

TERMS OF REFERENCE
of the
MINISTER OF EDUCATION
to the
ADMINISTRATOR FOR THE MANGOSUTHU UNIVERSITY OF TECHNOLOGY

PREAMBLE

In terms of the Higher Education Act, 1997 (Act No. 101 of 1997), as amended, the Minister of Education may appoint an Administrator for a public higher education institution in terms of section 41A of the Act, which states:

41A Appointment of administrator

- (1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other mal-administration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the institution and perform the functions relating to governance or management on behalf of the institution for a period determined by the Minister, and such period may not exceed two years.

[Sub-s. (1) substituted by s. 15 of Act 23 of 2001.]

- (2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.
- (3) Notwithstanding subsection (1), if a council is deemed to have resigned as contemplated in section 27 (8), the Minister must appoint a person for a period of not longer than six months as an administrator on behalf of the institution to:
- (a) take over the authority of council;
 - (b) perform the council's functions relating to governance; and
 - (c) ensure that a new council is constituted.

[Sub-s (3) added by s11 of Act 63 of 2002.]

[S. 41A inserted by s. 6 of Act 55 of 1999..]

The Council and its Executive Committee of the Mangosuthu University of Technology have deliberated on matters of governance and management at the Institution over a period of time and became concerned that serious problems in the governance and management of the

University may be impacting on the effective functioning of the University. There was a pervasive sense that there are serious management deficiencies. Council and its Executive Committee resolved that a thorough and independent assessment of the affairs of the University be conducted with respect to governance, management and employment relations.

In terms of section 45 (a) of the Higher Education Act, the Council of the Mangosuthu University requested the Minister of Education to appoint an Independent Assessor to conduct an investigation into the affairs of the Mangosuthu University of Technology. The general purpose of the investigation was to advise the Minister and the Council on:

- the source and nature of the governance, management and administrative problems at the Mangosuthu University of Technology; and
- steps required to restore proper governance, management and administration at the Mangosuthu University of Technology.

In this regard I appointed Dr Vincent Maphai as the Independent Assessor at the Mangosuthu University of Technology on 10 September 2008. Dr Maphai was supported by a team of specialists in the broad areas of governance and management structures, human resources and finance as per the terms of reference.

The Independent Assessor commenced his work on 26th September 2008, and reported to me within 30 days as required in terms of Section 47 of the Higher Education Act 101 of 1997.

The specific terms of reference of the Independent Assessor were:

Assess the financial management systems of the University.

- Conduct a detailed analysis and report on the financial management systems and practices of the institution with particular emphasis on whether the University has appropriate and adequate procurement policies and whether the policies are adequately applied, including the functioning of the appropriate committees.
- Establish whether an adequate system of control is in place to ensure that risks are mitigated with specific reference to procurement risk and procurement process risk and whether Council is regularly apprised of potential risks.
- Specifically conduct a detailed analysis and report on the remuneration policies and practices of the University, and the functioning of the appropriate committees of the University.
- Review the terms of reference of the Finance Committee and the functioning of these committees to assess whether areas of internal control and risk management are covered;
- Identify any regulations, policies or practices that must be reviewed or created to improve the governance, management and administration of the financial affairs of the University.

Governance and Management Structures and Efficiencies

- Conduct a detailed analysis of, and report on the current situation in terms of organisation, management and governance structures, processes, systems, policies and competencies including issues of accountability and responsibility.
- Identify any authorities that have been delegated to the Vice Chancellor and management in contravention of the statutes or good corporate governance, indicating the circumstances and authority for such delegation.

Human Resources

- Conduct a detailed analysis and report on the human resource policies and practices of the University, particularly in relation to enhancing organisational efficiency and employment relations at the University.
- Review the functioning and role of committees established in terms of HRM policies with identification of policy-practice gaps;
- Conduct an investigation to determine the circumstances and reasons for the significant number of staff suspensions, disciplinary cases, labour disputes, staff demotions and dismissals at the University.
- Identify any regulation, policy or practices that must be reviewed or created to improve employment relations within the University.

Management oversight by the Vice Chancellor

- Conduct a detailed analysis and report on the reporting and accountability and reporting requirements by the Vice Chancellor to the Council and its relevant committees.
- Specifically conduct an analysis and report on the establishment and performance of the emoluments and tender committees of the University and the relationship of these committees to the Council and Vice Chancellor.
- Conduct a detailed analysis and report on whether the Vice Chancellor has deviated from Council approved policies and procedures, particularly with respect to emoluments and procurement and whether he has benefited financially from such decisions.
- Conduct a detailed analysis and report on whether the Vice Chancellor has performed any action that requires the approval of Council or its committees without such approval.

Make recommendations on

- restoring of effective and proper governance, management, administration and employment relations at the University; and
- what action, if any, ought to be taken.

I have received and considered the report of the Independent Assessor and the advice of the Council of the Mangosuthu University of Technology in this regard. It is evident in the report that there are serious problems in the governance and management of the University, which are undermining the effective functioning of the institution. The key recommendations of the Independent Assessor are:

1. Council to formally suspend the Vice Chancellor pending further investigation and formulation of charges where the investigation suggests this;
2. Council to request the Minister to repeal the MUT Statute in recognition that it is not aligned with the requirements of the Higher Education Act. The Institution should, pending the approval of a new Statute, operate in terms of the Standard Institutional Statute provided for in the Higher Education Act;
3. The Minister to appoint an Administrator in terms of Section 41A of the Higher Education Act, 101 of 1997 as amended, with Terms of Reference developed from the Report and the detailed section reports;
4. The Minister should request Council to consider its continued work as Council, given the contents of the Report.

I have accepted the report and recommendations of the Independent Assessor, but have decided to allow the Council to serve its term of office. In this regard, I, Grace Naledi Mandisa Pandor MP, Minister of Education have decided to appoint Professor Jonathan Jansen as Administrator for the Mangosuthu University of Technology in terms of section 41A of the Higher Education Act, with the following terms of reference:

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The general and specific terms of reference of the Administrator are:

- To take over the authority of the Management and administration of the Mangosuthu University of Technology, for an initial period of 6 months.
- To identify and initiate processes and initiatives that restore proper management and administration at the Mangosuthu University of Technology.
- Assist Council to restore proper governance at the Mangosuthu University of Technology, including the establishment of necessary Council sub-committees and the drafting and submission to the Minister of Education, of a new statute for the University.
- To initiate and conclude, in consultation with the Council, the forensic audit of the University as recommended by the Report of the Independent Assessor and any other matters that may have arisen.
- To initiate and conclude, in consultation with the Council, disciplinary procedures against members of staff who are charged from the outcome of any investigation, including the forensic audit.

- To ensure that the University has a legally constituted Council in terms of the new statute of the Mangosuthu University of Technology, to be approved by the Minister of Education.

The Administrator will commence duties on 1 February 2009.



GNM Pandor MP

Minister of Education

Date 27-01-2009