

**9 OCTOBER 2023**

**INDEPENDENT INVESTIGATION  
INTO UCT GOVERNANCE  
EXECUTIVE SUMMARY**

**JUDGE LEX MPATI (CHAIRPERSON)**

**JUDGE AZHAR CACHALIA**

**DR BERNADETTE JOHNSON**

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## ***ABBREVIATIONS***

Ally	ED DAD, Dr Russel Ally
BOP	A consultancy company, Board of Practice
Budlender	Deputy Chairperson of Council until March 2020, Ms Debbie Budlender
CEO	Chief Executive Officer
CMD	Communication and Marketing Department
COO	Chief Operating Officer
DAD	Development and Alumni Department
DVC	Deputy-Vice Chancellor
ED	Executive Director
ETI	Executive Transformation Initiative
Exco	Management Executive Committee including the VC, DVCs, COO and Registrar
Feris	DVC Transformation and Student Affairs, Professor Loretta Feris
Hall	Acting DVC Transformation and Student Affairs, Professor Martin Hall
Harrison	DVC Research, Professor Sue Harrison
Hoosain	ED Human Resources, Ms Miriam Hoosain
HR	Human Resources
IS	UCT Institutional Statute
Kruger	ED Communication, Ms Gerda Kruger
Lange	DVC Teaching and Learning, Adjunct Professor Lis Lange

Lushaba	Member of Council, Dr Lwazi Lushaba
Morar	COO, Dr Reno Morar
NDA	Non-disclosure agreement
Ngonyama	Chairperson of Council from July 2020 to May 2023, Ms Babalwa Ngonyama
Phakeng	VC from July 2018 to February 2023, Professor Mamokgethi Phakeng
Pityana	Chairperson of Council until July 2020, Mr Siphon Pityana
Price	VC until July 2018, Dr Max Price
Ramugondo	DVC Transformation, Student Affairs and Social Responsiveness, Professor Elelwani Ramugondo
RemCom	Council Remuneration Committee
Rousseau	Member of Council, Mr Jacques Rousseau
RToR	Revised Terms of Reference
The Ombud	The UCT Independent Ombud, Ms Zetu Makamandela-Mguqulwa
ToR	Terms of Reference
UARC	UCT Audit and Risk Committee
UCT	University of Cape Town
VC	Vice-Chancellor
Zinn	Deputy Chairperson of Council from March 2020 to July 2020, Professor Shirley Zinn

## **EXECUTIVE SUMMARY**

### ***Introduction***

- [1] On 3 November 2022, the University of Cape Town (“UCT”) Council approved the appointment of an independent panel to investigate the circumstances surrounding the termination of Associate Professor Lis Lange’s (“Lange”) contract as Deputy Vice Chancellor (DVC) for Teaching and Learning on 30 April 2022. She left UCT after concluding a Non-Disclosure Agreement (“NDA”). The investigation was precipitated following the events that arose after Senate had approved the extension of the Vice Chancellor (“VC”), Professor Mamokgethi Phakeng’s (“Phakeng”) tenure on 22 March 2022, for five more years.
- [2] The motivation for the extension of Phakeng’s term at the Senate meeting was made by the then Chairperson of Council, Ms Babalwa Ngonyama (“Ngonyama”). She had not disclosed Lange’s impending departure. Lange was highly respected at UCT. Had Ngonyama revealed this information, troubling questions may have been raised regarding the stability of the Management Executive Committee (“Exco”), of which Lange was an integral member.
- [3] It was common knowledge that the Exco, consisting of the VC, DVC Lange, DVC Professor Sue Harrison (“Harrison”), Chief Operating Officer (“COO”), Dr Reno Morar (“Morar”) and the Registrar, Mr Royston Pillay (“Pillay”) was not functioning properly, which many believed was a result of the VC’s poor leadership. Professor Loretta Feris (“Feris”), the DVC for Transformation and Student Affairs and Dr Russel Ally (“Ally”), who was the VC’s advisor had resigned in 2021 behind a wall of silence, also having signed NDA’s.
- [4] Lange’s departure was first openly questioned at a meeting of the Commerce Faculty on 4 May 2022. The VC said she had no role in the decision, and that Lange’s reasons for her departure were voluntary and personal.
- [5] On 6 May 2022, Ngonyama stated at Special Council Meeting, convened to allay concerns regarding Lange’s departure, that Lange had approached her through the Human Resources Department (“HR”) early in March 2022 and

advised that she would not seek a second term as DVC. Ngonyama told her to raise the matter with the VC. The Remuneration Committee (“RemCom”), which dealt with the matter, completed its work in April 2022, after the Senate meeting. Ngonyama added that she met Lange on 14 April 2022, to discuss the reasons for her departure. Lange refused to disclose them, insisting they were personal.

- [6] On 10 June 2022, Professors Moultrie and Williamson posed two written questions at a Senate meeting: First, whether the Chairperson of Council was aware of Lange’s impending departure when she addressed the Special Senate Meeting on 22 March 2022 and, if so, whether she had consulted with Lange and the VC to establish the reasons therefore. Second, whether she could provide clarity on the reasons for Lange’s early resignation and was aware of any further instability in the senior leadership structures of UCT.
- [7] The VC was present at the meeting and offered the following response, apparently contradicting both what she had told the Commerce Faculty meeting on 4 May 2022, and what Ngonyama had said to Council on 6 May 2022:
- She had approached Lange and asked her whether she wished to seek a second term as DVC; Lange indicated that she did not; and
  - Lange also said repeatedly that her reasons were ‘confidential’ and ‘personal in nature’.
- [8] A Senate meeting was scheduled for 30 September 2022, at which the Chairperson of Council was required to respond to the two questions. She did so in a letter dated 23 September 2022, where she presented another version. She stated that Lange had indicated that she did not want to be considered for a second term for reasons that were both personal and confidential; that Lange had submitted her proposal to HR on 17 March 2022; and that, at the time when she had addressed the Senate on renewal of the VC’s contract on 22 March 2022, the matter was with Lange and the VC. This account too, was inconsistent with what both she and the VC had said previously.
- [9] On 29 September 2022, Lange, who had kept a dignified silence throughout this period, wrote to Senate with a different explanation. In summary, it read:

- The process that led to her stepping down was initiated by the Chairperson of Council. At no point was the VC part of the conversation, except at the very end after she had already signed the NDA;
- Her first conversation with the Chairperson of Council about her future at UCT took place on 3 January 2022. During that conversation, Ngonyama conveyed to her that the relationship between Lange and the VC had broken down, and that her tenure could not go beyond 2022;
- Ngonyama had also indicated to her that, once it was known that she was stepping down, the remainder of her tenure would be ineffective and therefore she should cut it short;
- She had indicated to Ngonyama that it was her intention to stand for a second term to finish her work, but Ngonyama's response was that Council would not appoint a DVC against the VC's wishes, no matter how much support she might have;
- She signed the NDA on 17 March 2022; and
- She had no personal reasons for stepping down from her position as DVC.

[10] Moultrie read the letter to Senate. What they heard raised the disturbing possibility that the Chairperson of Council and the VC had not been telling the truth about the circumstances of Lange's departure. Senate then voted overwhelmingly to appoint a sub-committee of ten members to investigate the issue.

[11] On 6 October 2022, a Special Council Meeting was convened. There were two motions before it, one of which was to appoint an independent panel to investigate where the truth lay. Ngonyama excused herself as the Chair, but remained in the meeting, as did Phakeng. They both voted, despite being conflicted and together with the Deputy Chair, Ms Pheladi Gwangwa ("Gwangwa"), who also voted, mustered sufficient votes to defeat the motion calling for an independent panel by a single vote. When objections were raised to Ngonyama and Phakeng having voted, Gwangwa, wrongly, dismissed the objection. The Panel found that Gwangwa, too, was conflicted because of her prior knowledge of some of the events, and that she had conducted the meeting in an improper and partisan manner.

- [12] Ngonyama then presented yet another version of Lange's departure later at the meeting. She stated that she had met Lange on 3 January 2022 to discuss the renewal of the VC's term and that Lange became aggressive and expressed her wish to become the VC. Ngonyama ended the meeting and referred the matter to HR to resolve. When she addressed Senate on 22 March 2022, regarding the renewal of the VC's term, the matter had not been resolved and was still with the VC and Lange.
- [13] Later that evening Gwangwa issued a statement to the UCT community containing this version, which thirteen members of Council disavowed publicly the following day.
- [14] Several Council meetings were held afterwards, culminating in confirmation of the appointment of this Panel, its composition and terms of reference on 17 November 2022. The Panel was required to investigate primarily whether the Chairperson of Council and the VC had misled Senate regarding the circumstances of Lange's departure, executive relationships and the reasons for the resignations of other senior leaders. It proceeded to conduct its investigation with four members, commencing in February 2023. They were Retired Justices Mpati and Cachalia, Dr Hanekom and Dr Johnson.
- [15] Shortly thereafter, UCT announced that it had concluded an agreement with Phakeng to step down as VC. On 11 March 2023, Council revised its terms of reference.

### ***The Revised Terms of Reference***

- [16] The revised terms of reference ("RToR") no longer required a specific focus on whether or not the Chairperson of Council or the VC had misled Senate regarding the termination of Lange's contract. Council broadened the scope of the inquiry to include other Exco resignations and retirements for the period from 1 January 2018 until 31 December 2022.
- [17] At the time it was known that, in addition to Feris and Ally having left in 2021, Ms Gerda Kruger ("Kruger"), the Executive Director ("ED") of the Communications and Media Department ("CMD") had been suspended, Ms Miriam Hoosain ("Hoosain") the ED of HR, Morar the Chief Operations Officer, and Pillay, the Registrar had resigned.



[18] In Clause 3 of the RToR stated that:

*“The purpose of the inquiry shall be primarily forward looking although, based on its findings, the Panel is authorised to recommend redress where warranted. The Panel is thus authorised to make recommendations that could help Council and the University to prevent and better address any of the failures of governance the Panel finds.”.*

[19] The Panel’s mandate is set out in Clause 4, to investigate:

*“a. The circumstances surrounding the resignation or retirement of members of the executive including DVC’s, deans, directors and other employees linked to the senior leadership, with the specific purpose of finding out whether executive relations and the failures of governance within the Council, its offices and structures contributed to this;*

*b. In relation to 4(a) above, the Panel is empowered to advise whether any unfairness, breaches of labour law or UCT statutes, regulations and policies took place, whether any remedy is possible and practicable, and whether there are policy gaps that need rectifying; and*

*c. The role of Council in handling the Ombud Report and subsequent reports, and whether there were any failures of governance in this regard that still need to be addressed.”.*

[20] The investigation was conducted under a strict confidentiality regime as required by the ToR. The names of witnesses have been disclosed, to the extent necessary, where the Panel has made findings based on their testimony.

[21] The scope of the inquiry was extensive, covering five years and straddling two Councils. The Chairperson of Council, until July 2020, was Mr Sipho Pityana (“Pityana”). Ngonyama was a member of Council then and was elected Chairperson when Pityana’s term came to an end in June 2020. Phakeng was appointed VC in July 2018. The investigation covered her full term. It was therefore evident that, despite her departure, her role in these events remained a central concern of Council.

[22] On 1 April 2023, Phakeng left UCT following a settlement agreement. Ngonyama resigned from Council on 22 May 2023 after the Panel had recommended her removal in an Interim Report on 17 May 2023. The investigation continued after their departures.

### ***The Pityana Council***

[23] Phakeng joined UCT as DVC: Research and Internationalisation in January 2017. A year later she applied for the VC position. There was no question that she was suitably qualified. Pityana, who chaired the Selection Committee, was aware of serious concerns reported about her behaviour and leadership ability, during her tenure as DVC. Dr Max Price (“Price”), who was the outgoing VC to whom she reported, cautioned him against appointing her.

[24] The Selection Committee was divided, but ultimately yielded to Pityana’s recommendation to appoint Phakeng. This, after she had assured them that she would mend her relationships with her colleagues, some of whom were known to be anxious about her possible appointment. Following Pityana’s suggestion, Phakeng also agreed to the appointment of a mentor or coach to assist her. For his part Pityana promised to manage her closely. Senate and Council overwhelmingly supported her appointment.

[25] Phakeng began her tenure as VC in July 2018, inauspiciously. Pityana observed that she abused her power by targeting senior executives she believed were loyal to Price. Feris appeared to be her primary target but others, including Lange, did not escape her ill-treatment either.

[26] The most troubling aspect was the divisive way she used race and racial difference as a weapon in her interaction with many, regardless of their position. Pityana described her as having a “*crass*” obsession with race. An example of this was her insistence on reminding Feris that she was “*coloured*” and not black, despite Feris’ objection. Phakeng reminded others that she was the only Black African with kinky hair in Bremner, offending and alienating them. She earned a stern rebuke from Pityana when she indicated that she did not believe in non-racialism on one occasion.

- [27] It became increasingly difficult for her colleagues and staff to attend meetings with her. She brooked no disagreement and caused distress to those who became the object of her hostility. It is troubling that at these levels of seniority few were able to oppose her and most simply resorted to silence in meetings.
- [28] As Pityana and Ms Debbie Budlender (“Budlender”), the Deputy Chairperson of Council, tried to address these issues, Phakeng reportedly became convinced that there was a plot to remove her.
- [29] The simmering tension between Pityana and Phakeng burst into the open at a Council meeting in June 2019 and led to the appointment of the Omar-Davids-Rousseau Committee. This Committee was ostensibly established to examine whether there were grounds for the VC’s belief that there was a plot to remove her. No such grounds were established. It further explored some of the underlying tensions giving rise to this belief but was hamstrung by what was clearly its true purpose: to smooth over the cracks in the VC’s leadership.
- [30] Pityana and Budlender continued to receive complaints about the VC’s behaviour, including from the Ombud, Ms Zetu Makamandela-Mguqulwa. The Ombud reported confidentially on what she identified, was a growing problem. By the end of 2019, Phakeng’s performance appraisal by Budlender laid bare these problems. Phakeng believed there was no merit in the criticisms Budlender had raised in her review. Phakeng believed she had exceeded her performance expectations, which revealed little self-awareness of the damaging effect of her conduct with respect to interpersonal relationships.

### ***The Ombud Report***

- [31] In February 2020, the Ombud submitted a draft report to Council covering the period July 2018 – June 2019. As was the practice, it was submitted first to Budlender for comment and advice and would be tabled later at a Council meeting. It had two parts. The first, was a six-page message from the Ombud, which, she said, described her “*honest reflections*” on this reporting period, which had “*changed dramatically*” from earlier ones. The second, adopted the style of previous reports, using aggregate data to comment on trends and concerns based on anonymised complaints received by her office.

[32] The first part referenced serious complaints against the VC. It read:

*“[A] number of [other] work-related complaints came to be about professional interactions with the VC where people felt bullied, silenced, undermined, rebuked and/or treated unfairly. Their pain was visible. Some affected bystanders also came to express fear and told me how they were impacted individually by different incidents...Not one of those who brought these issues wanted me to approach the VC as they feared retaliation. The bystanders said they would not want to experience what they saw...happen to others...The visitors came in different capacities, but all spoke about the same fear. As a result of their not wanting me to approach the VC, I focussed on their own well-being....”.*

[33] The Report also criticised the Exco for not understanding her role and identified, what she described as push-back, from the Deans. These were minor criticisms compared with the disturbing allegations against the VC. When Phakeng read the report she demanded its retraction. She complained that the Ombud had treated her unfairly.

[34] Given its explosive content Pityana was reluctant to table the Report at Council in this form. He thought it prudent to find “*another way*” to deal with it. Budlender disagreed with Pityana, and consequently resigned from Council on 6 March 2020. She was dissatisfied with Pityana’s reluctance to deal decisively with the increasing problem of the VC’s leadership. In a letter to Council, she expressed the view that withholding the Report from Council interfered with the Ombud’s independence.

[35] At Council’s request the Ombud amplified her Report by adding that there were 37 complaints against the VC, including from Faculties, professional staff and students. Some of these, she added, were surrogate complainants, who were affected by the public humiliation of others in their presence.

[36] Meanwhile, members of the Exco, who had received the Report from the VC during her sabbatical leave of absence, convened. They decided that as the primary complaint was against the VC, she should respond to the allegations against her though a process decided by Council. This was a sensible

suggestion. Phakeng, however, accused them of not supporting and ganging up against her.

- [37] Faced with a threat from the VC to litigate against UCT, Pityana obtained a legal opinion advising against the Report serving before Council in its original form. It (the opinion) also advised, as the VC's executive colleagues had done, that the grievances in the Report be dealt with through a process approved by Council.
- [38] On 24 April 2020, Council agreed not to publish the Report but took no action regarding the complaints about the VC. Instead, it elided the problem by mandating Pityana and Professor Shirley Zinn ("Zinn"), who was elected Deputy Chairperson to replace Budlender, to "engage" with the VC regarding her "leadership style" and her relationship with her colleagues.

### ***The Pityana-Zinn Report***

- [39] Pursuant to their mandate from Council, Pityana and Zinn met with the VC and each member of the Exco. They then asked Phakeng to meet with her colleagues to address their differences – a suggestion they (the Exco colleagues) disagreed with given the hostile atmosphere between them.
- [40] Their view was that a coach, available to the VC and to them, should be appointed to be present at Exco meetings, identify problematic behaviour and find solutions. It was further suggested that Pityana and Zinn oversee this process. Pityana rejected the proposal. He accused them, baselessly, of dictating to Council how it should do its work.
- [41] Pityana and Zinn prepared a report to Council in which they described the VC's behaviour as humiliating, demeaning and disrespectful towards her colleagues. They suggested, however, that her colleagues were disloyal to her and have an "insubordinate tendency for collective defiance.". The finding against the four members of the Exco which followed, was not only unjustified by its content but unfortunate in its tone:

*"It is our considered view that the response from the four executives (Feris, Lange, Harrison and Morar) suggests that they have constituted themselves as a clique that has no regard for the authority, not only of the VC, but also that of*

*Council despite their protestations to the contrary. Their continued assertion of how, we on behalf of Council, should undertake our review and the arrogant prescription of what we should recommend to this august body, underscores that; as does their insistence on continuing to function as a clique.*

*To the extent that Council continues to have confidence in the leadership of the VC, have neither found a reason why it should (not), nor has Council ever contemplated this) we have a duty to protect her office from such flagrant conduct that stands to undermine its effectiveness. Given their determination to continue conducting themselves in this manner, it is not unreasonable for the VC to institute appropriate measures to protect her office...*

*...By our inaction, we would be endorsing a conduct (sic) that is capable of cascading down to other levels of management with uncontrollably destabilising consequences for the institution. We may reasonably be accused of making the VC to a lame duck (sic); or worse still that we may be said to have reduced her to a black token leader.”*

- [42] The ill-considered report served before Council, Pityana’s final meeting, on 26 June 2020. The minute of the meeting records that Council resolved to appoint an external facilitator to assist the Exco to address the issues raised in the report. On this note the term of the Pityana Council came to an end.

### ***Evaluation of the Pityana Council***

- [43] It was apparent from Phakeng’s tenure as DVC, that there were concerns about her leadership. The idea that the perceived risk could be mitigated by appointing a personal coach for her was short-sighted and counterproductive, as was Pityana’s assurance that he would be able to “manage” her. The fact that the appointment was a mistake became obvious fairly soon.
- [44] Despite this, Pityana and Council balked at the possibility of terminating UCT’s relationship with the VC. Instead, they avoided the problem by ignoring all the evidence, especially the multiple complaints of bullying and the abuse of power against her. Worse, towards the end of his term Pityana found a scapegoat for his own inability to take decisive action against her by unjustifiably shifting some of the blame onto the Exco.

[45] The Panel found at least two reasons why Pityana avoided acting decisively against her: First, he was reluctant to act against a black female VC because he feared repercussions. This was against a background of an increasingly racialised discourse driven by Phakeng.

[46] Second, he came to the view, probably within the first year of the VC's term, that the incoming Council should be handed this responsibility. As he also told the Panel:

*"I think it would've been difficult to initiate a process of termination of the Vice-Chancellor's term at that point in our tenure not knowing who was going to come back to Council. Council was in the middle of a major transition and exiting Chief Executives in a confrontational way is a very difficult process. So, if you initiate it, you must see it through."*

[47] The Panel found that this was not a good reason for him or Council to abdicate their fiduciary duty to act in UCT's best interests. The incoming Council, led by Ngonyama, embarked on an even less salubrious path.

### ***The election of the Ngonyama Council and publication of the Ombud Report***

[48] Once Pityana departed, the Ombud realised that Council would not act on the complaints about the VC in her Report. On 9 July 2022, before the new Council convened, she published the Report on the UCT website. Its content was later covered in *News 24*.

[49] The new Council met on 11 July 2022. It had thirteen new members. Ngonyama was elected Chairperson. Their first task was to deal with the consequences of the publication of the Ombud Report.

[50] It was apparent early on that the new Council was divided, with one group showing fealty to Phakeng and the other equally determined to hold her to account. Ngonyama's view was that Council must move on and leave the past behind. On 14 July 2022, she issued a statement to UCT criticising the Ombud's publication of her Report.

[51] On 22 September 2022, a divided Council voted to institute disciplinary action against the Ombud. The charges included:

- *leaking of confidential information belonging to UCT. In relation to a News24 article of 18 September 2020;*
- *bringing your employer's name into disrepute in circumstances where you were recorded in the above-mentioned News24 article making allegations that UCT is refusing to investigate allegations of bullying against the VC, Council is protecting the VC because she is a black woman, that Council is preferring the VC over the 37 people who have complained that the VC has bullied them, and that UCT is giving you silent treatment in relation to the allegations of bullying against the VC; and*
- *insolence towards the Chairperson of Council... as your line manager.*

[52] The charges were not pursued, and the Ombud left UCT on 31 December 2020, when her contract came to an end.

[53] In the Panel's view, the case against the Ombud was instituted for an improper purpose, i.e., to suppress the allegations of systematic bullying by the VC. The threat by the Chair, purporting to act on behalf of Council, to institute disciplinary proceedings against the Ombud was unlawful. This is so because the publication of the Ombud Report constituted a "*protected disclosure*" within the meaning of the Protected Disclosures Act 26 of 2000.

### ***The Board of Practice***

[54] Towards the end of 2020 Ngonyama contracted the Board of Practice ("BOP"), as an external facilitator to assist with the solving the problem of "*executive dysfunction*". The BOP was a consultancy with whom Ngonyama had a relationship as a business executive. The method it employed included individual and team diagnostics, team effectiveness workshops and individual coaching.

[55] It became clear during this process that the VC was not only having difficulties with her Exco colleagues, but that her relationship with Ngonyama had also become strained. Phakeng felt, for good reason, that Ngonyama was interfering in her management of UCT.



[56] The BOP initiative ended early in 2022. It submitted a comprehensive report to the VC and the Chairperson in November 2021. Each member of the Exco was given his or her own report. No final report was presented to Council, presumably because this was overtaken by events.

[57] While some in the Exco found the individual coaching sessions helpful, the initiative failed. The relationship between the VC and her colleagues deteriorated. It was clear that the primary source of the breakdown in Exco was the VC's poor relationships with the whole Exco team. At least one member of the BOP indicated confidentially that it was clear to them that either the VC should leave or the Exco had to go.

[58] While the BOP started apparently as a bona fide initiative by Ngonyama to solve the problem of Exco dysfunction, it is clear that it failed in its primary purpose. It was destined to fail because it was premised on two flawed assumptions: First, that it could ignore what had transpired during the previous Council and particularly the disclosures in the Ombud Report regarding the VC's alleged abuse of power; and second, that the fundamental problem regarding the VC's leadership could be overcome by coaching and team building. This was the same error of judgment made by Pityana.

[59] There is an irony that shortly after BOP commenced its work, Feris' contract was terminated, Ally left, and Ngonyama began to prepare the ground for Lange's exit.

### ***The resignations of senior executives***

[60] The circumstances regarding the departures of senior executives from UCT all have their source in the VC's leadership. This included what they described as her:

- abrasive behaviour;
- public belittling and humiliation;
- false accusations, mistrust, insecurity and endless baseless accusations of trying to undermine, unseat or sabotage her role;
- authoritarian leadership under the guise of holding people accountable;

- subjective treatment of colleagues where for a similar event, a colleague who differed with her was publicly castigated, disrespected and belittled, while another was not;
- increasingly building her power through patronage that “*borders on class, gender and racial stereotyping*”;
- inability to accept that leadership is about leading and being led; and
- inappropriate social media presence.

[61] In several cases, however, Ngonyama also had a direct role in the resignations.

***Professor Loretta Feris***

[62] In regard to Feris’ termination in April 2021 the Panel made the following findings:

- I. Ngonyama, acting through the Remuneration Committee (RemCom), initiated the termination of Feris’ contract by causing the VC’s performance assessment rating of Feris in November 2020 to be downgraded from “meeting” to “not meeting” her performance targets. UCT’s policy permits DVC’s to apply for a renewal of their contract only if they meet their targets. The consequence of the downgrading was that Feris would not be able to renew her contract;
- II. Neither Ngonyama, as Chairperson of Council, nor RemCom, had any authority to be party to decisions regarding performance assessments of senior executives as this was the VC’s function;
- III. In agreeing to amend Feris’ performance assessment, and amending her assessment as instructed by Ngonyama, the VC acted unlawfully in failing to hear Feris on the revised adverse assessment; and
- IV. Feris had little option but to acquiesce in the termination of her contract as her work environment had become intolerable. She was the victim of an abuse of power, often in the presence of others, by the VC over a protracted period of more than three years. In her case the VC baited her and unfairly discriminated against her on the ground of her race, insisting that she was coloured, and not black. It was also apparent, as Ngonyama had made clear in a Council meeting at which Feris was present, that she had no confidence in her. The circumstances suggest that Feris was constructively dismissed.

***Dr Russel Ally***

[63] In regard to Ally's resignation the Panel makes the following findings:

- I. With Feris' impending departure early in 2021, the VC approached Ally to make himself available to act in her position. He agreed and anticipated being appointed Acting DVC Transformation and Student Affairs;
- II. Shortly before the Council meeting to approve the appointment, he learnt that Professor Martin Hall ("Hall") had been nominated for the position instead;
- III. Ally asked the VC to clarify what had happened. She told him that the Chairperson of Council had "*overruled*" her by nominating Hall;
- IV. Ally then asked Ngonyama for an explanation. She said that she had no role in the matter and that it was the VC's decision. The Panel found that Ngonyama had been directly involved in the decision to appoint Hall before the Council meeting;
- V. Faced with their conflicting versions, which Ally regarded as duplicitous, he felt he could not trust either of them;
- VI. He also disagreed with their decision to appoint a "*retired white male*" to the position. He was not justified in this view as Hall was suitably qualified to be appointed;
- VII. Council was presented with only one name – Hall's – and approved the recommendation; and
- VIII. The Panel found that Ally was justified in believing that he could not trust the VC and the Chairperson of Council because they were not truthful with him. This was the dominant reason for his resignation.

***A/Professor Lange***

[64] In regard to Lange's termination the Panel makes the following findings:

- I. Ngonyama, without having the authority, initiated Lange's termination at a meeting on 3 January 2022. She told Lange that she would have to leave because of her poor relationship with the VC. When Lange pushed back, insisting that she had done no wrong, Ngonyama added that the extension of

her term as DVC was in the gift of the VC, and if the VC did not want her, she would simply advise Council and the Senate that she wished to appoint an African DVC in her place;

- II. At the end of January 2022, Lange felt she had no option but to negotiate the termination of her contract with HR, represented by its ED, Hoosain;
- III. Between 13-16 March 2022 Hall, on behalf of and in consultation with Phakeng and Ngonyama, assisted by the ED of HR and UCT's lawyers, finalised the terms of the NDA, which Lange signed on 17 March 2022;
- IV. On the same day, after Lange had signed, Ngonyama informed RemCom of Lange's impending departure. Phakeng and Gwangwa were present. It was apparent that their intent was that the VC would sign the NDA only after Senate had decided on the VC's renewal of her term on 22 March 2022, so as to avoid questions being asked regarding Lange's termination. There was no record of the discussion as the HR service officers were asked to excuse themselves from the discussion of the agenda item;
- V. On 22 March 2022, Ngonyama made the case for the renewal of the VC's term for a further five years at a meeting of Senate. She deliberately concealed Lange's impending departure, underplayed the extent of Exco dysfunction, and made no mention of the VC's persistent misconduct. In so doing she misled Senate and secured its approval to grant the VC another term;
- VI. Phakeng signed the NDA on 20 April 2022;
- VII. Between 4 May 2022 and 6 October 2022 Phakeng and Ngonyama presented inconsistent, contradictory and false versions to several meetings, including to Council and Senate regarding the circumstances of Lange's termination;
- VIII. At the Special Council Meeting on 6 October 2022 together with Gwangwa and other Council members they apparently colluded to defeat a motion calling for an independent panel to investigate the circumstances of the termination of Lange's contract. They did so by voting against it despite having clear conflicts of interest;

- IX. Between 15 October and 17 November 2022 Council met on several occasions. It rescinded the earlier decision of 6 October 2022 not to appoint an independent panel and voted to appoint one. It also approved terms of reference for the inquiry;
- X. Supporters of Phakeng in Council, in particular Dr Lwazi Lushaba (“Lushaba”), who was joined by Professor Elelwani Ramugondo (“Ramugondo”), attempted to discredit the idea of an independent inquiry. Lushaba falsely called the decision a “*racist attack*” against Phakeng and Ngonyama. Ramugondo added that what was happening to three Black women, Ngonyama, Phakeng and Gwangwa, was an example of institutional racism. There was no evidence to support these allegations; and
- XI. On 26 October 2022, Senate also voted to support the appointment of an independent panel.

***Ms Gerda Kruger***

[65] In regard to Kruger’s suspension the Panel makes the following findings:

- I. Kruger was suspended as ED of CMD by the VC on 11 May 2022. She is in the process of negotiating the terms of her termination with UCT;
- II. She was also the victim of the VC’s antagonistic behavior from the very onset of her appointment as VC. She found it particularly difficult to manage the risks that the VC’s inappropriate and sometimes incendiary social media presence posed to UCT;
- III. The VC suspended Kruger after the CMD had prepared a complimentary farewell brochure for Feris after her resignation;
- IV. The brochure contained collated information from the online “VCDESK” publication in which the VC acknowledged Feris’ contribution to UCT. It had a colour photograph of the VC alongside the tribute to Feris. The publication cost about R5000 to produce. Five copies were made. Three were given to Feris and two were kept as a record by the CMD;

- V. When Phakeng saw the brochure she called Kruger demanding an explanation for the brochure. Kruger's attempt to calm her down by apologising profusely was in vain;
- VI. The publication was in fact a replica of the publication that the VC herself had approved and which is available on UCT's web page;
- VII. Kruger then faced several charges that: she had no authority to make the publication; she did not inform the VC about the publication; and that she had used the VCDESK in the tribute publication without the VC signing off on it;
- VIII. The charges were petty, unfounded and instituted for an improper purpose. It was evidently driven by VC's dislike for both Feris and Kruger;
- IX. Subsequently, the VC defamed Kruger in the media by falsely stating that Kruger had "*forged her signature*", which was a reference to the VC's name being associated with the brochure; that she had been "*found guilty of gross misconduct*"; that she was "*untouchable because she is a white person*"; and that she had "*acted unethically*";
- X. Kruger lodged a grievance against the VC for these defamatory statements, but UCT never proceeded with it; and

***Mr Royston Pillay***

[66] In regard to Pillay's resignation the Panel makes the following findings:

- I. Pillay, the Registrar, resigned on 2 December 2022;
- II. His resignation was the result of the "*intolerable, accusatory relationship*" with the VC, which, he said "*no self-respecting person*" would take;
- III. He believed that the dilution of institutional governance posed an institutional risk to UCT and a professional risk to him personally because of the central role of the Registrar in UCT's governance; and

- IV. One example of the kind of risk he was concerned about was the VC's improper instruction to him to approach the editors of media houses to disclose the names of persons who were leaking information to the media about the events at UCT. He, correctly, refused to execute the instruction.

***Dr Reno Morar***

- [67] In regard to Morar's resignation the Panel makes the following findings:
- I. Morar was the COO of UCT. He resigned in December 2022;
  - II. The reasons he gave for his resignation were similar to those of his colleagues regarding the debilitating consequences of the VC's conduct; and
  - III. He also felt he that had little choice but to resign even though he would suffer significant financial harm as a result.

***Professor Linda Ronnie***

- [68] In regard to Ronnie's resignation the Panel makes the following findings:
- I. Professor Linda Ronnie ("Ronnie") was the Dean of the Commerce Faculty and resigned at the end of March 2021, at the same time as Feris. As a Dean she was not a member of the Exco, but attended meetings of the Senior Leadership Group;
  - II. In her case too, the behavior of the VC was the cause of her resignation;
  - III. She was troubled by how the VC brooked no dissent in meetings and was evidently hypersensitive to criticism, which had the effect of silencing any debate on important issues;
  - IV. On one occasion she expressed concern in a meeting about the VC's view of how to accelerate transformation. The VC believed that researchers could be appointed to senior administrative positions to achieve this purpose. Ronnie differed. She contended that adding administrative responsibilities to a researcher's workload would be burdensome. The VC then stigmatised her as the "*anti-transformation Dean*";
  - V. Ronnie found the VC's race-baiting particularly offensive;

- VI. Ronnie believed that the VC started treating the Commerce Faculty unfairly because of their increasing personal distance from each other. She cited two examples of how the VC interfered improperly with the appointments she wished to make, which are detailed in the Report; and
- VII. Finally, what precipitated her decision to leave was what she described was the “*ghastly*” way in which Feris was dismissed.

***Ms Miriam Hoosain***

[69] In regard to Hoosain’s resignation the Panel makes the following findings:

- I. Hoosain was the ED of HR and decided to resign when the introduction of the Executive Transformation Initiative made it possible for her to leave earlier in May 2022;
- II. As the ED of HR she was at the coal face of almost all the issues that arose in this inquiry, including terminations, performance assessments and disciplinary issues. Her evidence was illuminating and troubling;
- III. She observed the increased politicisation of the HR function, at the VC’s behest, which she believed posed a serious risk to UCT. By this she meant that good HR practices were compromised to serve the VC’s ‘political’ interest in making appointments, granting or refusing performance awards and disciplinary processes. These decisions were made improperly on a racially discriminatory basis;
- IV. Other examples of this kind of racially discriminatory treatment are referenced in the Report dealing with her evidence. It included a trend remunerating black Africans entering UCT at a higher rate than other designated groups and the inconsistent application of performance awards on a racially discriminatory basis. The Panel was not able to investigate this in any detail; and
- V. Ultimately there were several factors that caused her to leave. These included: the ED HR increasingly being excluded from meetings where her presence was necessary, the practice of having closed meetings where there was no record, the increasing escalation of internal conflict, the unfair treatment of employees, the burden being placed on HR and the increased risk to the UCT by the conduct of the VC and the Chairperson of Council.



***Ms Judith du Toit***

[70] In regard to Du Toit's resignation the Panel makes the following findings:

[71] Ms Judith du Toit ("Du Toit") served as Director in the Office of the VC, first with Price and then Phakeng. She resigned towards the end of 2022, and left in January 2023;

[72] She described Price's leadership style as insightful, strategic, probing, and respectful, and that he allowed, even encouraged, engagement by people and the expression of personal views; Phakeng, on the contrary was far more formal and controlling. She demanded unquestioning support and blind loyalty from those with whom she worked, making her difficult to work with;

[73] She witnessed the VC attacking and bullying her Exco team and the deterioration of its functioning. She observed an increased culture of silence in meetings, which she asserted correctly, was contrary to the ethos of a university where freedom of expression ought to flourish;

[74] Du Toit never contemplated taking early retirement until 2021, when it became evident that the toxic working relationship with the VC and her authoritarian and erratic management style was unlikely to improve;

[75] Her management style included taking advice from an inexperienced Mr Tsotsobe who she had appointed as a high-level Special Advisor, and marginalised Du Toit and others in the VC's Office who had the responsibility for its management;

[76] [REDACTED]  
[REDACTED] This demotivated her to continue to perform at the high standard that she had set for herself and upheld in past years. [REDACTED]  
[REDACTED];

[77] She did not seek help from the Ombud's office because of the risk of the VC finding out. At this point, the Ombud report was out and Phakeng was trying to find the names of the complainants;

- VIII. When she resigned, there was simply no one to turn to, because relationships under Ngonyama's leadership of Council had become so divisive that there was no one she could trust; and
- IX. When she finally left she was not asked by the VC or anyone in HR to explain her reason for taking early retirement, nor was the VC interested in discussing her "*hand-over*" report with her.

### ***The case of Professor Elelwani Ramugondo***

- [71] Among the circumstances surrounding Lange's termination was Ramugondo's role in these events. She is the current DVC: Transformation, Student Affairs and Social Responsiveness, which is a sensitive and complex portfolio. She was appointed in July 2022. She served on both the Pityana and the Ngonyama Councils, the latter since her appointment.
- [72] In 2017, Ramugondo competed with Lange for the position of DVC: Teaching and Learning at UCT. Lange was appointed. Ramugondo contested Lange's appointment on various grounds in court. In her court papers, she pettily accused Lange of misrepresenting her credentials to the Selection Committee, by referring to herself as "*Professor*" instead of adding the prefix "*Associate*". Ramugondo believed that she should have been appointed because she is black, and Lange, a "*white female Argentinian*" whose appointment contravened UCT's own employment equity policy and transformation objectives.
- [73] In UCT's response, it said that the Selection Committee assessed Lange to have direct and relevant experience for the position, while Ramugondo did not. The high court ruled against Ramugondo as did the Supreme Court of Appeal.
- [74] She abandoned an appeal to the Constitutional Court after a Selection Committee recommended her appointment to the current portfolio. The litigation revealed a personal animus against Lange. Its racially loaded content had a negative impact at UCT, and left Lange insecure.
- [75] In the midst of the litigation, on 18 March 2021, Ramugondo posted the following message on social media:

*“You are a line manager of 7 people. 3 resign, 2 become seriously ill, and one of them dies. Another takes his own life. How do you sleep at night? How do you justify the fact that the only one who stays strong is the only one of seven who is white?”.*

[76] Many believed this referred to Lange, including a Council member, Dr Shuaib Manjra, who drew it to the Panel’s attention.

[77] When Ramugondo was interviewed by the Selection Committee for the current position she holds, she was asked whether the message referred to Lange because of its potential impact on their working relationship. She denied it referred to Lange. In her testimony to the Panel, this time under oath, she denied it again. The Panel tested and considered her evidence carefully. It concluded that her denial was untruthful.

[78] This finding put a different gloss on her conduct in Council meetings where she voted against the appointment of an independent panel. She ought to have recused herself because of her personal animosity towards Lange. What is more she supported Lushaba’s racially offensive statements in Council.

[79] The Panel has, therefore, recommended that Council take disciplinary action against her.

### ***The governance failures***

[80] The Panel identified the following governance failures:

- I. Institutions flounder when those who lead and manage them do not have the gravitas, knowledge and experience for the role with which they are entrusted. Had Council, in partnership with Senate in UCT’s dual governance structure, fulfilled its governance role properly, the events that unfolded and emotional trauma to many individuals could have been avoided;
- II. Notwithstanding individual efforts, in the face of clear evidence of the abuse of power by its most senior office bearers, Council failed as a collective to act decisively on this abuse of power. This resulted in an infringement of the fundamental rights of individuals, and eroded the very foundation of a harmonious and equitable learning environment;

- III. The Panel has outlined the failure by both the Pityana and Ngonyama Council's to hold the VC to account and to take the necessary steps to terminate her contract despite the risks that her behavior posed for UCT. They thus failed in their fiduciary duty to act in UCT's best interests. This included, but was not limited to, failing to deal with the complaints against the VC in the Ombud Report.
- IV. Under the Ngonyama Council the governance failures became acute. Not only did a sizeable number of Council members display partiality, bias and fealty to the VC, but Ngonyama began to act as an executive chair, involving herself in management decisions, in violation of the legal and policy framework for the governance of UCT. This included, as Chairperson of RemCom, performing functions that Council had not delegated to RemCom;
- V. Ngonyama began to assume management functions by requiring some senior officials to report directly to her, including Hall and Hoosain. By the end of 2022, when Harrison acted as VC, she observed multiple chains of command, making governance complex and difficult;
- VI. Ngonyama initiated or became responsible for the termination of the contracts of senior executives, including Feris and Lange, and the resignation of Ally; and
- VII. By far the most serious governance failure occurred when Ngonyama and Phakeng mendaciously misled UCT regarding the circumstances of Lange's resignation, and subverted attempts by Council to investigate this.

### ***Breaches of Law and Policy***

[81] The Panel identified the following breaches of law and policy:

- I. Both Lange's and Feris' contracts as DVC were unlawfully terminated;
- II. UCT, acting through its senior officials, the VC and the Deputy Chairperson of Council breached the NDA by publishing defamatory statements of and concerning Lange, following the termination of her contract;
- III. At least four Council members, including the Chairperson of Council, the Deputy Chairperson of Council, the VC and Ramugondo breached UCT's conflict of interest policy by participating and voting in meetings when they were required to recuse themselves;

- IV. Ngonyama and the VC breached Council's Code of Conduct in not adhering to their duty to always act in the best interests of UCT by engaging in disreputable conduct: including failing to act in good faith, honestly, truthfully, and for a proper purpose, and improperly using their positions as Council members to gain an advantage for themselves or someone else;
- V. Phakeng repeatedly conducted herself unprofessionally by engaging in activity that is prohibited in the UCT workplace, including using threats, intimidation, ethnic slurs, personal insults and posting racially offensive material on social media;
- VI. Phakeng suspended Kruger without good cause in breach of labour law and UCT's policies;
- VII. UCT breached Kruger's right to have her grievance against the VC dealt with expeditiously or at all following the VC's defamatory public statements against her;
- VIII. Ramugondo posted racially offensive material referring to Lange on social media and then dishonestly denied that she had done so, first to the Selection Committee which interviewed her, and thereafter when she testified under oath to the Panel. She did so in breach of UCT's policies and of her duty of good faith to UCT;
- IX. UCT, acting through Ngonyama, violated Lange's right to equality and her right not to be unfairly discriminated against on the ground of race. She did so by implicitly threatening that if Lange did not resign, the VC would justify not extending her tenure by advising Council and the Senate that she wished to appoint an African DVC in her place;
- X. Lushaba breached Council's Code of Conduct by using threats, intimidation, ethnic slurs, personal insults and generally conducting himself in a racially intolerable and disruptive manner during Council meetings; and
- XI. Ngonyama, purporting to act on behalf of Council, unlawfully threatened to institute disciplinary proceedings against the Ombud arising from her having publicised the Report containing allegations of bullying against the VC. The publication of these allegations was legally protected as a "*protected disclosure*" within the meaning of the Protected Disclosures Act 26 of 2000.

## ***Recommendations on Governance***

[82] In regard to Governance the Panel makes the following recommendations:

- I. UCT must revert and adhere to the demarcation between Council's responsibility to govern and the VC's duty, as chief executive officer, to provide academic leadership as Chairperson of Senate, and manage the institution on its behalf in accordance with law and policy;
- II. Council collectively is responsible for good order and governance, the mission, financial policy, performance, quality of education and reputation of UCT<sup>1</sup>. UCT should review its Council nomination and selection process to ensure that members of Council meet the requirements of the Higher Education Act 101 of 1997, as well as requirements appropriate for a higher education institution, for good governance as set out in relevant statutes and the King IV Code;
- III. All members of Council must have the requisite skills to fulfil their governance responsibility and be properly inducted. This includes understanding the policies of UCT, how it is governed and Council's Code of Conduct;
- IV. In appointing the VC and DVCs of UCT, Council should review its assessment and selection process to ensure that the candidate has the knowledge and experience for the position and is selected properly. This requires an objective, integrated and professional evaluation process encompassing competency, leadership qualities and personality assessment to ensure that a candidate selected embodies the leadership acumen and personal attributes, in addition to the necessary competency, to lead a globally recognised prestigious university;
- V. Where Council delegates or assigns any of its functions to a structure of UCT in terms of s 12(4) of the IS, as it did with RemCom, the structure must perform these functions strictly in accordance with its delegation or assignment;
- VI. The practice where "*sensitive*" issues were discussed in RemCom meetings, and elsewhere at UCT, in the absence of service officers or other officials, where no proper records were kept, must be stopped forthwith. The failure to keep records undermines accountability and is antithetical to good governance;

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<sup>1</sup> *Guidelines for Good Governance Practice and Governance Indicators for Councils of South African Public Higher Education Institutions, Department of Higher Education and Training, 2017*

- VII. The HR function was degraded and misused by the VC and the Chairperson of Council (Ngonyama) to advance their own interests, instead of UCT's. It was enlisted to terminate the contracts of senior executives unfairly, placing UCT at risk. There were also reports of instances where appointments appear to have been made, and performance awards apparently granted, which were undeserved. The HR Department must function strictly in accordance with good HR practice and protect the interests of both UCT and staff. Proper records must be kept of all important decisions;
- VIII. It became apparent that several Council members did not understand their function or abused their positions. Some may have been appointed for reasons other than to protect the best interests of the UCT. There was not a single instance we are aware of where the Code was enforced against anyone, despite multiple violations. Council must enforce its Code of Conduct against errant members if it is to govern effectively;
- IX. Council is required to implement and enforce all its policies including its anti-bullying policy and its social media policy; and
- X. The Ombud plays a critical role, independently and confidentially, in addressing "...concerns and problems raised by any member of the university community...". In reviewing the terms of reference of the Office of the Ombud, UCT should ensure that its mandate is carefully crafted to avoid interventions in disciplinary processes and grievance procedures.

***The Panel makes the following recommendations regarding specific individuals***

[83] In regard to specific individuals the Panel makes the following recommendations:

- I. Ngonyama's conduct in failing to perform her fiduciary duty to UCT must be reported to the appropriate regulatory authorities. Her conduct, which placed UCT at risk, included, but was not limited to, initiating the termination of Lange's contract without having the authority to do so, misleading Council and the Senate regarding the circumstances of Lange's departure, attending and voting at a Special Council meeting despite having a conflict of interest, and

attempting to prevent the appointment of an independent panel to investigate her conduct by subverting the proper functioning of Council;

- II. Council must institute disciplinary proceedings against Gwangwa for breaching its Code of Conduct by failing to recuse herself from one or more Council meetings in which she had a conflict of interest, and, thereafter ruling that the VC and the Chairperson of Council were entitled to vote on a matter where they were manifestly conflicted, thus demonstrating clear bias or gross incompetence on her part. In the event that she resigns from Council and avoids a disciplinary hearing, her conduct should be reported to the Legal Practice Council by virtue of her being a Director of a Law firm;
- III. UCT must institute disciplinary proceedings against Ramugondo for posting a racially offensive message regarding Lange on social media; untruthfully denying to a Selection Committee, and, to the Panel under oath that the message referred to Lange; and for voting against the appointment of an independent panel when she was clearly conflicted because of her personal animosity towards Lange; and
- IV. Council must institute disciplinary proceedings against Lushaba for violating its Code of Conduct by using racially offensive language in one or more Council meetings.

***The Panel recommends the following remedies for individuals who were wronged by UCT***

[84] In regard to individuals wronged by UCT the Panel makes the following recommendations:

- I. A written public apology must be made to Feris, Ronnie, Ally, Lange, Hoosain, Morar, du Toit and Pillay for the circumstances giving rise to their resignations and commending them for their meritorious service to UCT.
- II. In Lange's case the written public apology must include an apology for the publication of defamatory material of and about her in the media;
- III. A written public apology must be made to Kruger for her unlawful suspension and the publication of defamatory material about her in the media, and commending her for her meritorious service to UCT;



- IV. UCT must publicly commend the previous Ombud, Makamandela-Mguqulwa, for her meritorious service to UCT. In addition she must be compensated in full for the legal costs incurred in respect of the abandoned disciplinary action against her;
- V. A written public apology, published on UCT's website, must be made to the 37 anonymous complainants referred to in the Ombud Report for failing to act on their complaints. In addition, UCT must make available, at its expense, a counselling service for any complainant who experienced bullying by the erstwhile VC;
- VI. Feris and Lange must be compensated in full for the legal expenses incurred to protect their rights;
- VII. Kruger must be compensated in full for the legal expenses she incurred pursuant to her suspension and her grievance against the VC. It is recommended she is paid a financial settlement she negotiated with Hall in May 2022 as part of the ETI initiative, [REDACTED]; and
- VIII. Those Members of Council and Senate who endeavoured to act at all times in the best interests of UCT, including Budlender who resigned from Council after many years of service because of the way the Ombud Report was handled, are commended. Council must write to Budlender, commending her for her service to UCT.

### ***Conclusion***

[85] UCT has been through a difficult period over the past five years. However, there were many courageous people who resisted and defended it from further deterioration. They include members of Council and the Senate. Many testified before the Panel fearing risk of repercussion. What was at stake was not only the future of UCT but the principles of good governance, fairness and non-racialism in one of our leading public institutions. In the end UCT stood its ground, confronted the corrosion of its governance and can now move on by restoring public confidence. The Panel thanks all who contributed to this endeavour.