the limits to acceptable protest at UCT. I strongly endorse the positions taken by the Constitutional Court, Senate itself in the past and more recently by the AU and EU, on the limits of acceptable protest. I do not support the findings of direct racial discrimination and prejudice by selection committees for appointments in named departments at UCT. There is no unequivocal evidence for this. I endorse Commissioner Yacoob's dissenting position on Chapter 6 regarding the findings on academic staff.
- uu. The report is so one-sided that it's laughable. It was based on 80 submissions, which is a tiny sample.
- vv. The process was poor; not inclusive and without a proper transparent agenda. the time at meetings was too short and the advert for them very short which in my opinion obstructive. i believe the "team" were biased in their thoughts and did not truly reflect the University population
- ww. As a whole it is unsatisfactory both in terms of procedures and outcomes: action should have been fair and swift, procedures should not have been contorted by the previous executive to suit political or career purposes. But NI and JS must be commended for having done what they could under the circumstances.
- xx. This is a one-sided report which cannot by any means be described as reflecting the views of the broad university community. It does not inspire confidence or inclusivity nor will it promote the coherence and confidence going forward.
- yy. The report concludes that racism exists and is entrenched at UCT. The report notes that "not a single submission claimed that UCT is not a racist place". This damning conclusion appears to be based on 80 submissions, which if correct is absurd. UCT has around 30 000 staff and students and over 100 000 alumni. The reputation of this nearly

190 year old institution with a proud record of opposing apartheid "Moscow on the Hill", and with one of the most racially diverse student body in South Africa, is being damaged over 80 submissions. I have little doubt that in a group of around 30 000 people you will find 80 who have extreme viewpoints and who would be the most likely to make submissions. An extremely damaging claim of this nature should be tested using a well design statistical survey based on a representative group of staff, students and alumni. I am completely astounded that one would consider releasing a report with such a damaging conclusion to the reputation of a world-class university based on this flawed process.

- zz. The IRTC did not take a balanced view of the problems. Many submissions from victims seem to have been ignored. From the executive summary:

7.1 completely ignores the impact that the protests had on non-protesting staff and students (by far the majority). The protesters took no heed of the hardship they caused poor students whose academic progress was impeded by the protest action. The staff members most seriously intimidated were the lowest payclass staff and outsourced workers.

7.2 talks about the need for decolonisation without defining what is meant. It seems like the commission was taken in by political rhetoric and no clue is provided about what the University is/was supposed to do.

7.3 should talk about privilege. The criticism of the management for problems that prevail in the society at large is not helpful.

7.4 criticises the management in a way that exonerates the protesters. A more nuanced view is that both sides' behaviour actively escalated the conflict. Even with hindsight is not obvious what the management should have done at each step in the development of the protests to have had a different outcome.

7.5 correctly criticises the lack of control of private security without answering the question about why it was necessary to have them on campus or the way private security was provoked and assaulted. Again, a completely unbalanced view of reality.

7.6 identifies that there is racism within the University – hardly a profound finding as there are 30 000 people involved and prejudice and discrimination are nearly universal problems. Finding of subtle forms of racism is also not very surprising.

7.7 does not offer any solution to the problem of over-offering of places in residence. The solution is in a central place allocation system across the country to ensure that applicants may accept only one offer from one university. With the current, Byzantine system, it is unavoidable that there will either be an over or under supply of residence places and this results in either financial loss or serious distress to students who cannot be accommodated.

7.8 is incorrect – the distribution of mental health issues in the population has not changed over time. We have become more sensitised to the issue of mental health over time (good) but also have become less robust to stress that is below the level of being medically serious (bad).

7.9 the University can only provide services within its means. Provision of health services is properly in the domain of the provincial health authorities. Not useful “finding” as a result.

7.10 is a serious problem but completely outside the capacity (or responsibility) of the University to solve. This is a well-known problem but hardly a “finding” and no resolution is proposed.

7.11 reflects the legacy of apartheid and the gender discrimination of the past. In every selection committee I have sat on I have observed serious attempts to employ people from designated groups. Again, this is not a “finding” as it is an acknowledged problem and there is no evidence presented that the University is not doing its best to address the problem.

7.12 (follow on from 7.11)

7.13 is deeply flawed logic as it hints that protest that causes inconvenience is on the same side of the Constitution as protest that is violent, provided there are “reasons”. There must be a clear line between legal and illegal protest and violence cannot be excused away.

7.14 rape is a crime and is not something the University should be attempting to deal with (or suppress?) internally. We should provide victim support and get the matter to the SAPS as soon as possible. Harassment (below the level of crime) can be dealt under our disciplinary processes.

Recommendations:

8.1 I do not support amnesty for behaviour that would result in a criminal conviction – these matters should be dealt with by the courts. If it would result in a civil judgment, the University can give amnesty if they so desire. This is not like the TRC where amnesty was possible to get to the truth and remember that the TRC (though a great gift to the society at large) failed the victims in many cases. The acknowledgement of wrongdoing in the UCT process was insincere in my view (as was the case in the real TRC).

8.4 Nonsensical – kids should learn about the Bill of Rights in primary school.

8.5 is unnecessary as it is already University policy and practice. We do need to teach the HR staff about the Employment Equity Act so that we do not create an absolute barrier to employing persons from non-designated groups.

8.6 support the idea but requires proper resourcing as (in the present context of grossly unequal basic education), it will select more under-prepared students. We need careful studies of the effectiveness of the current recruitment policy.

- aaa. Unfortunately, it is my view that the IRTC commissioners used a framework that ensured that they had reached their conclusions without the need for any hearings. They disregarded any views that disagreed with the protesters and their supporters. The vast majority of students and staff at UCT were either apathetic or had no confidence in the process from the beginning. The findings have damaged the university's reputation without much prospect of moving us forward. This is a pity, because a more careful and balanced commission could have actually taken the university forward to properly address the issues that arose.
- bbb. Parts of the report and especially parts of the section on Racism are based on the experiences, accounts and anecdotes from a small handful of individuals. While every individual counts and these accounts flag that these individuals are experiencing racism we all know about the pitfalls of anecdotal evidence. Surely producing an authoritative report about the environment and experiences of a university should ultimately be based on a well designed study with sound methodology that minimises bias and collects a more representative view from a larger collective of stakeholders? The addendum by Judge Zak Yacoob about him not agreeing with the theoretical bases or the definitional approach set out in Chapter 6 (on racism) nor that he agrees with many of the factual conclusions drawn, is notable. I do not quite understand what his concerns are (perhaps he has similar concerns to the ones I raise above?), but he clearly knows more than is discernible from this report and given his role as member of the commission and his qualifications and experience I feel this must be unpacked before this can be deemed as satisfactory.
- ccc. The report was disappointing because it seemed to be heavily loaded in the direction of finding collective fault. I am aware of a lot of good happening at UCT, but the report dismissed this, creating the impression that we all work in, and contribute to, a toxic environment. I read Jeremy's report and thought it summarised my views well, particularly the section; "I myself am disappointed that the Commission has not been clearer in identifying the limits to acceptable protest at UCT. The Commission had not made any Recommendation on this. The Commission has failed to take seriously incidents of assault and threatened assault as well as of serious damage to property".

RECOMMENDATIONS IN THE REPORT "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."
COMMENT: The diversity in the report refers to diversity of race and gender. What about diversity of thinking which is the core of a good healthy university? This is not addressed in the report. The report assumes we all subscribe to the principle of identity politics. Anyone not believing in identity politics is excluded and shut down. This applies to a large proportion of the staff and student body. "The university might have to set targets for itself over a ten-year period, with milestones in between". - COMMENT:

Once again the authors of this report are applying the identity politics model. The attributes of excellence is fulfilling a position is not mentioned. The tone of the report creates a victim mentality which feeds into finding fault at every opportunity. If we continue on this path UCT will drift into mediocrity.

- ddd. Most of it is unsatisfactory in its obvious bias to one political perspective. No statements/claims/accusations were checked or verified for accuracy and it is riddled with inaccuracies. Thus as a whole the report has zero credibility and should be discarded as a waste of effort and money.
- eee. It's flawed from the start - it can only reflect a biased and unbalanced report because of the nature of the subject and task in hand. It likely represents minority views as the silent majority are exactly that - 'silent'. I appreciate the effort but don't think this type of information/opinion seeking is helpful as it by nature will always and solely express the view of those who feel strongly (activist views predominantly) or those prepared to express a politically correct view. The view of the silent majority is likely along the lines of - disruptive actions/students should have been referred to strict disciplinary action intially (as they were) and sustained (which they weren't). The clemency route is problematic.
- fff. In particular, I should like to comment on the calls for addressing mental health problems within the university. The report missed the fact that we have already had a Mental Health Task Team since the protests, which has made heroic efforts and led to substantial changes. I also think that the broader context of the university was missed by the reports. We will never have enough mental health support on campus. This is a worldwide problem (no campus anywhere can meet the demand for treatment), but is exacerbated by a health system in SA that has (to some extent necessarily) other priorities, so we are unable to make routine referrals into that system with the expectation that folks will be seen fast (we can make the referrals, but those referred will likely sit on waiting lists for a long time). So the calls for a review in this area in the report are, first, made redundant by the work of the Mental Health Task Team (which has reported to Senate and elsewhere); and second, impossible to meet. In general I think it should be borne in mind that universities are established to provide educational services. As it stands, the university is already providing housing, transport and health services. While these are common to universities around the world (especially the housing and health services), they are not the primary role of a university. In addition, if the context around us provided (for instance) adequate health services, there would be no need for the university to do so. As it stands, students at UCT have access to far better services than those not attending university. This seems to have been missed by the report.
- ggg. I found the lack of any semblance of balance alarming. Particularly bad was the singling out of the physics department. The statements from which the (wildly overreaching) conclusions were drawn were interrogated independently and found to be false (not to mention in direct contradiction to the claim by the BAC that physics is one of those departments which does not employ black people at a rank higher than a

cleaner!) and/or exaggerated. If this the reasoning employed by the committee, I am (with good reason) skeptical about many of their other conclusions.

- hhh. The sample size and possible bias of the sample. I understand that a number of the recommendations already exist in UCT's policies and strategies therefore as always the issue is in the how, so areas that are already covered by existing UCT policies should be removed from the report e.g in HR I have a concern that where specific departments are mentioned as they tend to be in a Faculty which appears to have its own issues with a cohesive way forward for the Faculty Specific. It appears that there is a conflict of interest so I do not support the recommendation that UCT pays the costs of legal representation for students who have allegedly contravened the rules of the University This is similar to the provision of mental health medical practitioners. It is suggested that the report clarifies UCT's strategy and role as an educational institution to remedy the socio-economic issues of the University population which by extension can include the greater community. This role has to take into account the competing needs for the resources as an educational institution e.g. Is it acceptable for a world class institution to have a teaching ratio of 72 to 1? Does this not contribute to the issues of student wellness let alone staff wellness?
- iii. One only has to look at how the world is interpreting the report to realise that it was little more than an echo chamber for law breakers, failed law upholders and a small minority of representatives from the University - a failed process. The process was chaotic with many meetings not attended and long delays in the process such that most of those directly involved in the process are no longer at UCT or in positions of responsibility to be held to account for the very poor manner in which the protests were handled. Consequently I and most of the colleagues who I discussed the IRTC with stopped engaging in the process and even reading the reports. When the report finally came out we were given a very short response time with the result that few people engaged with the report. The final report has been criticised widely with Jansen calling it one sided and Nordling from Nature using it and select interviews with staff not elected as spokespeople for UCT to make claims that UCT is rife with racism and furthermore that black excellence is impeded at UCT. These outcomes are unacceptable and only serve to polarise UCT staff and students. The report seeks to manufacture racism where it does not exist and to inflate microaggressions that are normal between colleagues irrespective of race into race issues. As an example a staff member states that he never knew the reasons why his research vehicle was set alight and this is construed as an example of racism and white privilege. This staff member is neither and yet the IRTC enabled such a caricature to be made. The IRTC was costly, one sided, polarising and failed to provide a constructive dialogue to improve the already good relationships most staff and students (irrespective of race and gender) have at UCT.
- jjj. I would have like to see an analysis of the submissions which included gender and race backgrounds. This would have helped to identify why the report seem to acknowledge racism at UCT without hesitation. Yes, I know that this is not the case. The report may be interpreted as reflecting only one part of the University that acknowledges institutional and structural racism. I do not hear in the report any substantial evidence or voice of those who do not support this understanding of racism. Sadly, this means that

racial attitudes, practices and assumptions will continue uncontested. So the IRTC may not have brought up the full spectrum of views present in the university community.

kkk. In summary terms, these are my concerns--- to style them as "unsatisfactory" would be a massive understatement:

1. One of the most fundamental rules of natural justice known to every investigative and evaluative process is to "hear the other side". The IRTC made no serious attempt to engage with those outside the ranks of protesting and disrupting students and their supporters elsewhere within the university community, which in total constitute a very small minority of the whole. Thus the Commission based its report on hearing only one side of a series of extremely complex and devastating points of dispute and conflict, which caused immense damage to human relationships and dignity on EVERY side of the conflict. Almost every aspect of the Commission's work is tainted by this fundamental procedural flaw, which makes it very hard to accept its good faith.

2. The 'R' in IRTC stands for Reconciliation: the Commission made no attempt whatever to seek reconciliation between the disputing parties, it seeks at every turn to appease those who aimed to disrupt and destroy, and the most extreme group of such protesters, at that. I accept completely that there are many aspects of university life which many students find perplexing, depressing and even hostile, and that the university needs to do much more to combat such aspects and to encourage full inclusivity of diversity. However, the Commission has missed a wonderful opportunity to contribute to reconciliation, in failing utterly to address its reconciliatory mandate, preferring instead to condemn selectively without showing basic procedural fairness--- let alone any sense of substantive fairness in its "findings".

3. The connection between the reported "evidence" given to the Commission and its findings frequently beggars belief. On any rational and logical basis, many of the findings would be found wanting.

4. The Commission was invited specifically to address the issue of the limits of lawful protest on the campus, set within both the Constitutional and other legal framework. This was a matter raised and debated before Senate, SEC and Council on several occasions during the period 2015 to 2017, and it was a matter specifically addressed to the IRTC. The report signally fails to deal with this important issue in anything like a satisfactory manner, leaving the University community as vulnerable as ever to the disruptive tactics of small groups of discontented students and staff. This is a shocking omission by the Commission.

III. None.

Email correspondence: Please comment on any aspects of the IRTC report which you feel are unsatisfactory.

Email responses: 15 negative

- I'm glad to be on leave. I don't know how to respond to a document so one-sided. I wish you wisdom
- Colleagues; I have grimly waded through this report, and must admit that I am appalled at its tenor, its findings, and the fact that it seems to have been compiled from a handful (80-odd?) of submissions.

I am frankly too depressed at the use of anecdotes as evidence ("he was unfairly promoted"), the systemic assumption that white staff are complicit in racism, and the elaborate justifications for violent protest on behalf of what was always a very small minority of UCT staff and students, the ignoring of what has become entrenched anti-white sentiment among certain of the Humanities courses, to comment in detail right now. I have however annotated the report and will try to comment. Anything forthcoming from your end?

The longer I sit and think about that IRTC report, the more angry I get. Their 'theory' in chapter 6 (which Jacob distances himself from) seems to be:

- 1) the students were motivated by black pain and hence their cause was just
- 2) white pain is irrelevant because UCT is institutionally racist meaning white culture/power dominates
- 2) anyone who does not recognise black pain is committing a 'micro-aggression' therefore
- 3) when Tim Hoffman (who is white) responds to a call for submissions by pointing to the harm caused to his students (including from all over Africa) by the burning of his bakkie, his and their pain is not recognised (it is irrelevant).
- 4) when Tim Hoffman says he still does not know who burned the bakkie and why (and therefore feels vulnerable), not only is this vulnerability also ignored, but he is then castigated for committing a micro aggression for not assuming that it was burned by black people in pain (or their supporters) and for not including some sort of statement recognising the pain that supposedly motivated the people who burned the bakkie. In other words, not only were his questions (who burned the bakkie and why) ignored/deemed irrelevant, but the fact that he even asked them at all rendered him liable to criticism in terms of a theoretical framework that assumed from the outset that the bakkie was burned as part of a good cause by righteous people and Tim Hoffman should simply have realised this and either not made a submission at all, or if he did, it should have been accompanied by a recognition of black pain support statement.

The whole process lacks procedural justice (to put it mildly) and it does nothing to promote trust or to heal wounds. I learned from reading this report that if you are white, your pain is irrelevant (even if it involves pain to your students who come from across the racial and international spectrum) and it is totally OK for people (any people - we don't care who they were) to burn your departmental assets if they do so in a context where some protestors are making claims about institutional racism.

The report talks about UCT needing to heal its atmosphere of fear. Well, I would feel a lot more fearful in my job if this travesty of a report is accepted. At the very least senate should follow Jacob's lead and reject chapter six.

- UCT has become a toxic environment for most academics (I can feel this on my sabbatical in 2019) and the fear to discuss / debate differences. We should be able discuss our differences - on protests, race, gender ... It should be a space of differences!
- 'However, for all its welcome amplification of the protester viewpoint, the Report on the whole represents a missed opportunity. A one-sidedness pervades most of the Report, and it fails to offer the necessary complexity of assessment and interpretation.

In its account, on the one side stands a violent and racist institution; on the other, a unitary group of selfless protesters, motivated entirely by social justice concerns.

This kind of binary opposition is way too simplistic as a way of organizing a properly analytic and interpretive engagement of events and their consequences, and notably evades (often specific) questions of agency and responsibility.

In no particular order, and without the necessary time to make a fully argued case, the following might be noted:

1. If amnesty necessitates full disclosure, why is there no disclosure from those responsible for firebombing vehicle(s?) and the VC's Office, or explanation, or preparations for intentional acts of arson?
2. Too easy an equation of structural violence with individual acts of violence and aggression removes agency and responsibility from individuals, effectively downgrading them to the status of children, not responsible for their acts. Is such infantilization to be applauded or resisted?
3. Not enough attention is paid to the effects of the violence and intimidation perpetrated by protesters: this is only mentioned in what reads as a hasty and ill-considered account or afterthought in the body of the report.
4. The singling out of particular departments as having privileged insight into the understanding of events smacks of bias.

- Very briefly. I found the report very one sided and it does not provide any relief from the trauma some of my staff experienced during the protests. I find this very unfortunate. An opportunity has been lost.

Also the recommendations (as usual) lacked any thoughts on how they should be implemented eg "hire more black African South African women" - question is how will this be done?

This has always been the problem with UCT. The words are all there but the actions are not. We would not have had the protest if the type of interventions like the one we are rolling out in XX Dept had happened 10-20 years ago.

Why could we not have had a recommendation stating that the university will invest in the people and departments who are committed to meaningful change and then put some money behind those words.

I fear that this report (like so many political manifestos) will just sit on a shelf somewhere and collect dust until the next time we have major protests and then we will go through all of this again.

- I am most concerned by the implication in this report that “UCT is racist”, as seen with yesterday’s news headlines, which will cause immeasurable harm to current and future students and staff. There was very little evidence presented to support this assessment, and what was presented – as you describe – was based on a narrow and somewhat biased definition. Minimal effort was made by the IRTC to collect or reflect on evidence submitted of the many, many policies and practices by UCT that show that significant progress has been made towards transformation and that the vast majority of staff and students are not racist and do not find UCT racist. The IRTC report also appears to have (deliberately) glossed over the far-reaching harm of the violent protests, most poignantly reflected in the assessment of Bongani Mayosi’s family that these violent protests “vandalised his soul” and contribute to his tragic death. See for example <https://www.politicsweb.co.za/news-and-analysis/the-fallists-completely-vandalised-bonganis-soul-->
- Quick response from me: I support the views expressed by Jeremy Seekings in his very helpful submission yesterday. At short notice, I think he has done a good job overall at noting the strengths of the report and pointing out its shortcomings.
- On the issue of Soc and Pol Studs leading research. I think this should have been a call to Hum Fac more generally, properly supported, to do this work. Relationships in the 2 depts concerned at the time were strained to say the least and there does not seem to be recognition in the report that depts themselves may need assistance and careful reflective thought about their own stances and histories. A wider call would have offered support for the Humanities at a time when it is under tremendous pressure. Much work has been done in small pockets in the Faculty and I hope that some system of finding and recognising this is found. I wonder what material support will be offered to assist with this critical work.

I wish to note that the lack of psychological and other forms of support for academic and PASS staff is rather understated in the report.

- My apologies at responding at the 11th hour, but the timing has been very tight. My view is that the report lacks some very important elements:
 1. Acknowledgement of the fact that many staff members (PASS and academic) were not appropriately heard by the Commission. I persuaded one of our PASS staff members to testify, as she had been witness to an assault on a retired member of academic staff. She reluctantly agreed and then wrote me a very traumatised account of her experience at the Commission. I’m not sure if this was an isolated incident, but definitely there was a sense that the Commission had a pre-ordained agenda.
 2. The lack of any recommendation related to a code of conduct around protest is a serious flaw.

3. I also agree with Seekings' comments that "The Report is partial in its recognition of harm and pain". I believe that this report will go down in UCT's history as a sorry example of specific political agendas subverting true change and true justice.

- I have just read Jeremy's report and can only concur with the sensibilities embraced. The recommendations of the report are not, as he points out, contentious. The report itself however fails to engage with the complexity of issues. It is decidedly skewed in its depiction of events. Overall it smacks of sectarianism and is deeply disturbing in its inability to provide a more balanced and nuanced appreciation of the fraught politics of the time. The incantation of the discourse of structural violence simply serves as a justification for whatever has happened. This is disappointing and worrying. The position on protests and the instrumentality of violence flies in the face of existing policy frameworks for governing protests. The latter was forged through lengthy deliberations which tried to balance the right to protest with the responsibilities which all parties had to adhere to. In my view, the Commission's 'justification' for violence is not only short sighted but downright dangerous.

I read the report with a feeling of dread and the feeling of dread refuses to go away.

- We have already had a Mental Health Task Team since the protests, which has made heroic efforts and led to substantial changes. I cc my colleague Debbie Kaminer, who led this effort.

We will never have enough mental health support on campus. This is a worldwide problem, but is exacerbated by a health system in SA that has (to some extent necessarily) other priorities, so we are unable to make routine referrals into that system with the expectation that folks will be seen fast (we can make the referrals, but those referred will likely sit on waiting lists for a long time). So the calls for a review in this area in the report are, first, made redundant by the work of the Mental Health Task Team (which has reported to Senate and elsewhere); and second, impossible to meet.

- For what it is worth, I felt the report was disappointing because it seemed to be heavily loaded in the direction of finding collective fault. I am aware of a lot of good happening at UCT, but the report dismissed this, creating the impression that we all work in, and contribute to, a toxic environment.

I read Jeremy's report and thought it summarised my views well, particularly the section;

"I myself am disappointed that the Commission has not been clearer in identifying the limits to acceptable protest at UCT. The Commission had not made any Recommendation on this. The Commission has failed to take seriously incidents of assault and threatened assault as well as of serious damage to property".

Sorry I was not able to provide more feedback in the time we had.

- Having now read through much of the IRTC report I am extremely concerned and annoyed at the comments under the section "Allegations of the Existence of Racism" - page 34 in which Nadrah Lovric was quoted as saying

"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"

followed by..

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.

I can only speak for the Oceanography Department - this is absolutely incorrect and I would like to query why quotes (or their context) were used without any checks being made and also without any further discussion from the mentioned Departments. Since 2014, the Oceanography Department has advertised two positions at both Associate Professor and Lecturer levels. In both cases the advert was targeted to seek out a Black South African candidate and in both cases no one applied.

The quote on page 34 and ongoing quotes throughout the chapter are likely to be extremely damaging and divisive to our Department and an explanation must be given why the authors of the report felt the need to include quotes that clearly are misinformed and wrong. Why were HoDs of mentioned Departments not contacted for their view on these quotes? I understand that we were all asked to review the document last week but with very little lead up time and a desk full of other administration duties I have only now been able to read through the report - post senate.

- I do not feel that I can adequately comment, but feel and am saddened by the fact that our university is a place where dialogue is often ostensibly encouraged, but in fact, one feels "labeled", for simply asking a question as a point of clarity or for having a different interpretation. I am personally committed to transformation and open to many of the recommendations made by the committee. I do, however, feel that there likely are "voiceless" groups in the university community that do not feel emboldened to speak. As UCT moves through these important steps, we need to create "safe" spaces for dialogue.
- If this report were a piece of research, it would need to be thrown away, given its numerous methodological flaws. I think it should be treated the same way as a "report". The idea that we should now engage with a deeply flawed document by picking out what is good and what isn't seems like a misguided project. I'm not suggesting that you think this is worthwhile. I know that you're simply eliciting the opinions you've been asked to elicit. Please do add to those opinions the view that this report is no more worth engaging than a shoddy piece of research.

- In general I find the document very biased and it does not seem to reflect the broad range of opinions that exists at UCT.

Examples seem to be chosen to illustrate prejudged opinions and alternative views are presented critically and with bias.

By example I will comment in more detail on the Racism section.

Examples seem to be chosen to illustrate prejudged opinions and alternative views are presented critically and with bias. The language used, with terms such as “microaggressions”, reminds me of many themes discussed in articles from the 2018 book “The Coddling of the American mind” (<https://www.thecoddling.com/>), where it is described how a dangerous and counterproductive trend is being institutionalized at American universities of “vindictive protectiveness”. Ironically these terms come from the liberal “colonial” west. It is described how “microaggressions” can be unconscious racial affronts, i.e. anything that can be perceived as discriminatory on virtually any basis.

The authors present pages and pages of alternative definitions of racism. They end up presenting the one they will use to judge if UCT is racist. Their definition is incomprehensible, and could mean anything anyone chooses it to mean. It could cover anything from speaking English to having ones birthday party at the Mount Nelson Hotel, as done by the late Winnie Mandela. The report does not deal with any examples of anti-white racism currently practised at UCT.

Whether UCT is racist or not hinges on which definition of racism one chooses. I will comment based on the one used in the South African constitution i.e. “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, etc.”

By this definition UCT, the government, and all institutions in SA, are currently racist in that they discriminate directly against South Africans who are not Black Africa South Africans, or not black (generic) South Africans. The government enforces Apartheid-defined measures of race and demands that institutions implement racists policies. At UCT this occurs at the level of student entrance into UCT whereby quotas are used which means that some racial groups are accepted with lower marks than other groups. The same occurs for bursaries. Some Faculties, such as the Science Faculty, offer bursaries only for generic black South Africans, and UCT forces staff to implement the racist NRF policies of race-based quotas for postgraduate bursaries, rather than merit. In the Science Faculty, appointments of academic staff are race-based. Under the UCT statement using words to the effect that ...UCT seeks to employ Black South Africans....., a white South African cannot be appointed on that advert. Under the general equity statement, a White South African can only be appointed if an appointable black South African is not found from the pool applying to that advert. At UCT it is apparently acceptable to management that some events and formal societies be exclusive to black staff or students (eg the Black Academic Caucus), presumably also instigated by the participants (some of whom appear then to complain that they are called black

academics). It appears acceptable for UCT medical students to have a formal photo taken of ONLY the black students, (more than 50% of the class) not based on anything other than the colour of their skins.

In the above I do not in any way address or pass judgement on whether the current systems and practices at UCT above are justified or not given the past racial discrimination against black South Africans, but merely whether they are racist or not. In my view UCT is racist as an institution in that it discriminates against minorities based on race, using dubious yardsticks invented by the Apartheid Nationalist Government, and encouraged and institutionalized by the current Black African ANC government. It is well known that there are more interindividual difference between people based on factors such as upbringing, socioeconomic factors, religion etc, that on skin colour, and there is no conclusive genetic basis for race.

Based on my experience in the Science Faculty over the past 10 years, I have personally observed no examples of anti-Black racism by my colleagues or students. On the contrary I have observed many examples of direct racial discrimination against white people at UCT. My experience is that the vast majority of my colleagues are genuine in their desire to increase the number of academics and students from disadvantaged backgrounds, and to work hard to contribute to their success and to general harmony and inclusiveness at UCT. In addition, the vast majority from my observations do not support lawlessness and destruction, no matter what the cause, although most are sympathetic to hardships endured by those who are struggling, which includes people of all races at UCT.

Appendices (separate attachments)

Appendix 2: Prof Jeremy Seekings- Comment on IRTC Report (March 2019)

Feedback to Summary circulated to Senate on March 25, 2019 (one email)

- I have still not had an opportunity to read the report but I'd like to comment on the 2nd bullet point in point 2 of the feedback from senate.

This is an unfair criticism of the IRTC. There were numerous invitations extended to the community to make submissions during several of the road shows undertaken by the commission to various sectors of the UCT community to "consult broadly". I know because I took advantage of one of these invitations and made a submission. It is therefore the fault of the UCT community and not of the IRTC that so few submissions were made.

I agree that one of the commissioners, Justice Yacoob, was unnecessarily belligerent but I do not think that this compromised the process.

Appendix 3: Prof Tom Moultrie

Appendix 4: Prof Hugh Corder

Comments on the IRTC Report (March 2019)

Jeremy Seekings

This memorandum is intended to assist members of Senate in making sense of the IRTC Report. I am well aware that members of Senate hold diverse and perhaps even contradictory views on some of the issues raised in the IRTC Report. Nonetheless I hope that it might be possible to find some common ground on a way forward. As always, Nicci Illing and I shall be grateful for feedback.

The IRTC has finally tabled its report. You will recall that the IRTC was established to give effect to the agreement in November 2016 between the then VC (Max Price, together with other members of the executive) and a group of Fallist students (almost all of whom were members of the Pan Africanist Students Movement of Azania, PASMA). In 2017, the University established a Steering Committee to draft Terms of Reference and propose commissioners. Nicci Illing and I were elected by Senate as its representatives on the Steering Committee. After extended discussion in the Steering Committee, the UCT Council agreed at the end of 2017 on the terms of reference and a list of commissioners. As representatives of Senate, we had grave reservations over both the terms of reference and the composition of the Commission, but our objections were over-ruled. Between February and September 2018, the IRTC held hearings and received about 80 submissions.

The work of the Commission was made more difficult by the reluctance of members of the University to make submissions or attendance hearings. The Commission, in its Report, attributes this to a general climate of oppression and victimization at UCT (see Chapter 4). The Commissioners do acknowledge that fear extends across academic staff, students and PASS staff, but do not pay any attention to the fears of academic staff. Through 2018 I was told repeatedly by academic members of Senate that they feared sharing their experiences and impressions with the Commission because they viewed the Commissioners as basically hostile to their concerns. Some of these members of Senate will surely read this report as vindicating their skepticism about the Commission.

The Commission's Report comprises two parts. The Commission makes a short series of **Recommendations** (pages 69-71). These cover topics such as the embrace of diversity, the need for decolonization, the importance of inculcating the values in South Africa's constitution, the need for affirmative action in the recruitment of academic staff and students, the provision of student housing and mental health services, and the policing of protests. The Recommendations seem to me to be reasonable and sensible, and I doubt that any of them will prove highly contentious within Senate. Indeed, the University has already committed to implementing most of these recommendations. I imagine that Council and our current VC will draw attention to the past and existing efforts of the University to address these issues.

The body of the **Report** itself is likely to prove more contentious. I believe that most members of Senate welcomed a bright light being shone on the events of 2016-17: As scholars, we should expect to examine our own university as critically as we study the world around us. The quality of the Report, however, is deeply disappointing, especially in view of the likely financial cost of the Commission. The findings are not obviously based on strong evidence (i.e. evidence that has been tested) and appear to reflect instead the particular assumptions and theoretical approach that the commissioners brought with them.

It might assist members of Senate if I try to summarise the overall message and tone of the Report with reference to its findings with respect to each of:

1. The VC (at the time, Max Price) / Executive / Management,
2. The student protesters, and
3. UCT academic and PASS staff.

Findings on the VC / Executive / Management

The Commission repeatedly blames the then VC and Executive for their mishandling of the protests. Their response to protests was 'inadequate and inappropriate, to say the least'; it was insensitive, with insufficient oversight of the private security companies. Poor management facilitated racism at UCT. Student accommodation was managed badly. The University's mental health services and policies on sexual and gender-based violence are inadequate. (The Report refers to 'black students leaving the university in body-bags due to high rate of suicide' – page 48). These criticisms are summarized in paragraphs 7.4 to 7.9 and 7.14 in the executive summary (pages 2-3). UCT leaders are also criticized for failing to communicate with academic and PASS staff (see pages 24-25 and 63). The university's approach to student accommodation and the policing of protest is described as racist; UCT management is said to have 'looked the other way' when private security exercised racist repression; the University is accused of discriminating against black academics in selection committees (Chapter 6, also Chapter 7 on accommodation). The university's management had buried their heads in the sand (page 62). The then VC is accused of perpetrating a form of structural violence by failing to greet someone in a meeting (page 46).

The Commission does praise the University for its financial aid system (Chapter 9). The Commission acknowledges progress in transforming the racial composition of UCT's academic staff but notes that the university is still a long way away from reflecting the demographics of the country (Chapter 10).

The Commission condemns strongly the atmosphere of fear and distrust that it reports is pervasive at UCT. The environment is described as 'toxic'. Bullying is said to be commonplace. In an extraordinary paragraph, the Commission reports that 'Attempts by the commission to establish the existence of a cabal, structure or organization, 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' (page 64).

I imagine that the then VC will respond fully to many of these criticisms, either in a statement or in the book that he has said that he is writing. Some members of Senate may concur with the criticisms made of the then VC; others may feel that the criticisms are unduly harsh. Some of these criticisms are ones that Senate raised at the time: For example, Senate repeatedly criticized the then VC for his failure to communicate clearly over his negotiations and conflicts with Fallist students. It is not obvious to me, however, that Senate needs to take a position on these particular 'findings' by the Commission.

Findings on the Student Protesters

The Commission largely exonerates the student protesters on the grounds that their behavior was justified by their grievances. The Report repeats the recommendations on Amnesty that were made and discussed during 2018. These concerned only those students who had been found guilty through UCT's disciplinary processes and then had been granted clemency by the University, in connection

with the events of 16th February 2016 (when various vehicles and artwork was destroyed, and the VC's office was petrol-bombed). The Commission recommended that clemency for these students should now be granted amnesty, on the basis that they disclosed fully their participation in the events and admitted responsibility (see Chapter 5). The recommended amnesties covered mostly acts of destruction of property, but included also one case of assault. As Senate representatives, we reported to Senate on the amnesty issue last year (including on [30 May](#) , [14 June](#) and [14 August](#)). The Report says little that is new. This is unfortunate, because there are a number of protest actions for which no one has stepped forward to take responsibility. Also, the Commission continues to say nothing about incidents of assault and threatened assault by protesters on staff (both academic and PASS) at UCT.

The Commission does begin to consider the broader question of **the limits of acceptable protest at a university**. The IRTC insists that it did not agree with the argument that 'invisible and structural violence always justifies criminal violence', but in practice it seemed to conclude that the end justified the means, i.e. that the violence perpetrated by student protesters was justified because they were motivated by existing injustice (see Chapters 2 and 11). In Chapter 11 of the Report the Commission argues that protests that are peaceful but disruptive – that is they 'inconvenience' others – are legitimate, especially if the grievances are just. The Commission assesses that the students' grievances were just, in that the problems of racism and 'cultural dominance' had barely changed since 1994. The Commission concedes that 'The limit to protest action was ultimately exceeded' but immediately qualified this: 'that excess was not deliberate or planned but was at least in some measure caused by the response of the administration and security' (page 61). In the end, the Commission's answer to the question 'what are the limits to acceptable protest?' seems to be 'it depends ...' The Report is explicit on how protests should be handled by the university but is ultimately silent on the responsibilities of protesters.

I myself am disappointed that the Commission has not been clearer in identifying the limits to acceptable protest at UCT. The Commission had not made any Recommendation on this. The Commission has failed to take seriously incidents of assault and threatened assault as well as of serious damage to property. It is hard to understand how the Commission views assault as merely an inconvenience.

The Commission seems to have adopted a different approach to the Constitutional Court in the *Hotz* case. The case arose from protesters' legal challenge to the university's interdict against them to prevent them participating in illegal acts; it proceeded all the way up to the Constitutional Court after lower courts not only found against the student protesters but also determined that the student protesters were liable for the university's legal costs. In its Report, the Commission quotes favourably parts of the Constitutional Court judgement to the effect that lower courts should have considered the students' grievances when awarding costs. The Commission (in its Report) does not refer, however, to the Constitutional Court's unambiguous condemnation of the violence perpetrated by student protesters: The Constitutional Court found that protesters' conduct 'went beyond the boundary of peaceful and non-violent protest' and violated the constitutional rights of other people. The Constitutional Court emphasised that 'The destruction of property and incitement of violence is discordant with our constitutional dispensation' and 'cannot be countenanced'. The Constitutional Court found that the 'students responsible for these transgressions must be held accountable through appropriate legal means'. The Commission, in contrast to the Constitutional Court, seems to be suggesting that the students' actions – including assault – can and should be countenanced.

Senate has been at the forefront of pushing for a clear code of conduct to govern both protesters and the policing of protests at the university. Last August, in one of our [reports to Senate](#), we drew attention to the letter written by the AU and EU jointly to their members, in which they wrote:

“... [I]t is critically important that we send a clear message – to the students concerned, to the rest of our student community, to concerned parents, alumni and to the university’s PASS and academic staff – that violence and other actions that fall outside of the bounds of legitimate protest activities will not be tolerated.”

It is regrettable that the Commission has not taken the opportunity to assist with finalising a code of conduct.

I imagine that there are very diverse views within Senate on these findings by the Commission. I would hope, however, that Senate will at the very least endorse the positions taken by the Constitutional Court, Senate itself in the past and more recently by the AU and EU, on the limits of protest.

Findings on Academic Staff

The Commission’s comments on academics are largely confined to Chapter 6, entitled “Racism”. One of the commissioners, former Constitutional Court judge Zac Yacoob, explicitly dissented from this chapter (see page 73). Commissioner Yacoob concurred that racism exists at UCT, but dissented from the theoretical approach, definitions and factual conclusions in Chapter 6.

Chapter 6 uses a theory of racism based on a particular reading of Fanon and Biko. This entails a strong emphasis on ‘symbolic violence’ and ‘micro-aggressions’. The Report does not engage with alternative approaches to race and racism, or to disadvantage and diversity more broadly. The discussion of symbolic violence is tarnished by the evidence presented in the report. One of the most egregious examples of this is the discussion of submissions made by members of Senate on the harm caused by students who had applied for amnesty. At no point does the report recognize any of the concerns raised by members of Senate with respect to the stress and harm caused by illegal actions on the parts of students, including assaults on staff and the burning of research vehicles. Instead, the commissioners cite the submissions made by members of Senate as examples of ‘micro-aggression’: The absence of any explicit acknowledgement of the suffering of Fallist students is presented as an example of an act of micro-aggression (page 36). This is especially shameful given that the Commission itself called for submissions from people who had suffered harm in the actions for which students might be given amnesty. The Report is partial in its recognition of harm and pain, presenting poor examples of micro-aggression whilst ignoring actual assault.

The chapter also provides supposed evidence of direct racial discrimination and prejudice by selection committees for appointments in named departments at UCT. This is taken from personal submissions to the Commission (pages 33-35). On Monday, when the Commission presented its report to the Steering Committee, I asked whether the Commission had taken any steps to ascertain the veracity of the allegations reported as facts in the report. The Commissioners avoided answering directly. It appears that the commissioners (with the exception of Commissioner Yacoob) simply accepted the veracity of the allegations without testing them in any way.

I fail to see how Senate can endorse a document that presents untested allegations of this sort as facts. Framing the report in terms of a particular and contested theoretical approach also arguably tells us as much about the commissioners as it does about the university itself. It reflects the

Commissioners' choice of theoretical approach more than any incontrovertible evidence presented in the Report. I propose therefore that Senate endorses Commissioner Yacoob's dissenting position on Chapter 6.

Elsewhere in its Report the Commission does discuss the 'existing dominant culture', which is a white culture into which newcomers to the university are expected to assimilate (page 68). The Commission urges the University to embrace diversity. Senate has repeatedly affirmed its continuing commitment to reflect on institutional culture and should have no problem doing so again.

Conclusion

It seems to me that Senate is unlikely to object to the Commission's specific Recommendations. I suspect that many members will be disappointed in the quality of the report. The fact that there is a report reflects well on the university's commitment to self-criticism and learning from the past. Many members of Senate may, however, share Commissioner Yacoob's misgivings about Chapter 6, perhaps some of the assumptions made in other parts of the Report and hence the overall tone of the report. The Commission does seem to have taken as facts a number of serious allegations without any serious consideration of alternative perspectives or contrary evidence. The Report does not seem to demonstrate the excellence to which UCT aspires and is committed.

COMMENTS ON THE IRTC REPORT¹

OVERVIEW

The IRTC report represents the beginning of the end of a long and fraught process of the university (as a community; as a whole) trying to come to terms with the damaging and brutalising events that played out on the UCT campus over nearly three years from March 2015 through to December 2017.

That the genesis of the protests lies in a systemic failure to address the consequences of apartheid, and growing disaffection with the nature of the post-1994 compromise is widely appreciated, including by the author of these comments.

The UCT community had the anticipation that the IRTC report would lay the basis for healing the manifold and complex divisions and fractures that were exposed and which continue to affect the university community, and to trace a path for doing so. These divisions were shown to relate not only to black vs. white but also management vs. students and the roles of academic and administrative staff. So many constituencies had a hope for a thoughtful and inclusive way forward to emerge from this intensive consultative process. The report, sadly, does not accomplish these goals. It is a highly partisan, politically naïve document that seeks – at almost every turn – to exculpate and exonerate the student protesters (termed ‘the students’ in the document, although even at its peak it is unclear whether the protestors represented even a majority of black students on the campus). At the same time, it moves to excoriate and blame and denounce the executive; the administration; and a great number of staff (directly or indirectly).

As an academic, this report leaves the university in an even worse space than it was prior. Already, those exonerated and exculpated are crowing on social media; and the press (which has adopted a partisan stance through the protests) has trumpeted billboards shouting “UCT IS RACIST!”.

For political reasons, I am well aware that the manner of its ‘release’ and ‘dissemination’ makes it nigh impossible for the Steering Committee to put the genie back in the bottle and reject the report (and to recommend its rejection to the university Council). This is unfortunate.

It is also unfortunate that the IRTC SC provided its constituencies only a matter of days to respond to a report that runs to some 80 substantive pages. It is unclear how some constituencies (for example, and especially students) were meant to be able to elicit the views of several tens of thousands in such a short space of time. Whatever feedback is given is likely to be cursory and indicative; rather than engaging with some of the particularly explosive aspects of the report.

The report itself is meandering, prolix, repetitive. It is arranged under loose themes (for example, ‘Racism’; ‘Residences’; ‘Mental Health’), yet there is frequent repetition across these. This response does not engage with the report *ad seriatim*, but deals with (first) the political

¹ This commentary has been written in great haste to meet the unrealistic deadline imposed on the IRTC steering committee. All errors (grammatical, logical, factual) are my own.

context surrounding the protests; the misrepresentation of facts and contested facts; (third) the manifold logical errors in the report; and finally the partisanship which characterises the report.

POLITICAL CONTEXT

One of the most surprising aspects of the report, given the credentials of the Commissioners appointed, is its political naïveté. Beyond a potted history, largely culled from the online archives of *News24*, there is almost no discussion of the broader national context in which the protests occurred (the UCT-focussed *#RhodesMustFall* in March 2015; and the national *#FeesMustFall* movement from later that year). The preface to the Chapter 1 of the report notes that “the student action should be evaluated in the context of student resistance virtually throughout the country” (page 5).

Yet, the report barely scratches the surface of this crucial dimension. Both Jonathan Jansen and Adam Habib have written books² on this matter. While they are certainly interested actors in the history that played out, they are both scholars and what emerges from both their analyses is their appreciation that the protests that occurred throughout the country in the context of *#FeesMustFall* were not happening on campuses in isolation. Broader national politics were at work; playing out particularly in a three-way contestation for power between the student wings of two national political formations (the ANC and the EFF), and a more grassroots movement drawing heavily on Black Consciousness theory. Habib offers a compelling analysis that much of what was experienced at Wits was driven (particularly) by contestation between the EFF- and ANC-aligned student movements, with each trying to ‘out-radical’ the other, leading to a spiral of increasingly unmeetable demands and violence.

Hence, the assertion (page 2) that the protests in 2016 and 2017 were “a continuation of inadequately addressed and/or unaddressed grievances of the students” does not ring true. *#FeesMustFall* was certainly much bigger than that, and some location of the UCT experience within that broader drama would certainly have provided essential context.

Instead, the report (at page 58) appears to negate explicitly the possibility that the protests were – in some sense – orchestrated: “... 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.... 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...”. Regardless of the validity and legitimacy of the complaints, that does not preclude the protests from having been, in some sense, orchestrated by other bodies with an interest in fomenting a crisis on university campuses.

Likewise, given the protests in 2015 and how that year had ended, it is not entirely out of the bounds of plausibility that those same students who were in the vanguard of protest in 2015 might have been looking for a reason to disrupt and/or provoke at the beginning of 2016. In that sense, the accommodation crisis – which in reality was probably not worse than the university

² Jansen *As by Fire*; Habib *Rebels and Rage*. Others, perhaps perceived to be less conflicted, have also written on this though. See, for example, <https://csvr.org.za/pdf/An-analysis-of-the-FeesMustFall-Movement-at-South-African-universities.pdf>; Nyamnjoh - [https://www.up.ac.za/media/shared/85/Strategic%20Review/Vol%2039\(1\)/pp-256-277-a-nyamnjoh.zp121542.pdf](https://www.up.ac.za/media/shared/85/Strategic%20Review/Vol%2039(1)/pp-256-277-a-nyamnjoh.zp121542.pdf); or the book written by RMF Oxford- <https://blogs.lse.ac.uk/lsereviewofbooks/2018/11/14/book-review-rhodes-must-fall-the-struggle-to-decolonise-the-racist-heart-of-empire-by-rhodes-must-fall-oxford-edited-by-roseanne-chantiluke-brian-kwoba-and-athinagams-nkopo/>

had experienced in previous years (the issue of over-booking is returned to later) – might have been the immediate precipitating cause of the protest at the beginning of 2016, although had it not been that, there may well have been another issue around which protest could have been mobilised to equal effect and consequence. In this sense, the argument on page 38 that UCT management are responsible for constructing the crisis around residence accommodation might well – with a greater insight into the political conditions prevailing – be over-stated.

Finally, relating to the broader context in which the protests played out, the report notes on page 55 that “[s]ome tension between unions and the university management are evident.” While this is objectively true, what is not revealed is the role played by leaders of the protesting students in fomenting that tension through their active undermining of NEHAWU, and the promotion of the formation of splinter unions. That NEHAWU is an Cosatu- and ANC-aligned union is not irrelevant given the broader play of political opportunism that was prevalent in the protest movements.

MISREPRESENTATION OF FACT, CONTESTED FACTS, and UNVERIFIED ASSERTION

The report is plagued throughout by misrepresentation of fact; by the presentation as fact of matters which are perhaps contested; and by repeatedly unverified assertions. While the report notes that the Commissioners did not want to assert themselves as arbiters and adjudicators of fact, through the narrative of the report, they have effectively done exactly that by presenting and using hearsay evidence in their argument and construction of their analysis of the ills that befall the university.

Somewhat ironically, the castigation of the university as “being unable to hear and act upon truthful information” (page 45) can be juxtaposed against the report’s failure to be able to discern what is a truthful allegation at all. To give some concrete examples of the above:

- It is asserted (Page 3; para 7.7; and again on pages 3) that children of alumni get placed in the same residences as their parents *as a matter of course*. It is not university policy to preferentially allocate residence places to the children of alumni. However, having been allocated a place in residence, there may be preferential treatment regarding WHICH residence the student is allocated to. The difference between the two is significant.
- It is asserted (Page 3; para 7.11; and again on page 54) that “African South African female academics occupy the lowest levels of all academic positions in the university”. This fact could be read in the pejorative manner in which the Commissioners did. Or it may be read as being reflective of the efforts in recent years (evidenced by the changing composition of staff) to recruit – particularly – African women into the academy, and with academic recruitment taking place as usual via the most junior ranks. Data on full-time equivalent GOB-funded academic staff, which were collated for a Council report on recruitment and resignations are particularly instructive (see the Appendix). The proportion of academic staff who are African women in the academy **doubled** between 2015 and 2018 alone.
- While not directly involved, the narrative offered on page 5 is at odds with my recollection of the events of late 2016 (as well as those in 2015). First, the Shackville Agreement was certainly NOT the “beginning of the process” as claimed. In the weeks (perhaps longer, my memory fails, and time is short) before that agreement, a long process of facilitated negotiations had been conducted with a very broad range of formations; these negotiations were live-streamed on social media. Furthermore, the narrative makes no mention of the multiple **other** negotiations that had been attempted (and failed) in 2015 and 2016, not least due to the fact that several student leaders (including those subsequently charged at

Shackville) had engaged with the university administration in rank bad faith (changing demands or refusing to participate in negotiations until other pre-conditions were met). That there was a multiplicity of efforts to attempt to creatively and differently resolve the impasses over this period has not been acknowledged by the IRTC. Thus, to characterise the time leading up to the establishment of the IRTC as “there had not been any real effort to resolve the disputes in a different, more creative, constructive way” is simply false.

- On page 5, it is asserted that “many” students had been expelled, or suspended. My recollection is that the number is a very, very long way from “many”. Perhaps 10, in total?
- It is asserted that “[r]acism at the University of Cape Town often demonstrates itself in subtle forms of daily micro-aggressions” (Page 2; para 7.6; and pages 31, 33, and 36). It is by no means demonstrated that micro-aggressions (if they even exist) are racist in nature.
- It is reckless and dangerous, in the extreme, to accept uncritically and with absolutely no interrogation of evidence, that high rates of suicide can be attributed to “a racist institutional culture, unreasonable academic demands and the existence of an alienating environment” (page 31). This is a point reiterated on page 48: “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.”

It is not clear, from the limited national data available, that suicide rates at UCT are a) higher than in the general population; b) higher than those at other educational institutions; c) show a distinction by race. Furthermore, suicide seldom has a single sole predisposing cause. It is deeply distressing that the report plays into these careless, inflammatory, and highly dangerous narratives.

- The assertion (on page 45) that ‘research excellence’ comes at the price of the ‘demographic deficit’ would appear to be in reference to the work of Govinder *et al* relating to a proposed measure of equity in higher education³ which has been heavily criticised.
- The existence of perceived ‘micro-aggressions’ is used to justify the assertion that there has been a “systematic suppression of black excellence in recent years” (page 33). We are told (on the same page) that the submissions are “rife with stories of better qualified black academics being passed over for employment and promotion in favour of white academics”. But it is not clear that the complainants have been completely honest in their presentations. The Commission (while directly disavowing that it had the need or obligation to test evidence; should have been – as a consequence – a little more circumspect about the nature of the evidence put before it, not least because it leads to redundant recommendations:
 - For example, in relation to selection committees, it is asserted that “the system is set up so that one or two individuals appear to have complete discretion over employment in a department” (page 34). This is patently and simply false, as anyone who has ever had to sit through the bloated selection committees and painful torturous hiring processes at the university could have attested.
 - A review by the Commissioners of the rules and processes for constituting selection committees, together with even the most cursory review of a handful of reports from those committees would have indicated that this assertion would be very hard to sustain.
 - Likewise, the implication of the recommendation at page 4, para 8.5 (that at present the university’s recruitment and promotion practices are inequitable, opaque, and exclusionary) bears no resemblance to what actually happens. This is a point that

³ See SAJS vol 109(11/12) for the original paper, and the responses thereto in SAJS vols 110(1/2) and 110(5/6).

has been made strongly, and analytically, in an academic paper published about UCT's promotions system at the end of 2018⁴.

Clearly more must be done to demonstrate that these processes are fair, transparent, and inclusive.

- In the same vein, the allegation that departmental heads exercising “wilful behaviour can exist only where there is no oversight (or for that matter where there is complicity) from senior management” (page 35) is a highly damaging allegation without any evidentiary basis.

In a great number of cases, it is apparent that the Commissioners made little attempt to familiarise themselves with the operations of the university prior to writing the report. The misrepresentation of search and selection committees has already been mentioned above. A number of other recommendations are premised off the commission's interlocutors' perceptions of what happens rather than any factual basis:

- The Commissioners would have done well to be appraise themselves of a) the university's admissions policy; b) faculty-specific enrolment targets; c) actual enrolment numbers before making facile recommendations such as those at page 4 para 8.6. From the comments here (and elsewhere), it appears that either the Commissioners were misled by (some of) those appearing before it; or they did not validate / verify that information.
- Similarly, with the recommendation (at page 67) that “[a]s 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 Commissioners offer an accurate description of the current, existing, policies, processes and procedures.
- The recommendation (page 70) that selection committees should be representative betrays ignorance of actual policies and practice in the university, and reveals the predilection of the Commissioners to rely on hearsay accounts from partisan participants over any semblance of fact. Similarly, on page 70, the recommendations that “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. ... The university might have to set targets for itself over a ten-year period, with milestones in between.” is something that is already, and routinely done, as part of employment equity planning and reporting. (Again, that evidence is adduced in the Appendix)
- The recommendation on page 68 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.” is surprising. I would be extremely surprised if any academic, of any colour or ideological persuasion, in either of those two departments would regard this research as intellectually worthwhile, useful, or valuable. The Commissioners would appear not to appreciate the terrain of academic sociology or political science, conflating it perhaps with the practice of organisational development and psychology⁵. This recommendation also fails to recognize the significant

⁴ Sadiq, H., *et al.* (2018) “Academic promotions at a South African university: Questions of bias, politics and transformation”. *Higher Education*. Online: [dx.doi.org/10.1007/s10734-018-0350-2](https://doi.org/10.1007/s10734-018-0350-2). The essential finding is this: “Overall, therefore, we find little quantitative evidence of any consistent pattern of promotion bias.” (page 16).

⁵ It may also betray a certain mind-set on the part of the Commissioners that the only useful kind of academic is an ‘activist academic’.

scholarship at UCT over the years and across many disciplines that engages with issues of diversity in the context of South African higher education.

Other points of contestation

- The Commissioners justify their decision to “not hear other constituencies within the university who were prejudiced by the Shackville protest” on the ground that “many of these individuals had been heard during the disciplinary proceedings” (pages 22-3). This is simply not true. The fact that many voices were not heard by the Commission must be regarded as its single greatest failure. From the outset, and judging both by who volunteered to appear before it and from the accounts of some of those who did appear, the IRTCs capacity for impartiality was compromised. The vast majority of staff and students elected to not make representation to the Commission.
Of course, the Commission would have been ill-advised to attempt to compel participation before it, but the absence of these dissenting voices (and the illuminating account of two failed attempts to start a discussion in Humanities) should be of the greatest concern to the entire university community.
- The report’s comment on the Concourt’s judgement on the *Hotz* case is very odd. The substance of the Concourt’s ruling – in *Biowatch* and here – was fundamentally about the costs to be borne by appellants. Paragraph 39 of the ConCourt judgement in *Hotz* records:
 - “Disappointingly, their conduct however went beyond the boundary of peaceful and non-violent protest – by damaging the University’s property. The destruction of property and incitement of violence is discordant with our constitutional dispensation. It needs to be stressed that the destruction of property cannot be countenanced. The students responsible for these transgressions must be held accountable through appropriate legal means.”
 - In other words, while the perpetrators of the violence are of course still afforded constitutional protection (for example, against arbitrary punishment; infringement of constitutional rights; or excessive cost orders), the Court was unambiguous in its condemnation of the students’ behaviour. It is not insignificant, too, that the Court uses the imperative ‘must’ (as opposed to a voluntary ‘should’) in the final sentence quoted.
- While the arguments advanced on pages 56-7 about protest (and the possibility that peaceful protest may inconvenience others) is well made, it nevertheless fails to take into account the necessity – in any constitutional democracy – of balancing rights. Is it correct, for example, that a peaceful protest of fewer than 40 students at the only two vehicular entrances to a campus can, or should, trump the rights of a further 35 000 other staff and students. Where the cut-off lies, and how it is determined, is unclear. That there HAS to be some balancing of rights is surely common-sense to all.
- The recommendations would appear to be aimed at ensuring – by stealth – that private security (and quite possibly the police) is never used again: “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” (page 71).

In addition, several recommendations are likely to place an unaffordable and impossible financial burden on the university. These include:

- The recommendation to immediately stop the practice of overbooking residences. No-show rates are high (just as with airlines), and so places are overbooked, on the heuristic of prior years' experience. The financial implications of having untaken-up res rooms at a time of financial crisis for the universities do not bear thinking about.
- At page 40, the report opines that “[p]roper and sustained attention to student housing should have accompanied the introduction of measures to increase black admissions”, a statement amplified on page 70: “The university and government should immediately review the crisis they have create 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”.
- It is unclear, in a system with nearly 30 000 students and significant shifts in the composition of its student body in the last decade, and residence beds for less than a quarter of that number, what UCT should have done. The Commissioners would appear to have forgotten the reality of a campus built on the slopes of a mountain in the most expensive city in South Africa. Equally, it is not clear why there is an incumbency on the university to provide accommodation for all; even if that is something to be wished for.
- The requirement to offer legal aid to any student charged with a disciplinary offence. Since these charges are not criminal and the only counter-example I can think of is the State Legal Aid system, I cannot think of an equivalent incumbency in any other organisation in South Africa, or abroad.

LOGICAL ERRORS

In a number of places, the Commissioners commit logical errors. Sometimes this is in the form of strawmanning, but most often it is of the form of asserting that absence of evidence is the same as evidence of absence.

This latter logical error is best exemplified by the frequently repeated observation that no-one who appeared before the commission denied that the institution might have a problem with racism. The same rhetorical device is deployed in statements such as “There is no evidence that a single white student was refused a place in residence in 2016” (page 41). This is simply inadequate as a report by eminently qualified Commissioners.

But the report also tarnishes a great number (perhaps, the silent majority) of the university community by means of association. The argument on pages 35 and 36 imposes an asymmetrical burden on victims of the students' violence, expecting them to express compassion for the perpetrators before lodging a complaint. Is someone who has been assaulted obliged to say “I am hurt, but I understand why you assaulted me”? The assertion is ridiculous. And to then further describe that as an act of micro-aggression (which in itself is used to provide *prima facie* evidence of racism (on page 33)), establishes a clear circular connection that those who protested or complained about assault or damage to property or financial loss without first appealing the perpetrator(s) are *ipso facto* racist.

In another example of setting up straw men, the reports observed at page 43 that “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 a social contract”. But the word to be emphasized there is ‘peaceful’ – which the ConCourt in *Hotz* conceded was not peaceful.

These logical errors in turn make themselves tangible in moral ambiguities. On page 32, for example, the argument is made that theft of food is not a crime, if the perpetrator is hungry.

However, theft of the food remains theft; whether it is **sanctioned** differently is another matter. But the Commissioners fail to see appreciate that distinction. Instead, these logical flaws lead into a moral quagmire.

A few other errors in logic are worth noting:

- The argument on page 59 is advanced: “As it is, the approach by authorities ... 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.”
 - This is problematic on several levels: a) the university cannot authorise arrest, let alone effect, mass arrest. Second, it is extremely odd to assert that the university took the law into its own hands in demolishing the shack – it was erected on the university’s land without authorization.
- The report contradicts itself: “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 (on page 60), yet a page later notes that “[w]e must also always remember that the process of improving the demographics at the university will take a long time” (page 61).
- A particularly troubling logical conundrum manifests on page 59: “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.”
 - It would appear that a large number of people are going to be trapped in a damned-if-you-do; damned-if-you-don’t pincer!

PARTISANSHIP

The report is indeed far from neutral in its approach. In part, this reflects the one-sided nature of who appeared before the Commission, but that one-sidedness militates in favour that the Commissioners exercise an even greater duty of care to ensure that their report tries to understand all facets of argument. In far too many instances, the narrative is told solely from the perspective on one side (almost without exception, that of the protesting students; or black staff). In so doing, the stress and alienation felt by others is neglected or minimized.

Examples of this partisanship include:

- The report seems to neglect, ignore, or minimize the impact of the student protests on non-protesting students and staff. Physical, financial, and psychic costs were borne by many, and not only amongst those on the frontlines as seemingly suggested on page 2 (para 7.1).
- There is an excessive reliance on journalistic accounts of the protests in 2015 in establishing the history of protests (page 13). Yet those accounts neglect the less savoury aspects of the protestors’ behaviour: making DVCs sit in the hot sun in October 2015 outside Bremner, one of whom – Prof Visser – had returned to work a few days earlier from cardiac surgery. When approached to release him on grounds of concern for his health, the protesting students replied “It is not our fault if he dies”. Likewise, Lindsay Maasdorp’s attempted assault on the VC in 2017 is not recorded. In general, the often-appalling behaviour of the students is brushed under the carpet by omission; while every opportunity is grabbed to criticize the administration and its leadership for ‘offences’ such as (allegedly) not greeting someone.

- The report invokes the importance of respect for the constitution (in the necessity of combatting racism) by appealing to the necessity of respecting the rule of law. It can easily be argued (as the Concourt held in *Hotz*) that the students' protest itself violated the rule of law. But that point is never made.

Still more to the point, the approach of the Report (and the Commissioners) to the utility of violence is confused and partisan. The report apparently clearly disavows the Alumni Group's justification of physical violence as a legitimate response to psychic violence: "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" (page 8).

Yet the Commissioners actually seem to endorse the cathartic and redemptive nature idea of violence:

- "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" (page 28).
- "It is sufficient to observe that the structural violence of racism preceded violence on the part of students" (page 42).
- "Suffice it to conclude that structural/symbolic violence was rife on campus in the events leading up to 2016 and beyond" (page 46).

In every case, the effect is to implicitly condone and justify the violent actions of the protesting students.

And there are many other examples of partisanship. On pages 32-33, the report cites what appears to be someone they regard as an 'impartial witness', one Harold Ferwood. The Commissioners should be (or should have been) alert to the fact that 'Ferwood' is a nom-de-guerre (it being the name under which HF Verwoerd's parents enrolled him as a boarder at Milton College in the UK⁶); as well as that 'Ferwood' has been – since the very beginning of the *#RhodesMustFall* protests, one of the most consistently antagonistic critics of the university and its management. He is by no possible measure impartial. The report quotes 'Ferwood' approvingly, as he makes or repeats the simply astonishing (and untested) allegations that a) private security committed arson and damage to property to incriminate workers and students and b) police fired stun grenades and rubber bullets at students for "three hours". Did the Commissioners not for a moment find this, literally, incredible?

CONCLUSION

As noted at the outset, the last few years have been deeply traumatic for all at UCT; and certainly most traumatic for those staff and students embroiled in the cauldron of protest and engagement that consumed much of the university's emotional energy in that period. It was to be hoped that the IRTC would offer a way of both understanding the past, and charting a course for the future that would be comprehensible to all sectors of the university.

Yet the report of the IRTC does not come close to meeting those hopes and expectations. Its recommendations are – for the most part – either already implemented in operation; financially

⁶ See, for example, Christopher Hope *Brothers Under the Skin: Travels in Tyranny*, p. 45

disastrous or unobtainable; or trite. At the same time, it makes only the most cursory attempt to heal the divisions and conflict of the last few years.

It has also perhaps managed to succeed where others have failed. While there was a clear sense from academic and administrative staff and (probably) the majority of students that the Executive had conceded far too much in their engagements with the protesting students in 2015-2017, this report finds the polar opposite: that the Executive were incompetent, and did not concede enough. This is unlikely to be a view that commands the respect of most UCT constituencies.

Tom Moultrie
Cape Town
March 2019

APPENDIX

(The data here was originally prepared by the author as part of a submission to UCT Council in 2018 regarding staff attrition)

Table 2 Distribution of FTE GOB-funded academic staff at UCT, by year, employment equity status, and gender

	Female							Male							TOTAL							FTE
	African	Coloured	Indian	White	Not SA	Missing	TOTAL	African	Coloured	Indian	White	Not SA	Missing	TOTAL	African	Coloured	Indian	White	Not SA	Missing	TOTAL	
2005	1.3%	3.2%	1.8%	22.2%	3.6%	0.6%	32.7%	3.7%	3.7%	3.0%	38.0%	17.4%	1.4%	67.3%	5.1%	6.9%	4.8%	60.2%	21.0%	2.0%	100%	721
2006	1.3%	3.6%	1.8%	21.8%	3.8%	0.5%	32.8%	4.6%	3.5%	3.3%	36.6%	17.8%	1.3%	67.2%	5.9%	7.1%	5.1%	58.4%	21.6%	1.8%	100%	733
2007	1.1%	4.0%	2.1%	22.0%	4.6%	0.5%	34.3%	4.8%	4.0%	3.3%	35.3%	17.1%	1.1%	65.7%	5.9%	8.0%	5.4%	57.3%	21.7%	1.7%	100%	747
2008	1.2%	3.9%	2.2%	24.0%	4.8%	0.4%	36.6%	4.8%	4.3%	3.1%	33.9%	16.6%	0.7%	63.4%	6.0%	8.3%	5.3%	58.0%	21.4%	1.1%	100%	767
2009	1.6%	4.3%	2.2%	24.1%	4.9%	0.2%	37.3%	4.6%	4.2%	3.5%	32.4%	17.4%	0.6%	62.7%	6.2%	8.5%	5.7%	56.4%	22.3%	0.9%	100%	812
2010	1.8%	4.2%	2.5%	24.4%	6.0%	0.2%	39.1%	4.5%	4.8%	3.3%	30.8%	16.9%	0.7%	60.9%	6.2%	9.1%	5.7%	55.1%	22.9%	1.0%	100%	842
2011	1.5%	4.4%	2.5%	24.5%	6.5%	0.2%	39.7%	3.9%	4.6%	3.0%	30.2%	17.6%	0.9%	60.3%	5.5%	9.0%	5.5%	54.7%	24.1%	1.2%	100%	858
2012	1.6%	4.5%	2.6%	23.9%	6.8%	0.3%	39.9%	3.8%	4.8%	2.8%	30.1%	17.6%	0.9%	60.1%	5.4%	9.4%	5.5%	54.0%	24.4%	1.3%	100%	878
2013	1.3%	4.3%	2.7%	24.1%	6.9%	0.2%	39.5%	3.7%	5.0%	2.9%	29.7%	18.2%	1.0%	60.5%	5.0%	9.3%	5.5%	53.8%	25.2%	1.2%	100%	895
2014	1.8%	4.5%	2.6%	23.9%	7.4%	0.2%	40.4%	3.7%	5.1%	2.9%	28.2%	18.7%	1.1%	59.6%	5.4%	9.6%	5.5%	52.1%	26.1%	1.3%	100%	906
2015	2.2%	5.2%	2.7%	24.0%	8.0%	0.3%	42.5%	3.9%	5.0%	3.7%	25.4%	18.3%	1.1%	57.5%	6.2%	10.2%	6.4%	49.5%	26.3%	1.4%	100%	915
2016	2.5%	5.7%	2.9%	23.2%	7.6%	0.3%	42.2%	5.0%	5.4%	3.8%	24.0%	18.5%	1.2%	57.8%	7.5%	11.0%	6.7%	47.2%	26.1%	1.5%	100%	925
2017	3.1%	6.0%	3.3%	22.0%	7.7%	0.6%	42.7%	5.5%	5.5%	3.7%	23.2%	18.0%	1.3%	57.3%	8.6%	11.5%	7.0%	45.3%	25.8%	1.9%	100%	907
2018	4.4%	6.8%	3.4%	21.3%	7.7%	0.6%	44.2%	6.1%	6.0%	3.8%	22.4%	16.4%	1.1%	55.8%	10.5%	12.8%	7.2%	43.7%	24.2%	1.7%	100%	906

Table 3 Profile of GOB-funded academic staff at UCT in 2005, 2010 and 2018, by rank and employment equity category

2005 (N = 720.6 FTE)							
	African	Coloured	Indian	White	Not SA	Missing	TOTAL
Lecturer	2.6%	3.7%	1.4%	9.8%	2.2%	0.5%	20.2%
Senior Lecturer	1.4%	1.8%	1.2%	19.0%	6.8%	0.7%	31.0%
Associate Professor	0.6%	1.0%	1.0%	13.8%	5.7%	0.3%	22.2%
Professor + Deans	0.6%	0.4%	1.2%	17.6%	6.2%	0.6%	26.5%
TOTAL	5.1%	6.9%	4.8%	60.2%	21.0%	2.0%	100%

2010 (N = 841.8 FTE)							
	African	Coloured	Indian	White	Not SA	Missing	TOTAL
Lecturer	3.5%	4.2%	2.0%	11.1%	5.3%	0.3%	26.4%
Senior Lecturer	1.4%	3.2%	1.9%	15.0%	6.9%	0.1%	28.5%
Associate Professor	0.8%	1.0%	0.8%	13.0%	5.7%	0.1%	21.4%
Professor + Deans	0.5%	0.7%	1.0%	16.1%	5.0%	0.5%	23.7%
TOTAL	6.2%	9.1%	5.7%	55.1%	22.9%	1.0%	100%

2018 (N = 905.9 FTE)							
	African	Coloured	Indian	White	Not SA	Missing	TOTAL
Lecturer	5.9%	4.8%	2.2%	5.5%	4.2%	0.2%	22.9%
Senior Lecturer	2.6%	3.9%	2.4%	13.4%	7.6%	0.4%	30.2%
Associate Professor	0.6%	2.8%	1.6%	12.8%	7.2%	0.3%	25.2%
Professor + Deans	1.5%	1.3%	0.9%	12.0%	5.3%	0.7%	21.7%
TOTAL	10.5%	12.8%	7.2%	43.7%	24.2%	1.7%	100%

Submission to the IRTC Steering Committee in response to the invitation to comment on the 'Report' of the IRTC

TO WHOM IT MAY CONCERN

The genesis of the draft Code of Conduct in regard to protest on campus, and its fate in internal processes of the University

In late October 2016, a special meeting of the University Senate was convened at the request of the requisite number of members of Senate, in order to consider a request to the University Executive to prescribe some form of guidelines for the limits of protest action on campus. It fell to me to propose the motion, which was carried overwhelmingly by Senate, after intense debate.

After that, I worked with DVC Professor Danie Visser to draft a set of such guidelines, which then served before the Senate Executive Committee (SEC) a week later. Subsequent discussions and decisions on such guidelines (which became styled as a Code of Conduct) were as follows (details provided kindly the servicing officer of Senate, Mr James Sharp):

This is the timeline for the Guidelines on Protest Action:

- *24 October 2016: Senate resolves to ask the Executive to define the limits of protest action on the campus (minutes attached – see item 3)*
- *31 October 2016: The SEC considers the first draft (minutes attached – see item 9 under Part A)*
- *7 March 2017: The SEC considers a second draft and, subject to amendment, refers it to Senate (minutes attached – see item 12 under Part A)*
- *31 March 2017: Senate considers the draft Code of Conduct and supports it in principle in a straw vote, but agrees that further consultation is required (minutes attached – see item 8)*

Details of the minutes referred to are appended below (Appendices I to IV), for convenient reference. The item subsequently served before at least the CHED and Humanities Boards, and then before the Council of the University in October 2017 (see Appendix V below).

In addition, SEC again considered this matter, at the instance of the University Research Committee, earlier in 2019: the extract from the Minutes again shows a consistent approach to the matter (Appendix VI).

The outcome of this extensive series of consultations with a wide spectrum of opinion on campus was clearly that no decision should be taken by the responsible university structures and personnel until the IRTC had had the opportunity to consider the many aspects of this proposal, and to recommend steps to address the challenges.

Proceedings before the IRTC

As can be seen from the email exchanges which are appended to this submission (Appendix VII), in order to ensure that the matter was firmly placed on the agenda of the IRTC, I raised this matter directly with the administrative officer of that Commission. I was also informed that the University Executive had drawn the Commission's attention to desirability, if not necessity, that it address these issues in its report, and that it guide the university authorities and its constituent parts in fashioning a Code or Guidelines for the future. These can be seen in my email to Ms Amon on 15 August 2018; the Registrar as Secretary to Senate and Council verified (on 19 August) that the proposal had served before Senate, SEC and Council, and one of the two Senate representatives (who had much earlier submitted the draft Code--- see the email of Prof Illing in the Appendix and Appendix VIII below which is a copy of the submission, containing the Draft Code) on the Steering

Committee also intervened to ensure accuracy of the historical record to be considered by the IRTC. Please note that a meeting with the IRTC to engage on this matter was also proposed. In her mail of 20 August 2018, Prof Illing states “If you would like further discussions as to the reasons why such a policy may be both necessary and helpful for the university, we would be more than willing to meet with the Commissioners.”

There was, to my knowledge, no invitation to discuss the policy, or any further interaction between the IRTC and any authority within the University subsequent to this exchange of emails, until the publication of the IRTC Report in April this year.

In the Report, the only reference to the terms of protest is on pg 62, and it reflects a complete lack of engagement, and certainly no attempt to engage on the proposed Code of Conduct, nor the issues that it aimed to address. Some attention is given to the point that staff should be included in the policy, a proposal which had been readily agreed to in Senate some time before, as noted by the IRTC.

This is what the IRTC Report observes about this issue:

“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.”

Response

I am mystified by this singular refusal of the IRTC to engage with the extent to which protest action has limits, both in terms of the Constitution, existing law, and common decency and respect for others. What it essentially states in the above paragraph is that the “deeper trouble” is ensuring that “management and staff do not overplay their hand and that they remain sensitive, making every effort to dissipate tensions instead of worsening them”. The IRTC seems to be stating that the actions of the protesters themselves need no scrutiny or regulation, only those of “management and staff”.

Whilst the IRTC spent a lot of effort calling on members of the University community to engage with them, it ignored the specific request to discuss the draft code of conduct, which was tabled for discussion by members of Senate on 24 April 2018, and despite subsequent emails from the Senate members serving on the Steering Committee.

While this fits neatly into the general approach of the IRTC, which is frankly to condemn “management” without hearing their point of view, it is no less reprehensible for this consistency. It fits neatly with the attitude displayed by the Commission when a delegation of members of Senate appeared before it (21 May, 2018), when there was a palpable lack of interest in what those members of Senate had to say. Indeed, we were told that “management” (in whose ranks we were included) needed to assess the extent and nature of its own conduct before turning attention to that

of the protesters. It was as though those in authority within the University were to be regarded as guilty until they proved their innocence.

I would argue that any body (such as the IRTC) whose clear mandate is one of “reconciliation” has failed if it deliberately turns a blind eye to the excessive use of violence and disrespect for the rights and dignity of the vast majority of members of the university community, no matter from where it emanates. While I accept readily (as does the draft Code of Conduct and as acknowledged at every opportunity on which it was discussed) that protest must entail disruption and inconvenience to make an impact, nothing excuses the resort to the levels of violent intimidation by some of the protesters, of those who were not part of the protesting groups of students and staff, nor the flagrant denial of the human dignity of countless members of the university community.

In the result, I express my profound disappointment in this missed opportunity to establish a foundation for the future of this University, based on respect displayed by all those who work and study in it, for human dignity as required by the Constitution. In the light of this failure, I further express the hope that the concept of such a Code will soon serve again before, and be accepted by, the relevant decision-making bodies in the University, and be adopted expeditiously, in the current or an improved form, by the University Council.

Thank you for your attention to this submission.

Yours faithfully

Hugh Corder
Professor of Public Law

23 May 2019

Appendices

Appendix I

Minutes of the Senate meeting held 24 October 2016

EVENTS ON CAMPUS: REQUEST BY SENATE MEMBERS FOR URGENT MEETING

Senate noted that 32 members of Senate had requested that a special meeting be called in terms of S27 (5) (b) of the Institutional Statute. These members (Professors Barnard-Naudé, Black, Bourne, Buffler, Case, Chibale, Coovadia, Corder, Crankshaw, Dunsby, Egan, Fieggen, Fletcher, Harris, Hedderson, Illing, Knutsen, Kraan-Korteweg, Levitt, Mesthrie, Midgley, Moultrie, Naidoo, Nattrass, O’Riain, Parnell, Scott, Seekings, Weiss, Woudt and van Steen, and Associate Professor Lilley) recorded the agenda item as follows:

Violent events on campus over the last few days clearly show that the plan as communicated by the Vice Chancellor in his VC Desk of Saturday 15 October to complete the 2016 academic programme is in peril. The UCT campuses need to be urgently stabilized in order to protect the legitimacy of protest, to give the negotiation process a chance to succeed, and to allow staff and students to complete the academic year in an environment which does not place people and property at risk.

Under the current extraordinary circumstances, we propose that Senate adopts the following motion to increase the probability of the successful completion of the 2016 academic year. We recognise that adoption of this motion does not guarantee that peace is restored to UCT campuses, but does lay down the boundaries of what is regarded as legitimate and peaceful protest:

“Noting the foundational role of the rule of law in the Constitution, that the right of assembly extends only to peaceful and unarmed gatherings, and that the right of free expression does not include hate speech, Senate condemns without qualification the many acts of violence which have

occurred on campus since the Senate last met, by whomsoever has done so, including the physical assault on the Vice Chancellor on 14 October, which is regarded as an assault on the institution itself. Against this background, Senate resolves to

(1) Request the VC (advised by the DVCs and after consultation with the Deans and other members of the Senior Leadership Group) to define clearly what the University leadership regards as legitimate protest on UCT campuses, to publish this definition, and to relate it to existing rules on conduct (the RCS rules);

(2) Request the VC, so advised, to instruct to all students that they must confine all protest action on UCT campuses to delineated areas, these areas to be defined by the VC, so advised, during this period of crisis, and make it clear that a breach of this instruction will be dealt with as a disciplinary matter having regard inter alia to rules RCS 1.3 and RCS 5.1 (Rules of Conduct for Students);

(3) Record its view that any protest action which contravenes the limits of legitimate protest as defined by law or in internal protocols, or which occurs outside of the delineated areas, or both, must be reported to the SAPS (if the law has been breached) and that those involved must face UCT disciplinary charges; and

(4) Request the VC, in the exercise of his authorised discretion, to use appropriately the powers of suspension provided for in the DJP rules in all cases where the conduct of a student adversely affects the University or its members, and to ensure that anyone engaging in such protest action knows that immediate suspension from UCT during this period may follow.”

Professor Corder introduced the motion and explained that its purpose was not to place blame for the current situation affecting the University but to propose a way forward and, in an imperfect way, resume the academic programme for which Senate was ultimately responsible. In introducing the motion Professor Corder highlighted the following reasons as to why Senate, in the view of those who called for the meeting, should adopt the motion:

- The motion proposed extraordinary measures which were arguably necessary to resume the academic programme given the climate of intimidation and violence on campus.
- The motion took its inspiration from the Constitution and the idea of the rule of law. It was emphasised that the rule of law should not be confused with law and order, and the motion sought to emphasise that no right was without limit as these needed to be balanced either for the greater good or against the rights of others.
- The motion invited Senate to condemn without qualification all acts of violence on the campuses. The assault on the Vice-Chancellor on 14 October prior to a Council meeting was cited, and it was argued that while Council had remained silent on this the Senate should not.
- The motion set out four suggestions for consideration by the Vice-Chancellor and the Executive which may assist them in taking decisions and implementing the necessary measures that would allow for a campus environment conducive to both rigorous debate and the continuation of the academic programme.
- The motion was premised on the continuation of negotiations with student representatives with credible mandates, recognising that a negotiated settlement was preferable to one enforced through rules.
- The motion sought to initiate a process of defining the limits of legitimate protest in a manner that respected all of the rights granted by the Constitution.
- Those who called for the meeting argued that the motion would provide a framework for the University to establish the bounds of legitimate protest in order to allow for the continuation of the academic programme and the functioning of the University.

Professor Buffler added that protest action by students was currently not guided by any form of policy, and argued that questions of how such a policy would be implemented should not preclude the University from drafting one in the first place.

Professor Corder, seconded by Professor Buffler, moved that Senate adopt the motion.

Senate proceeded to debate the motion at length.

In respect of the assault on the Vice-Chancellor on 14 October the Registrar informed Senate that the Council had issued a statement condemning the incident, which had been published on the UCT website that morning.¹

1 “The members of the Council of the University of Cape Town are dismayed at the assault on the Vice-Chancellor when he and other members of the executive were engaging with protesting students outside the Bremner building on Friday, 14 October 2016. We condemn violence and we reject with contempt the action of any person who perpetrates violence. This includes violence of any form and from anyone against those engaged in peaceful protest. There is no place in a hard-won democracy for actions that undermine the very basis of that democracy. Council affirms its support for open dialogue and mutual respect. Council also affirms its support for the executive of the university in its efforts to manage the institution under challenging circumstances.”

Professor Dunn spoke in support of the motion with some qualifications, namely that whatever Senate ultimately adopted needed to be binding beyond 2016 to avoid a repeat of a similar situation in future, and that any mention of “successfully completing the academic year” should be rephrased to remove the word ‘successful’ as it was misleading given the events that had transpired and the trauma experienced by staff and students during the protests.

Associate Professor Haupt spoke against the motion and read out his response to the motion, tabled copies of which were before Senate (*attached as appendix 1 to these minutes*). Professor Moultrie responded that the response effectively argued against Senate developing a policy which would guide and protect legitimate protest. He argued that intimidation by some protestors could not be seen as legitimate, and reminded Senate that those staff who had been subject to intimidation had been intimidated while working at the behest of their employer. He further argued that Senate needed to define the boundaries of legitimate protests in order to protect the remainder of the 2016 and the upcoming 2017 academic years.

Professor Moyo spoke to the current situation on campus and reminded Senate that previous attempts to re-open the University had been unsuccessful. It was his belief that arising from the protests was a deepening rift between various members and groups of the university community, with staff and students being traumatised and property being damaged as a result of the ongoing protests. He emphasised that the current situation was very different to the one which prevailed at the end of 2015 and as such it was not clear whether the examinations could be successfully concluded in the absence of a national solution. He suggested that the University should be closed until such time as there was a national solution to the current crisis, at which point clearer decisions as to the way forward could be made. Professor Christie shared similar concerns.

Professor Parnell spoke in favour of the motion and acknowledged the need for engagements at a national level on the current crisis, and stated that a University/Senate position could help guide these. Speaking to the lack of a policy for student protests she informed Senate that the unions had very clear guidelines for the conduct of protesting staff. She suggested that as a short-term solution ‘legitimate protest’ in the context of student protests could be defined in line with the guidelines for protesting staff, and that a more long-term definition could be proposed by Senate in future.

Mr Moseli stated that while the University and Senate should take steps to salvage the 2016 academic year he had reservations about Senate’s ability to define what could be considered as ‘legitimate protest’, as well as the extent of Senate’s role in proposing such a definition for the entire University when it itself was only one part of the University. It was his view that a security solution had not worked at any institution in South Africa and the current blended learning model did not successfully enable teaching and learning; he argued that more pragmatic approaches were required

to solve the current crisis, to uphold the core mandate of the University, and to show leadership to both the University community and the broader higher education sector.

Dr Cairncross spoke against the motion on the grounds that she did not believe it would assist in bringing an end to the current crisis. She argued that the current protests were a legitimate expression of a political movement, even if the protests occasionally resulted in violence, and that Senate needed to look beyond the use of violence to the concerns of students which underpinned the protests.

Associate Professor Jacobs spoke against the motion on the grounds that it would require further militarisation of the campus to be implemented. He argued that irrespective of how other institutions had chosen to handle their situations the militarisation of UCT had not worked, and had instead resulted in racial profiling in the residences by members of private security, as well as instances of potential xenophobia given that a number of the private security members were foreign nationals.

Associate Professor Garuba stated that the question before Senate was essentially whether or not to support stronger measures to bring the situation on campus under control. He questioned, however, if stronger measures did in fact work, what the effect of forcing protestors into submission would be. In respect of the lack of a policy for protests by students he argued that it was nonsensical to suggest that protests escalated because there was no policy guiding them, and suggested that Senate needed to consider the current crisis politically in order to establish more effective ways of ending the current impasse.

Associate Professor Bennett suggested that Senate should interrogate the motion not as a means of communicating and upholding principles, but rather to decide what language in the motion was salvageable. She used as an example the fourth clause of the motion, which in her view was not salvageable, as it would vest in the Vice-Chancellor responsibilities which were not his to carry out without the necessary support of the bodies which were meant to assist him in the execution of his duties. Professor Corder responded and reminded Senate that the Vice-Chancellor was already empowered by the Rules (DJP 3.1 and 3.2) to provisionally suspend a student on certain grounds. Professor Coovadia spoke to the assertion that the motion and attempts to uphold the rule of law on campus would drive further violent protests, and reminded Senate that on a number of occasions when the security presence on campus had been reduced violent protests had taken place. He argued that the assertion itself was untested and the outcome of attempting to enforce the motion, if passed, unclear, and that the University needed to at least make an attempt at stabilising the situation on campus and to allow the majority of staff and students who wished to resume activities an opportunity to do so. Professor von Blottnitz reminded Senate that the Occupational Health and Safety Act was one such law that existed to protect individuals in the workplace, and emphasised that there were instances on campus where this Act was being violated (he used the example of the fire systems in the residences, which had been compromised by the actions of protestors moving through the residences and triggering the systems, and the danger this presented to members of the University). He argued that the University could not introduce a policy to regulate protests when it was not able to uphold the laws (such as the Occupational Health and Safety Act) which would underpin it and which would likely escalate tensions on the campus. He suggested that Senate should rather issue a statement stating that it wished to meet with the SRC once the suspended elections had been properly conducted and with the Executive to jointly discuss the drafting of a policy which would guide student protests.

Professor Winkler expressed concern that the motion, if adopted, would make addressing a number of the issues raised by protestors difficult as a result of the likely escalation of tensions. He agreed that issue of violence needed to be addressed on all fronts, but noted that the motion only spoke to violence perpetrated by students and, as a result, he did not believe it to be implementable. He asked whether Senate should establish a task team to consider the motion and to advise it on ways in which Senate could also take responsibility for finding ways to end the current crisis.

Mr Chungu acknowledged the importance of the principles that underpinned the motion, but was of the view that it sought more to regulate protest action on campus rather than attempting to deal with the root causes of the protests. As such he did not believe that the motion could successfully ensure the continuation of the academic programme.

Professor Lambert acknowledged that the rights of protestors needed to be respected and upheld, but questioned who, during the course of the protests, spoke for and represented those students who had chosen not to protest for any number of reasons.

The Chair responded to the debate and noted that while there was broad support for the continuation of the academic programme there was little agreement on the relative priorities of how this should be achieved. It was his understanding that discussions indicated a general sense that the motion was not sufficiently balanced, did not sufficiently address the use of excessive force by both protestors and the South African Police Service (SAPS), and did not sufficiently recognise the legitimacy of protestors' causes.

Senate then proceeded to debate amendments to the motion and possible alternative courses of action, during which Professors Andrews, de Vos, Illing, Naidoo, Ross, Winkler and Tayob, Mr Moseli and the Chair spoke to the debate. After the debate, with Senate having agreed that the substantive motion before it should be voted on, and with the proposer and seconder having accepted the amendments to the motion, the Chair put the motion that Senate adopt the following revised resolution, which Senate so resolved by an overwhelming majority with 8 members against and 5 abstaining:

Violent events on campus over the last few days clearly show that the plan as communicated by the Vice-Chancellor in his VC Desk of Saturday 15 October to complete the 2016 academic programme is in peril. The UCT campuses need to be urgently stabilized in order to protect the legitimacy of protest, to give the negotiation process a chance to succeed, and to allow staff and students to complete the academic year in an environment which does not place people and property at risk.

Under the current extraordinary circumstances, we propose that Senate adopts the following motion to increase the probability of the successful completion of the 2016 academic year. We recognise that adoption of this motion does not guarantee that peace is restored to UCT campuses, but does lay down the boundaries of what is regarded as legitimate and peaceful protest:

Noting the foundational role of the rule of law in the Constitution, that the right of assembly extends only to peaceful and unarmed gatherings, and that the right of free expression does not include hate speech, Senate condemns without qualification the many acts of violence which have occurred on campus since the Senate last met, by whomsoever has done so, including the physical assault on the Vice-Chancellor on 14 October, which is regarded as an assault on the institution itself. Against this background, Senate resolves to request the VC (advised by the DVCs and after consultation with the Deans and other members of the Senior Leadership Group, and after listening to representation by students on this matter) to define clearly what the University leadership regards as the limits of legitimate protest and of the appropriate conduct of security services on UCT campuses, to publish this definition, and to relate it to existing rules on conduct (the RCS rules).

Senate further agreed that in defining the limits of legitimate protest due attention must be given to those areas of campus where protest action should not take place for health and safety reasons.

Appendix II

Senate Executive Committee 31 October 2016

DRAFT PROTOCOL ON THE LIMITS OF LAWFUL ASSEMBLY, DEMONSTRATION AND PICKETING BY STUDENTS ON CAMPUSES OF THE UNIVERSITY OF CAPE TOWN

The SEC had before it for consideration a tabled Draft Protocol on the Limits of Lawful Assembly, Demonstration and Picketing by Students on Campuses of the University of Cape Town (*attached as appendix 1 to these minutes*). Professor Visser reminded SEC that at a special meeting on 24 October 2016 Senate had resolved that the Vice-Chancellor must "...define clearly what the University leadership regards as the limits of legitimate protest and of the appropriate conduct of security services on UCT campuses, [and] to publish this definition..." Professor Visser sought SEC's guidance on both the content of the draft protocol and on what further consultations should take place. He spoke to the content of the draft protocol and the process of drafting it, explained that the draft protocol was intended to be a high level document, and invited questions from members.

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Associate Professor Shay reminded SEC that when the initial resolution had been brought before Senate the members of Senate had voted on whether or not to adopt it, and asked whether the feedback from SEC would therefore assume that all members of SEC had voted in support of adopting the final resolution. The Chair responded that Senate's resolution required that the protocol be drafted in consultation with various stakeholders, which was why it was now before SEC. He suggested, however, that feedback from this meeting be considered as feedback from the members of SEC, rather than from the SEC as a whole. SEC agreed.

Associate Professor Shay asked for clarity on why, under General Principles (p. 2), the draft protocol made reference to "Students participating in any form of protest..." rather than to anyone participating in protest action. Professors Moultrie and Visser responded that there were other existing policies and guidelines which governed protests by staff, and that the draft protocol before SEC sought to establish similar limits for students as these did not currently exist.

Professor Andrews asked for clarity on why the draft protocol set different distance limits for exclusion zones (section B (9)) to those in the provisional interdict granted to the University on 27 October 2016, as the 200m limit had been set to protect the integrity of the examinations. Professor Visser responded that the protocol varied this in an attempt to balance the need to protect the examinations while also allowing for peaceful protest. Professor Le Roex suggested that 50m be set as the standard for exclusion zones except for buildings where examinations were taking place, where the distance limit should be extended. Professor Moultrie suggested that sections B (2) and B (10) were redundant, that one of these should be removed from the draft protocol, and that B (9) should be understood as a further limitation to the general principles in either B (2) or B (10) (whichever of the two was retained in later versions of the protocol).

Associate Professor Garuba asked whether, due to the layout of Upper Campus, the proposed exclusion zones would, in effect, prohibit protests from taking place at all on the campus. He further cautioned that some clauses of the draft protocol may have unintentional consequences (he used the example of B (15) - "Protesters may not disguise themselves or make themselves unidentifiable." - and how this may inadvertently have a negative impact on Muslim women wearing a burqa). He urged that consequences such as these be thoroughly considered, and legal opinion sought, when the draft protocol was further refined.

Mr Moseli questioned what, in his view, was a tendency by the Executive and academic members of staff to rely on legal solutions to deal with problems which were socially rooted. He stated that while he understood that Senate's resolution required that the protocol be drafted, he argued that a number of the provisions it contained were already covered by the University's Rules and that there needed to be additional mechanisms in place to deal with the demands of the protestors rather than attempting to stop protests from happening in the first place. He further questioned what perception the University community would have of the University's priorities once the protocol was made available publically. The Chair responded that he agreed that discussions around the issues raised by the protestors on local and national issues needed to be ongoing, but that the question of what constituted legitimate protest and establishing these limits should be seen as a separate task. He argued that the purpose of the draft protocol was to clear up various misunderstandings around the issue of legitimate protest and the balancing of individuals' various rights, including the right to protest peacefully.

In response to the points raised by Mr Moseli Professor Andrews agreed that it was critical that the issues raised by protestors should not be trivialised or ignored, but emphasised that the immediate concern was protecting the integrity of examinations which were due to begin in a week's time. Associate Professor Hendricks added that in the Faculty of Health Science, while opinion was divided on a number of matters, a substantial number of Heads of Department had expressed concern that not enough was being done to protect laboratories and certain key buildings. He further noted that the Faculty had a number of facilities housing animals which were not mentioned in the draft protocol and which he argued warranted a general statement that such facilities required protection. He further reported that many members of the Faculty were in favour of the alternative wording for B (9).

Associate Professor Garuba asked whether the draft protocol had been drafted with a view to protecting the November 2016 examinations, or whether it was intended to be a long-term policy for protest action at the University more generally, as it was his understanding that the Senate resolution required the latter. The Chair responded that the draft protocol was intended as a long-term policy, but that his understanding of the Senate resolution was that there was also an urgency for better guidance for the upcoming examinations, which the draft would seek to provide in the interim.

The Registrar acknowledged that there was a need for guidelines that oversaw protest action at the University, but stated that recourse to external agencies, such as gaining a court interdict, would still be required in emergency situations such as those currently being experienced by the University where the enforceability of internal guidelines such as the draft protocol proved problematic. He argued that a benefit of an interdict in such circumstances was that it assisted the University in dealing with a particular set of problems while only being in place temporarily.

In response to the points raised by the Registrar Mr Moseli stated that the Senate's resolution may have been taken with a view to protecting the upcoming examinations at a point when it could not have known that a provisional interdict would be granted for this purpose, amongst others. If this was the case he questioned whether it was necessary to have a long-term policy (which would still require external assistance to be implemented in certain cases) aimed at solving a short-term issue. The Registrar clarified that having rules and guidelines in place allowed for prosecution in instances where these had been violated but where the situation was not critical, while an interdict allowed for speedier intervention where the situation was critical and time of the essence, and where there were risks of physical harm. Professor Moultrie added that while the protocol was not a panacea it would help to clarify certain issues where the Rules had proven inadequate in dealing with issues currently facing the University. Professor Visser responded to the debate, thanked members for their input, and

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- highlighted that it was not the intention of the draft protocol to prohibit peaceful protest action on any of the campuses and the wording would be revised to ensure that this was made clear;
 - reiterated that the draft protocol was intended to be a high level document, and explained that ancillary documents could be used or drafted to give more detailed explanations of its general clauses and definitions; and
 - underscored Professor Moultrie's point that some of the Rules were either inadequate or there simply was no rule to deal with some of the current issues affecting the University, and the draft protocol sought to address this.

The Chair asked that members submit any additional feedback or comment to Professor Visser.

Appendix III

Senate Executive Committee minutes 07 March 2017

DRAFT PROTOCOL ON THE LIMITS OF LAWFUL ASSEMBLY, DEMONSTRATION AND PICKETING BY STUDENTS ON UNIVERSITY OF CAPE TOWN PROPERTY

The SEC recalled that at its meeting on 31 October 2016 it had considered a draft Protocol on the Limits of Lawful Assembly, Demonstration and Picketing by Students on Campuses of the University of Cape Town, which had been drafted following a resolution taken by the Senate at a special meeting on 24 October 2016. A revised draft protocol, incorporating comments from the SEC, members of Senate, and the Vice-Chancellor's Management Advisory Group (VCMAG) was now before SEC for consideration (additional agenda, pp. 9 to 13).

Professor Corder spoke to the revised draft protocol and presented an overview of its content, highlighting the following aspects of the revised draft:

- The definition of 'violence' (additional agenda, p. 11) had been adapted from a United Nations protocol. This had been used due to contested notions of what could be considered 'violence'.
- The sixth bullet point under 'General Principles' (additional agenda, p. 11) introduced the concept of reasonableness. This had been introduced in response to feedback that protest, by its nature, was disruptive, and the view that the protocol needed to allow for a degree of flexibility. The principles which underpinned reasonableness in the protocol were rational behaviour and proportional impact.
- The protocol required all security personnel to exercise extreme restraint in protest situations (additional agenda, p. 12).
- The requirement that protestors not disguise themselves to escape liability (additional agenda, p. 12) would not apply, for example, to academic staff taking part in a protest where those staff chose to wear their academic dress or where a costume was worn to draw attention to a protest.
- The requirement that protestors should not prohibit entry or exit from the University or its property (additional agenda, p. 13) would not apply in instances where access or egress from one of the campuses was slowed down due to protestors wishing to engage with passers-by.
- A restriction had been introduced on stationary protest (additional agenda, p. 13) in response to the argument that generally limited protest action around venues in which teaching or research was taking place would effectively prohibit all forms of protest action on the campus.

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The SEC proceeded to debate the revised protocol at length. In the course of the debate, during which Professors Andrews, Bourne, Corder, Feris, Le Roex, Lewis, Mayosi and Phakeng, Associate Professors Allie, Garuba and Madiba, Dr Khan, Mr Moseli, the Registrar and the Chair spoke to the draft protocol, the SEC noted the following points and positions raised by members:

- The draft protocol, if adopted by Senate, would require Council's approval to be put into effect.
- While the content of the protocol did not directly fall within the ambit of Senate's responsibilities, the Senate was entitled to pass any resolution and require the Council to consider it.
- As the Senate resolution was taken at the height of tensions on campus and prior to the agreement between UCT management and the SRC Candidates signed on 6 November 2016, a view was expressed that the draft protocol may not be as relevant now as it would have been at the time the resolution was taken.
- Concern was expressed at the possible timing of introducing the document, and that its implementation may be misconstrued as the University trying to limit staff and students' rights to protest. A counter-argument to this was that the protocol did not infringe on the right of any member of the University to protest peacefully and that it set out principles for what would and what would not be deemed acceptable means of protest. It was also noted that the protocol sought to address safety concerns, including instances where protestors may inadvertently place themselves in danger.
- Concern was expressed around what was being expected of the document, and the view was expressed that if implemented the protocol itself would not stop unlawful forms of protest taking place on the campus.
- The view was expressed that the document was not problematic in and of itself, but rather that the current climate affecting the University would cause it to become controversial and make its implementation a possible flashpoint for further protest action.
- Concern was expressed that the specificity of the rules of conduct for protestors (additional agenda, pp. 12 to 13) may be too prescriptive to cover future eventualities and may lead to difficulties in enforcing the protocol; it was suggested that a set of more overarching guiding principles might better serve the University. A counter argument to this was that a protocol with guidelines needed to be prescriptive and to respond to known issues. A view was also expressed that the specificity of the document would assist those staff and students who chose not to protest in understanding what the University would and would not allow under circumstances where protest action was taking place.

Having considered the different views, concerns and positions raised by members the SEC, mindful that it was required to submit a set of guidelines to Senate in keeping with the Senate's resolution, agreed that

- once revised to take into account the points raised during the course of debate the protocol should be submitted directly to Senate and, based on the outcome of Senate's deliberations, means of further consultation could be considered;
- the draft protocol be accompanied by a cover note detailing the views and concerns expressed by members of the SEC;

- the preamble to the protocol should provide more UCT-specific context to explain why it had been drafted;
- S17 of the Constitution should be included;
- the specific examples listed in Section B of the draft protocol should be reviewed and, where retained, provision made for deviations from these prescriptions under exceptional circumstances;
- the wording between Sections A and B of the protocol needed to be better aligned;
- the protocol needed to explicitly state that it is unlawful to interfere with any health & safety measures in place on the campuses;
- the framing of the document should be given further consideration, with the possibility of presenting it as a working guideline as opposed to a rule-based protocol; and
 - members should consult with various constituencies where possible and seek possible further input on the document.

[Professor Corder]
[Senate]

Additionally, the SEC agreed that 'rules of engagement' with members of the Shackville TRC, SRC Candidates and other student formations needed to be developed that would cover the period while the Institutional Reconciliation and Transformation Commission (IRTC) conducted its work. These 'rules' would seek to ensure that both University management and the student formations had a clear understanding of, and agreement on, what types of behaviour would be deemed acceptable from either side during this time.

Appendix IV

Senate Minutes 31 March 2017

DRAFT CODE OF CONDUCT ON PROTEST AT THE UNIVERSITY OF CAPE TOWN

Senate recalled that at its special meeting on 24 October 2016 it had resolved "...to request the VC (advised by the DVCs and after consultation with the Deans and other members of the Senior Leadership Group, and after listening to representation by students on this matter) to define clearly what the University leadership regards as the limits of legitimate protest and of the appropriate conduct of security services on UCT campuses, to publish this definition, and to relate it to existing rules on conduct (the RCS rules)."

Senate now had before it a draft *Code of Conduct on Protest at the University of Cape Town* as submitted by the Senate Executive Committee in fulfilment of this resolution (agenda, p. 125 to 127) and a tabled list of Rules on Conduct for Students (RCS) which formed the basis of the document (*attached as appendix 4 to these minutes*).

Professor Corder spoke to the draft Code of Conduct and presented an overview of its content and the process of consultation which took place in drafting it. He informed Senate that the SEC, when it had considered the document at its meeting on 7 March 2017, had found the original form of the document (which had been distributed to members of Senate on 8 November 2016 for comment) to be too prescriptive and legalistic, and had requested that the document take the format that was currently before Senate, as well as the insertion of the 'Foundational Assumptions' (agenda, p. 125). Professor Corder invited questions and comments from Senate.

A wide-ranging debate ensued during which Professors Buffler, Coovadia, Mizrahi, Reid, Ross, Seekings, Williamson, Associate Professor Bennett, Dr Cairncross, Mr Ismail, and the Chair spoke to the draft Code of Conduct and raised the following points:

- In respect of the 'General Principles',

Senate minutes: 31 March 2017 (cont)

- o under point 1, concern was raised that these provisions required protestors to decide or assume the extent to which the rights of others were being infringed and to act accordingly;
- o under point 5, it was questioned whether the notion of 'unreasonably' was in contradiction to RCS 7.9 and 7.10, which were more prescriptive;
- o under points 6 and 10, there appeared to be an inconsistent approach to the level of restraint required on the part of protestors when compared to the level of restraint required by private security personnel;
- o under point 8, it was questioned whether the wording "...in order to escape liability for unlawful conduct " should be removed; and
- o under point 9, it was questioned whether the blanket ban on protest action taking place in research laboratories should not be re-inserted.

- On a point of clarity, it was questioned what was meant by the following wording under the Preamble (agenda, p. 125, emphasis added): "...justifying the use of **restraint** by the university management?"

- Concern was expressed that students had not been consulted on the draft, as the Senate's resolution required, and that without such consultation the simple implementation of more rules would not stop further protests from taking place in future. A counter argument to this was that there was a limit to how much consultation could take place and that there was a need to have in place guidelines to protect those students affected by the disruptions in the latter part of 2016.

- It was suggested by some members that the draft should serve as part of the IRTC process, rather than being a Senate-based document.

- It was noted that while the RCS formed the basis of the draft, protests could additionally involve staff and members of the public and that the University community needed to be made aware of the codes of conduct and disciplinary measures that applied to academic and PASS staff.

- While the draft was intended to protect the Institution and the rights of non-protesting staff and students, the question needed to be raised regarding what protections were offered to protestors who were intimidated or threatened by non-protestors.

- Concern was expressed that the draft did not explicitly make reference to how disruptions to academic activities, which was at the core of the why Senate has passed its original resolution, should be dealt with.

- It may be useful to provide exemplars for what would constitute unreasonable behaviour in a protest context.

Professor Corder responded to the debate:

- In respect of the 'General Principles', o the issue of proportionality and context needed to be taken into account under point 1 when considering whether and to what extent the exercise of one person's rights infringed upon the rights of another;
- o security personnel were already instructed to exercise extreme restraint;

Senate minutes: 31 March 2017 (cont)

- o the notion of ‘unreasonably’ had been included following the consultation process, where a more prescriptive wording had been felt to be inappropriate, and allowed for a degree of flexibility (for example, pedestrian traffic onto campus could be slowed down due to protest action, provided that entrance was not altogether stopped);
 - o the wording under point 8 had been constructed to ensure that individuals who dressed for cultural, religious or other similar reasons during a protest were allowed to do so; and
 - o it was agreed that the blanket ban on protest action taking place in research laboratories would be re-incorporated into the draft.
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- In respect of whether the document should serve before the IRTC and the more general issue of consultation, the SEC had agreed that as Senate had requested that the draft Code of Conduct be compiled it should first serve before Senate and, if supported, then be subjected to a process of University-wide consultation. The Chair added that the timeline for the IRTC meant that, if Senate were so minded, the draft could likely only serve before the IRTC nearer the end of the year, but that if supported such a document might be of assistance to the IRTC when it began its work.
-
- In respect of the codes of conduct for academic and PASS staff it was agreed that hyperlinks to these documents, including guidelines for staff taking part in industrial action, would be included in the draft once revised. It was further agreed that the Council’s guidelines for when members of the South African Police Service (SAPS) may be called onto campus should also be included.
 - It was agreed that clarity on the disruption of academic activities should be included in the draft.
 - It was argued that not strictly defining what constituted reasonable behaviour in a protest setting could be useful as it would allow for a degree of flexibility and for separate instances to be considered based on their particular circumstances.

The Chair reminded Senate that the resolution taken by Senate did not call for a document which would be approved by Senate, as doing so was not within the ambit of Senate and would ultimately require the approval and enforcement of Council. He suggested that if Senate generally supported the intentions underpinning the draft Code of Conduct it should be revised in light of these discussions before undergoing a further process of consultation, particularly with student formations, before ultimately being submitted to Council for its consideration.

The Chair conducted a straw vote asking members whether they generally supported the draft Code of Conduct and the need for such a Code of Conduct to be in place, as well as the process of consultation as described by the Chair, which an overwhelming majority of members indicated that they did with one member against and fourteen members abstaining.

Appendix V

Extract from the October 2017 Council minute below.

7 DRAFT CODE OF CONDUCT FOR PROTEST ACTION ON CAMPUS

Council had before the draft code of conduct for protest action on campus (pp.231-235).

Professor Corder drew Council's attention to the Senate resolution which gave the background to the item as set out in the agenda papers. He told Council that Senate Executive Committee, Deans, SRC, Institutional Forum and Trade Unions had been consulted in drafting the code. The code was an attempt to chart a different course for UCT through agreement on a set of measures that would guide protest action and the response to such action by University authorities. The code acknowledged that the purpose of protest was to disrupt in order to draw attention to the message of protesters within reasonable limits in respect of non-violence and the respect for the dignity of all. The main points of the code were to:

- Acknowledge that protest caused disruption
- That there were reasonable limits for protest
- The right to test clashed with other rights enshrined in the constitution and sometimes with the rule of law
- Emphasize peacefulness and respect for human dignity
- To place a special obligation on Security Officials to behave with maximum restraint and to carry visible and appropriate identification

The Chair invited comment

The SRC President noted that she did not favour the approval of the Code given the current issue of private security in as far as it gave a mandate for security. She further noted that policy in respect of the use of private security was yet to be developed and suggested that the matter be deferred until such time as this had been done. She said that the executive exercised a lot of autonomy with security measures which impeded on their relations in all other areas (i.e. committees etc.).

She was of the view that the code only spoke to the behaviour of students during protest and that it seemingly singled out students to be treated a certain way and handled a certain way when they protested. Further, that the tone of this policy impeded on the freedom of expression as enshrined in the constitution.

She proposed that Rule 9 must be completely removed. She argued that Historic protest action had happened in the library that was peaceful and artistic (i.e. the clothing of Sarah Bartmann). Moreover some form of protest in lectures was reasonable in the context of UCT wherein certain ideas or values were violated in classes. Silent pickets occurred in class, libraries and other quiet areas of teaching and learning. These forms of protest were not unreasonable and were completely condonable in those settings as they were quiet and did not necessarily present interference that prevented teaching.

She proposed that Rules 11 & 12 be removed completely. She said that neither she, nor the SRC endorsed any form of security on campus during protest. She suggested peace

keepers/monitors could be deployed as para military security or police have historically escalated tensions on campus.

Ms Ncayiyana was of the opinion that any proposed code of conduct should be equally applicable to staff members. She argued that in many cases staff members were also instigators. She suggested that all references to race and gender should also include ableism and disability. She asked if for instance a decision by tutors to down tools would be considered as interfering with the academic project.

Professor Feris told Council that there had been some discussion in the Senate Executive Task Team and Special Executive Task Team since the Code was considered by the Senate and that these discussion included the deployment of peace monitors and the training of private security before being deployed. She suggested that these be included in the code.

Dr Manjra emphasized the need to link the code to the policy on the use of private security on campus. He pointed out that (i) there were some areas in the University that were highly dangerous e.g. laboratories where chemicals were stored, he suggested that such areas should be put out of bounds for protest because of the public health risks associated with them, and (ii) Many students taking part in protest action were not from UCT and suggested that the code should make provision for common cause.

The Chair argued for a more affirmative protest policy that should confirm that protest is an acceptable democratic expression and providing the framework within which this should be done and how disputes should be resolved

Ms Ngonyama supported the Chair, but cautioned against bias in such a policy.

Professor Corder replied to the comments and questions. He confirmed that the Code would be applicable to all protestors (staff and students), pointed out that general principle 2 encouraged the use of appropriate marshals and the presence of independent peace observers; drew attention to page 231 which emphasized positively the role that protest had played in the development of democracy in South Africa, and assured Council that a list of hugely vulnerable buildings/laboratories etc. was available.

Associate Professor Ramugondo suggested that the definition of human dignity should be broadened to include students and not only older people.

The Vice-Chancellor's view in respect of Ms Ncayiyana question about tutors downing tool was that withholding participation would not constitute unlawful interference.

The Chair suggested that the Code be amended to provide the framework for what a protected protest should be.

Appendix VI

Senate Executive Committee Minutes March 2019

Compliance with Safety, Health and Environment Policy requirements in research areas

The SEC had before it a recommendation from the University Research Committee that it endorse the 'Draft Code of Conduct on Protest at the University of Cape Town' (agenda, pp. 74 to 78) and recommend its adoption by Senate and Council. The SEC recalled that the draft Code had been developed following a Senate resolution taken at a special meeting on 24 October 2016 and supported in principle by Senate at its meeting on 31 March 2017 subject to there being further and broader consultation on its contents. The Registrar informed SEC that Council had also considered the draft Code at its meeting on 7 October 2017 but had not taken a decision on whether or not to adopt it following concerns raised in that meeting to some of its contents. Professor Naidoo spoke to the proposal and explained that a number of URC members had expressed concern about the vulnerability of sensitive areas on the campus which were critical to the research functions of the University. It was these members' view that there needed to be some form of policy that enforced health and safety requirements around these areas under protest conditions. The Chair raised the point that the areas that the URC was concerned about could be similarly impacted by situations that did not occur as a result of protest, such as criminal activity, and expressed the view that while the concerns were valid the draft Code was not an appropriate measure of addressing them. The Registrar added that an exercise had been conducted in 2012 to identify high risk areas of the campus that required greater protection and security, which the University was legally obliged to protect irrespective of the specific circumstance, and for which there should be standard operating procedures for ensuring health and safety at these facilities. The Chair suggested that the SEC defer any further consideration of the draft Code until such time as the final report of the Institutional Reconciliation and Transformation Commission (IRTC) had been published and its recommendations and how the draft Code may or may not align with these could be properly considered. The SEC agreed.

Appendix VII

Exchange of emails with the IRTC

From: Nicola Illing
Sent: 24 April 2019 08:45 AM
To: Hugh Corder <hugh.corder@uct.ac.za>; Tom Moultrie <tom.moultrie@uct.ac.za>
Subject: FW: IRTC Submission

Dear Hugh

Here is the email record- you made your submission on May 12; we had a flurry of correspondence again on August 15-20, and then silence, despite our invitation to engage on the topic.

Regards

Nicci

From: Hugh Corder
Sent: Monday, 20 August 2018 08:06
To: Nicola Illing <nicola.illing@uct.ac.za>; Royston Pillay <royston.pillay@uct.ac.za>; Candice Amon <candice.amon@uct.ac.za>
Cc: Tom Moultrie <tom.moultrie@uct.ac.za>
Subject: RE: IRTC Submission

Dear Candice

Thanks from my side too; and I entirely endorse Prof Illing's remarks below.

Best wishes

Hugh

Hugh Corder, Professor of Public Law
Acting Dean of Law, June 2018 onwards
Mail: Faculty of Law, University of Cape Town
Private Bag X3, Rondebosch 7701, South Africa
Physical: Room 4.08, Kramer Law School Building, Middle Campus
Tel: +27 21 650 2705/6 (work) Mobile: +27 82 337 3317

From: Nicola Illing
Sent: 20 August 2018 06:51 AM
To: Royston Pillay; Candice Amon; Hugh Corder
Cc: Tom Moultrie
Subject: RE: IRTC Submission

Dear Candice

Thank you for following up the submission of the draft code on the limits of protest.

Could I please make a correction to your record. This submission to the IRTC was made by the following UCT staff members from Faculties across the University.

Nicola Illing, Faculty of Science
Andy Buffler, Faculty of Science
David Erwin, Faculty of Science
Kevin Naidoo, Faculty of Science
Imraan Coovadia, Faculty of Humanities

Owen Crankshaw, Faculty of Humanities
Tom Moultrie, Faculty of Commerce
Hugh Corder, Faculty of Law
Pilate Moyo, Faculty of Engineering and the Built Environment
Prof Valerie Mizrahi, Faculty of Health Sciences

Jeremy Seekings name was not listed. Please let me know if I need to resubmit the document.

If you would like further discussions as to the reasons why such a policy may be both necessary and helpful for the university, we would be more than willing to meet with the Commissioners.

Regards
Nicci

From: Royston Pillay
Sent: Sunday, 19 August 2018 10:02 PM
To: Candice Amon <candice.amon@uct.ac.za>; Hugh Corder <hugh.corder@uct.ac.za>
Cc: Nicola Illing <nicola.illing@uct.ac.za>; Tom Moultrie <tom.moultrie@uct.ac.za>
Subject: RE: IRTC Submission

Dear Candice

I confirm that this draft code on the limits of protest has served previously before the UCT Senate and Council, and it is a matter that will need to be put to Council for resolution. Hence the request for the input of the IRTC.

Royston Pillay
Secretary to Senate and Council.

From: Candice Amon
Sent: 19 August 2018 09:58 PM
To: Hugh Corder <hugh.corder@uct.ac.za>
Cc: Nicola Illing <nicola.illing@uct.ac.za>; Tom Moultrie <tom.moultrie@uct.ac.za>; Royston Pillay <royston.pillay@uct.ac.za>
Subject: RE: IRTC Submission

Good day,

Thank you for the submission once again – the IRTC appreciates it.

The draft code was submitted by Jeremy and Nicola and the IRTC will be commenting on the document, in due course.

Kind Regards,
Candice

From: Hugh Corder
Sent: Wednesday, 15 August 2018 2:20 PM
To: Candice Amon <candice.amon@uct.ac.za>
Cc: Nicola Illing <nicola.illing@uct.ac.za>; Tom Moultrie <tom.moultrie@uct.ac.za>; Royston Pillay

<royston.pillay@uct.ac.za>

Subject: FW: IRTC Submission

Dear Ms Amon

As I am unable to attend any event in the IRTC “Roadshow”, I am resending the attached submission, which reached you and the Commission in mid-May. I subsequently appeared before the Commission, as part of a group from Senate, but there was no engagement on the substance of my submission: indeed, I had the strong impression from at least some commissioners that they were unwilling to engage with it. It may be that in current circumstances they might like to be reminded of the arguments contained in it.

Furthermore, as a matter of public record, could you let me know whether the Draft Code of Conduct on Protest at UCT, the necessity for which I proposed at, and was overwhelmingly accepted by, Senate in October 2016; which I then drafted together with Prof Danie Visser (DVC), and which was then accepted by Senate Exco; served again before Senate in March 2017, was amended and accepted again by Senate in June 2017 (I think, the Registrar must please correct me on this); was then tabled at Council in October 2017, where it was decided that it needed a little more work before being submitted to the IRTC for consideration, is available to you and the Commission? If it is not available to you, I would be happy to oblige by providing a copy of the latest version.

Thank you, and best wishes

Hugh Corder

Appendix VIII Submission of Code of Conduct for protests to IRTC May 7, 2018

From: Nicola Illing

Sent: 07 May 2018 03:42 PM

To: Candice Amon <candice.amon@uct.ac.za>

Subject: RE: Phase II Submission to the IRTC_ Code of conduct for protests

Dear Candice

Thank you for this acknowledgement.

Here is the updated version that I sent through to you this morning, which includes Prof Mizrahi (Faculty of Health Sciences).

Regards

Nicci

From: Candice Amon

Sent: Monday, 07 May 2018 3:31 PM

To: Nicola Illing <nicola.illing@uct.ac.za>

Subject: RE: Phase II Submission to the IRTC_ Code of conduct for protests

Good day,

The IRTC acknowledges receipt of the document. It will be perused and feedback on this will be granted.

Regards,

Candice Amon

From: Nicola Illing

Sent: Friday, 04 May 2018 1:42 PM

To: Candice Amon <candice.amon@uct.ac.za>

Cc: Andy Buffler <andy.buffler@uct.ac.za>; Kevin Naidoo <kevin.naidoo@uct.ac.za>; David Erwin <david.erwin@uct.ac.za>; Imraan Coovadia <imraan.coovadia@gmail.com>; Owen Crankshaw <owen.crankshaw@uct.ac.za>; Tom Moultrie <tom.moultrie@uct.ac.za>; Hugh Corder <hugh.corder@uct.ac.za>; Pilate Moyo <pilate.moyo@uct.ac.za>

Subject: Phase II Submission to the IRTC_ Code of conduct for protests

Dear Candice

I, Andy Buffler, Kevin Naidoo, David Erwin, Imraan Coovadia, Owen Crankshaw, Tom Moultrie, Hugh Corder, and Pilate Moyo would like to make the following submission (attached) to the IRTC as part of Phase II.

Please let me know if you any have queries on this submission.

Regards

Nicci

Prof Nicola Illing

Faculty of Science

University of Cape Town

Submission to the IRTC_ Draft Code of Conduct on Protest

7th May 2018

The IRTC Provisional Terms of Reference include

- *Make recommendations on institutional culture, transformation, decolonization, discrimination, identity, disability, labour relations and any other matters that the university community has raised over the years or may wish to raise.*

We submit the Draft Code of Conduct on Protest (Appendix A) for consideration by the IRTC. Following the disruptions of 2016, members of the University have been debating and refining a draft code of conduct on protest (Appendix A). The purpose of this code of conduct is to create a space in which members of the University can engage with each other, without fear or intimidation, so that the University community can move forward constructively. The attached document has been debated in Senate (24th October 2016), VCMag (17 February 2017) and the Senate Executive Committee (31st October 2016, 7th March 2017), was supported in principle by Senate (March 31, 2017), and has been discussed in Council (7th October, 2017). It has not however been finalized as it was argued that input from the IRTC would be valued.

The code covers important issues, such the importance of health and safety regulations not being contravened during protest, and the presence of private security. The latter issue has been widely debated across the University, including the Institutional Forum (16th August, 2017) where it was agreed that the presence of private security during periods of protest should be referred to the IRTC. We ask the IRTC to consider the draft code of conduct on protest (Appendix A), comment on its value, and advise Senate and Council on whether further edits are necessary to improve this version.

Nicola Illing, Faculty of Science

Andy Buffler, Faculty of Science

David Erwin, Faculty of Science

Kevin Naidoo, Faculty of Science

Imraan Coovadia, Faculty of Humanities

Owen Crankshaw, Faculty of Humanities

Tom Moultrie, Faculty of Commerce

Hugh Corder, Faculty of Law

Pilate Moyo, Faculty of Engineering and the Built Environment

Prof Valerie Mizrahi, Faculty of Health Sciences

Additional Note from Prof Mizrahi: “When this matter was debated in Senate, I recall noting the fact that the draft code referred to general and other clauses in the Rules on Conduct for Students, as set out in Handbook 3, but made no reference to the code of conduct for staff. I noted, at the time, that the code of conduct for academic staff and PASS differed, and, moreover, that the codes were hard to find on the UCT website

While I support the principles underlying this draft, I do feel that it is problematical to emphasise – inadvertently or otherwise – the application of this Code of Conduct on Protest to students. In my view, it should be absolutely clear the draft Code of Conduct on Protest applies equally to all UCT staff and students, as well as to visitors.”

Reply from Prof Hugh Corder

“This point was taken: please see footnotes 8 and 9 of the Code of Conduct (Appendix A), where all these disciplinary codes are referred to.”

Hugh

Hugh Corder, Professor of Public Law

Appendix A:

DRAFT CODE OF CONDUCT ON PROTEST AT THE UNIVERSITY OF CAPE TOWN
Submitted to Council, 17th September 2017

Foundational Assumptions

The University of Cape Town (UCT) is an institution that is premised on the expression of ideas, criticism, debate and dissent, on a strong foundation of tolerance, mutual respect and the recognition of the human dignity of every person.

Conduct and expression based in racism, sexism, hate, silencing and “shutting down” have no place within our university community.

The University is a place for non-violent protest. Through this Code we recognise basic values which set limits to acceptable protest, dissent, debate and argument, with the object of preserving the space to engage with others and to advance knowledge, free from any form of fear and intimidation.

Through our acceptance of this Code, we commit ourselves to creating and preserving conditions for the free exchange of views, and to defending the primacy of debate and discussion as a central tenet of the university community.

Preamble

The right to protest is inherent in the concept of democracy. Our Constitution and Bill of Rights not only guarantee a range of rights related to protest action but also protect these rights; which include the right to assemble, demonstrate, picket and present petitions; the right to freedom of expression, freedom of association and, in instances where protests result in physical constraints, the right to bodily integrity and the rights of arrested and detained persons.

Like most universities, UCT has been tested on how these rights are understood and respected during the recent student and worker protests. Central to the discussion is whether acceptable forms of protests extend to interfering with and disrupting the ordinary functioning of the university (such as the stopping of classes, blocking university entrances, occupying university buildings and shutting down administrative operations). The questions that the recent spate of protests have starkly posed is: when does the constitutional right to protest unreasonably infringe the rights of others and when does lawful protest become unlawful interference, justifying the use of restraint by the university management?

The common response to some forms or incidents of protest recently (and UCT has been no exception) has been a resort to urgent relief, such as interdicts, arrests, and disciplinary tribunals. While this may have provided a degree of order, it has also led to fears of increasing securitisation of campus, the diversion of resources to fight expensive legal battles and the erosion of the role of the university as a space for difference and dissent.

This document is an attempt to chart a different course for UCT through the agreement of the main university constituencies on a set of measures that will guide protest action and the response to such action by university authorities.

This Code is informed by the fundamental principle that the right to protest includes not just the passive indication of a grievance but a level of disruption that impacts on the functioning of

the university, as long as the rights of others are not unreasonably affected. The guiding principle is the absolute commitment that protest will always be non-violent.

In this context, we recognise and fully support the values on which the Constitution of South Africa of 1996 is founded (see section 1), in particular in this context the rule of law, and the accountability, responsiveness and openness of government. Equally, we subscribe to all relevant rights in the Bill of Rights, particularly: the right to human dignity in section 10¹; the right to freedom and security of the person in section 12;² the right to the freedom of conscience, thought, belief and opinion in section 15³; the right to freedom of expression in section 16⁴; and the right to assembly, demonstration, picket and petition in section 17⁵. At the same time, we recognise that no right is without limits, that in particular, some rights have to be balanced against other rights, and that any limitation on the exercise of rights must be proportional.⁶

The University already has in place several sets of rules for discipline relating to students⁷ and employees,⁸ and all visitors to any part of the campuses would be bound by law to respect these rules, and by the applicable laws of the country, enforceable through the courts. Several policies have also been adopted, which may bear on the rights of protesters as well as those not participating in protest.⁹

Against this background, the following guidelines relating to protest action are adopted by the University and apply to all staff and registered students of the University, and any visitors to any part of its property. **This Code seeks to achieve a balance between preserving the lawful right to protest and the lawful rights of those not participating in protest. It does this by laying down generally applicable principles.**

General Principles

¹ **Human dignity** - Everyone has inherent dignity and the right to have their dignity respected and protected.

² **Freedom and security of the person** - ... which includes the right to be free from all forms of violence from either public or private sources (section 12 (1)(c)).

³ **Freedom of religion, belief and opinion** - (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion..... .

⁴ **Freedom of expression:** (1) Everyone has the right to freedom of expression, which includes a. freedom of the press and other media; b. freedom to receive or impart information or ideas; c. freedom of artistic creativity; and d. academic freedom and freedom of scientific research. (2) The right in subsection (1) does not extend to a. propaganda for war; b. incitement of imminent violence; or c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

⁵ **Assembly, demonstration, picket and petition** - Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

⁶ The current statutory limitation of public protest action is to be found in the Regulation of Gatherings Act, 205 of 1993. The Act emphasises peaceful and negotiated public protest action, declares certain areas to be effective exclusion zones, and lays down guidelines for the proper conduct of gatherings and demonstrations. Its terms have recently been examined and found to be constitutional by the Constitutional Court.

⁷ The Rules on Conduct for Students (RCS) can be found in Handbook 3 (General Rules & Policies), available at http://uct.ac.za/usr/downloads/uct.ac.za/apply/handbooks/Handbook3_2017.pdf

⁸ Disciplinary procedures for academic staff:

http://www.hr.uct.ac.za/hr/employee_relations/disciplinary/academic_staff

Disciplinary procedures for PASS staff:

http://www.hr.uct.ac.za/hr/employee_relations/disciplinary/pass_staff

⁹ The University's policies on racism, sexism, sexual harassment etc. are available at

<http://uct.ac.za/about/policies/>

The Council's guidelines for the intervention of SAPS on campus is available at

https://www.uct.ac.za/usr/about/governance/SAPS_on_campus.pdf

1. Those exercising the right to protest must recognise that their actions may impact negatively on and possibly infringe the rights of others. Such impact must in all circumstances be peaceful, non-violent, and proportionate to the respective rights infringed.
2. Anyone organising protest action must plan it in such a way that these principles are observed. The use of appropriate marshals and the presence of independent peace observers are encouraged.
3. Those participating in any form of protest and those in the immediate vicinity of any protest must conduct themselves in a peaceful and orderly manner, and in a way that respects human dignity.
4. Intimidation, unlawful interference with any other person, incitement to violence, unnecessary provocation, and the resort to violent conduct during protest amount to contraventions of this Code.
5. Conduct which interferes¹⁰ unreasonably¹¹ with the movement of students, staff, suppliers, or vehicular traffic, or the performance of University activities,¹² is contrary to this Code.
6. Protestors and bystanders must be unarmed.
7. Protestors and bystanders must not damage, destroy or deface property.
8. Protestors and bystanders must not disguise themselves or make themselves unidentifiable in order to escape liability for unlawful conduct.
9. Protest action may not occur in any library, lecture venue, or research laboratory.
10. Those participating in protest must at all times comply with University security and safety regulations. In particular, fire and other safety alarms must under no conditions be interfered with or activated where no fire or other security danger exists, especially in a high-risk environment.
11. Every security official¹³ charged with the responsibility of maintaining order on any part of University property must at all times exercise maximum patience and tolerance, including the minimum resort to the use of force, in carrying out their duties.
12. Every security official must at all times carry some appropriate and visible form of identification, clearly displayed to any observer, whether a number or a name or a combination of the two.

Appendix

Rules on Conduct for Students

Some of the provisions of these rules, set out in Handbook 3, which are relevant to the Draft Code, are as follows:

¹⁰ It should be noted that the Rules on Conduct for Students outlaws the prohibition of entry or exit from the campus or any building on it (RCS 7.8) and the obstruction of the movement of any person (RCS 7.10). The use of “interferes unreasonably” allows for protesters to inhibit the free flow of traffic within reason, but not its obstruction nor its prohibition.

¹¹ The concept of reasonableness is widely accepted in the law of South Africa as an objective standard against which to measure expression and conduct. Its meaning is naturally contestable, given the context. The intention here is to provide a measure of latitude to achieve a balance between the interests of protesters and others.

¹² See in particular the provisions of RCS 7.9, which reads as follows: “A student must not obstruct, disrupt or interfere with the teaching, research, administrative, custodial or other functions of the University.”

¹³ The private security industry is already subject to regulation, including a Code of Conduct, by virtue of the Private Security Industry Regulatory Authority Act of 2003.

General Clauses

RCS1.1 Any breach by a student of these Rules on Conduct for Students or any other institutional rules framed by the Council is an offence subject to disciplinary action by the University.

RCS1.2 Nothing in these rules shall be constructed as absolving any student from liability for any misconduct in which he or she is personally involved.

RCS1.3 No student shall wilfully commit any unjustified act or omission which adversely affects the University or any member of the University.

Criminal Conduct

RCS3.1 Any criminal offence, in terms of the criminal law of South Africa, committed by a student of the University and which is prejudicial to the University or its staff and students is an offence subject to disciplinary action by the University.

RC3.2 Any student convicted of any criminal offence by a South African court with criminal jurisdiction shall be guilty of an offence in terms of these rules.

Conduct relating to the work of the University

RCS5.1 A student must comply with any reasonable instruction of an authorised member of the University.

RCS5.2 A student is required to be acquainted with the section entitled “Proper Channels for Student Complaints”.

RCS5.3 A student must, at all times, have in his or her possession his or her student card and must produce this upon request by any authorised person.

RCS5.4 A student must not supply false information to a University authority. false information RCS5.5

Conduct in general

RCS7.1 A student must not make unauthorised entry into or use of University facilities.

RCS7.2 A student must not make use of any University facilities for illegal purposes or for purposes detrimental to the University.

RCS7.3 A student must not commit acts of theft or damage in respect of University property or the property of any person on the University Campus. For the purposes of this rule, the possession of known stolen property shall be deemed to constitute an act of theft.

RCS7.4 A student may not bring onto the University any explosives or other dangerous weapons except by express permission of the Registrar. “Dangerous weapon” includes, but is not limited to, firearms, knives or daggers, martial arts equipment or switchblades, and a normally harmless instrument designed to resemble a firearm or any other dangerous weapon, or which is used by a student to inflict bodily harm upon any person.

RCS7.6 A student must not act or threaten to act in a manner which interferes with the work or study of any member of staff or student in general and specifically in relation to the person’s race, gender, beliefs or sexual orientation.

RCS7.7 A student must not abuse or otherwise interfere with any member of the University community in any manner which contributes to the creation of an intimidating, hostile or demeaning environment for staff or students in general and specifically in relation to the person's race, gender, beliefs or sexual orientation.

RCS7.8 A student must not prohibit entry or exit from the University campus or any building on the University campus.

RCS7.9 A student must not obstruct, disrupt or interfere with the teaching, research, administrative, custodial or other functions of the University.

RCS7.10 A student must not obstruct the movement of any member of the University community.

Conduct relating to student housing

RCS9.9 A resident student must ensure that his or her visitors comply with domestic rules and all other University rules and shall be responsible for the behaviour of such visitors.

RCS9.11 A student may not tamper with electrical installations of any part of the student housing unit.

RCS9.12 A student must not act or threaten to act in any manner which is abusive towards any student or any person employed at a student housing unit and which contributes to the creation of an intimidating hostile or demeaning living, working or study environment for staff or students in general and specifically in relation to the person's race, gender, beliefs or sexual orientation.