

UNIVERSITY OF CAPE TOWN



STEERING COMMITTEE MEETING

MINUTE

Date: Tuesday, 18 April 2017

Venue: Mafeje Room, Bremner

Time: 16h00-18h55

Committee Membership

Council (Chair): Siphon Pityana (Chair) and Debbie Budlender (alt)

SRC: Rorisang Moseli (rep) and Nthupula Masipa (alt)

ShackvilleTRC/SRC Candidates: Mlingani Matiwane (rep), Sinxolo Boyi (rep), Sinawo Thambo (alt) and Lindokuhle Patiwe (alt)

Other Student Formations: Thembelihle Ncayiyana (rep) (alt not yet filled)

Deans: Penelope Andrews (rep) and Mills Soko (alt)

Senate: Nicola Illing (rep) and Jeremy Seekings (alt)

Academic Union (AU): Maanda Mulaudzi (rep) and Catherine Hutchings (alt)

HoDs: Hussein Suleman (rep) and Eric Van Steen (alt)

Black Academic Caucus (BAC): Khwezi Mkhize (rep) and Shadreck Chirikure (alt)

EDs: Russell Ally (rep) and position yet to be filled (alt)

Alumni: Nombulelo Magula (rep) Lorna Houston (alt)

Pass Forum: Sonwabo Ngcelwane (rep) and Edwina Brooks (alt)

Employees Union (EU): Andrea Plos (rep) and Samuel Chetty (alt)

NEHAWU: Lindikhaya Payiya (rep) and Noluthano Pawulina (alt)

Non-Recognised Unions: Portia Nyalela (rep) and Linda Maqasha (alt)

Executive: Max Price (VC) and Loretta Feris (DVC Transformation)

Committee Attendance

Apologies

Portia Nyalela (Non-recognised Unions)

Attendees

Sipho Pityana (Council, Chair)

Debbie Budlender (Council)

Loretta Feris (Exec)

Max Price (Executive)

Russell Ally (ED)

Maanda Mulaudzi (AU)

Catherine Hutchings (AU)

Shadrack Chirikure (BAC)

Khwezi Mkhize (BAC)

Penelope Andrews (Deans)

Lorna Houston (Alumni)

Nicola Illing (Senate)

Jeremy Seekings (Senate)

Edwina Brooks (PASS Forum)

Samuel Chetty (EU)

Andrea Plos (EU)

Lindokuhle Patiwe (ShackvilleTRC)

Simon Rakei (ShackvilleTRC)

Sinoxolo Boyi (ShackvilleTRC)

Sinawo Mambo (Shackville TRC)

Tembelihle Ncayiyana – Other Student Formations

Rorisang Moseli (SRC)

Bulie Magula (Alumni) – connected electronically

Hussein Suleman (HoDs. rep.)

Eric Van Steen (HoDs, alt.)

1. WELCOME AND APOLOGIES

The chair welcomed members of the Committee. Apologies were noted from Portia Nyalela. Nombulelo Magula was connected via livestreaming and was invited to call in with comments to Lorna Houston.

2. APPROVAL OF THE MINUTES OF

The revised minute of 26 January 2017 was moved for approval by Penny Andrews and seconded by Nicola Illing. The minute of 23 February 2017 was moved for approval by Nicola Illing and seconded by Jeremy Seekings.

3. MATTERS ARISING

3.1 Representation of Pay Class 2 – non-unionised groupings

Sinoxolo Boyi requested clarification from the Executive as to why heads of unions were not balloted to elect a representative of the non-recognised unions as proposed. He sought further clarification on the process followed to hold a direct ballot of Pay class 2 staff.

Loretta Feris explained that there was difficulty with working with union groups for balloting purposes (ref.: Minute 23 February 2017, p.2, para. 8) in that NEHAWU was already represented due to having bargaining rights. The rest of the unions were still in negotiations for bargaining rights. HR advised that for this reason it would not be viable to convene union heads because of the contested nature of the space due to the fact that Unions were still in the process of mobilising for membership. It is for this reason that the proposal (ref.: Minute 23 February 2017, p. 3, para.1) to facilitate a direct ballot with Pay class 2 workers was implemented.

Sinoxolo Boyi responded that the explanation sufficed.

Loretta Feris reported that two meetings were held in the previous week to elect representatives. Two members were elected. Linda Maqasha was present at the meeting.

The Chair congratulated and welcomed Linda Maqasha to the meeting. He also thanked the Steering Committee drafting subcommittee for the preparatory work. He thanked all the constituencies for their submission.

3.1 (a) Provisional Terms of reference for IRTC

Nicola Illing reported that three of the six members were able to attend the rescheduled meeting of the sub-committee on 13 April 2017. She reported that Samuel Chetty and Thembelihle Ncayiyana were in attendance and apologised for not being able to pronounce Thembelihle's surname. She noted that Sinoxolo Boyi tendered his apology. Max Price attended the meeting and requested to participate as an observer. Given that only three members were present, the meeting agreed that Max Price could participate. She further explained that the Sub Committee considered the Terms of Reference (TOR) circulated by Judy Favish, Senate's comments on this as well as the BAC statement and Alumni's two documents. The Sub Committee tried to come up with a consensus document. She also requested further clarification from the Committee as to how to deal with Khwezi Mkhize's submission (Attachment 3 (b)) which arrived after the sub-committee meeting.

Lorna Houston raised a point of order on the comment that the previous speaker could not say Thembelihle's surname. She requested that the Chair be more mindful about these matters.

Nicola Illing apologised to Thembelihle and expressed a willingness learn how to pronounce her surname correctly.

Jeremy Seekings inquired as to why the Vice Chancellor attended. He indicated that the Executive had been very heedful of the perception that it was driving the processes and very respectful of constituencies involved. The Vice Chancellor was not an elected member of the sub-committee and therefore it was not appropriate for him to be present.

Max Price explained that he had read all submissions and felt that they raised points that he wanted the sub-committee to consider. He approached the sub-committee to be either an observer or participant since upon his

review of the minute he did not understand that it was exclusive but rather was established for purposes of efficiently synthesizing all input received.

Nicola Illing explained how the submissions were incorporated into the final draft.

The Chair invited other members of the Sub Committee to comment.

Samuel Chetty confirmed that in his view the essence of all submissions were captured in the sub-committee draft and that the draft was aligned to the original Agreement.

The Chair thanked the Sub Committee and then proceeded to open the discussion.

Thembelihle Ncayiyana raised a concern that so few submissions were made. In her case she felt that people did not identify with the process and on that basis was unwilling to engage.

The Chair noted the comment.

Khwezi Mkhize said that it was important to note where the draft TOR is coming from and that it does not include students' inputs.

The Chair questioned the validity of that statement stating that the original TOR in the Agreement came from student involvement. He stated that although in this round we did not have student input the Agreement involved students.

Sinoxolo Boy cautioned that the process is moving too fast and was out of touch with students. He reminded the Steering Committee that he had cautioned against the dates set given the study cycles. The occupation, mid-term tests, and SRC elections (which would run until the first or second week of May) had made it difficult for students to make submission. He stated that the student-led movement was in favour of the submissions made by the Alumni and the BAC but these have not been fully reflected in the sub-committee's draft. Students would like to own the process and therefore requested a postponement to make submissions. He cautioned that favouring operational issues (timelines etc.) over substantive issues (involvement of students) would delegitimise the entire process which in future could lead to more student protests.

The Chair confirmed that the missing input from students was critical. He asked the Committee to consider the request for a postponement given the strong motivations made. He advocated for full debate on the matter and invited constituents to express their views on the extent to which they felt their feedback was accommodated in the draft TOR.

Lorna Houston raised a concern about point 4 in the sub-committee's draft TOR. She referred to the judgement of the Concourt in the matter of Hotz vs UCT as well as the Constitutional right to engage in peaceful protests. In her view, point 4 which speaks to the need for 'boundaries of legitimate protest' is one that is determined by law and cannot be determined by the IRTC.

Penny Andrews disagreed with Lorna Houston regarding the constitutional court's judgement on the limits of lawful protest. She emphasized that the court in its decision explained in clear terms the limits of lawful protest, and in fact mandated that UCT take appropriate steps against those students who had engaged in unlawful protest.

Khwezi Mkhize repeated the concerns raised by Sinoxolo Boyi and Thembelihle Ncayiyana regarding how the current draft of the TOR was verbatim from Senate. He requested that this view be confirmed by Nicola Illing and Jeremy Seekings.

Nicola Illing confirmed that the sub-committee considered the original Agreement, the draft that was circulated by Judy Favish and then used the Senate document as the backbone from which to work. Given that the Alumni document was very long, the document circulated by Judy Favish was regarded as a sensible place to start.

Khwezi Mhize questioned the rationale for framing Point 4; 'the boundaries of legitimate protests'. He felt that within the terrain of struggle things will change and that it was problematic to fix boundaries of protests. He called for the expunging of clause 4. He felt that it was important for the TOR also to articulate clearly what is meant by decolonization and transformation.

Judy Favish clarified that the initial draft came from the minute of the first meeting of the Steering Committee. Since several objections were raised it was subsequently agreed to reconvene a special Steering Committee meeting to have a discussion on the TOR as well as the clear up inaccuracies in the minute. The Senate document then used this draft TOR as a basis for their input.

Jeremy Seekings questioned why the IRTC, which would be considering behaviour, should not also consider what the boundaries of legitimate behaviour should be.

Khwezi Mkhize objected to how Jeremy Seekings pronounced his name.

The Chair stated that it was offensive to mispronounce names.

Jeremy Seekings apologised to Khwezi Mkhize and to everyone else also noting that his own name was routinely mispronounced at the University.

The Chair ruled that since both Nicola Illing and Jeremy Seekings apologised and requested assistance in this regard, their request was fair.

Khwezi Mkhize objected that Jeremy Seekings was permitted to continue to speak after he objected to the pronunciation of his name.

The Chair ruled that it was protocol to give the person holding the floor the opportunity to have their say.

Khwezi Mkhize accepted the apology offered by Jeremy Seekings while pointing out that greater sensitivity needed to prevail especially after the matter was initially raised by Lorna Houston.

The Chair recommended to the Steering Committee that it might want to spend some time becoming acquainted with one another's names and that this could be done by way of a round of introductions.

Rorisang Moseli raised a concern that it is tantamount to asking Black people to teach others; to perform for white people. In this way Black people are required to make certain concessions. So if we do that, we need to be aware of the implications that such an action could spill into other concerns.

Russel Ally redirected the attention of the meeting to Sinxolo Boyi's earlier point that the current pace was disadvantaging students and he supported the proposal to postpone the discussion.

The Chair indicated that Sinxolo Boyi's request for a postponement would be addressed. Returning to the issue (point 4 of the Sub Committee's draft; 'boundaries of legitimate protests') he guided that the provenance of this matter was less important than the substance even though it referred to an issue of power dynamics. He noted that this was an issue throughout the country. He further indicated that over a year was spent on conversations between business and labour about protest action in Marikana and other strikes in the country, which manifested in ways that seemed outside the law. People with legitimate grievances were exposed to heavy-handed action by police who were not competent to handle the issue.

He further stated that it was important in adversarial spaces to be able to show one's unhappiness and we (university community) need to define how that happens in an acceptable manner. It (the university) needs to decide on the remit of management when unacceptable forms of protests occur. He indicated that this was a realm that was unfamiliar to many and hence a conversation that the university could not escape.

He further stated that this conversation was not particular to UCT given that although we have the right to protest, it is not well-articulated how this can be exercised in the framework of the law. It is better to have a conversation than to have management and experts draft something.

The Chair requested clarity if the Steering Committee had a difficulty with the formulation (of point 4), the fact that it is being discussed or whether it should rather be raised in another forum.

Thembelihle Ncayiyana raised a concern that Senate and UCT already took the initiative to draw up a set of rules. These rules were already going to be in effect by the time the IRTC came into operation. She queried whether it would be possible to change those rules. She questioned whether it was worth consulting on this matter as one constituency acted without consulting other constituencies representing a lack of good faith. She advised that the

rules should come to a joint platform like the Steering Committee. It would appear that rules were created to protect the institution from protesting students.

The Chair observed that there was a huge trust deficit in the environment notwithstanding the rules. The rules could be put aside. The proposal was for independent Commissioners to be appointed as mediators who would enjoy the confidence of the constituencies. During this process workers, students, and faculty views would be heard. They would assist with shaping those rules. He further committed that there will be no decision on the part of Council on this matter until it had come through the Steering Committee process.

Khwezi Mkhize impressed upon the Committee the fact that what led to the Agreement was the radical stance taken on the part of students yet the language the Steering Committee was using was more liberal with reference to laws and legalities. This was giving rise to tension as witnessed in the recent occupation.

Maanda Maluadzi stated that point 4 of the draft TOR submitted by the sub-committee needed further discussion. From the AU and EU point of view, the TOR should include Point 4 with the view of reaching consensus within the community.

Samuel Chetty relayed the experience of staff that were left to fend for themselves in a context where management could not guarantee their safety. As a result the staff raised a dispute through the Commission for Conciliation, Mediation and Arbitration (CMA). To this end it was necessary to include point 4 in the TOR and thereby allow staff to make submissions to the Commissioners.

Simon Rakei was of the view that Senate wanted to define the bounds of protests with a view to 'cracking down' on protests. This was the intention of point 4 and was being done in bad faith. To ignore this (intention) would be disingenuous.

Hussein Suleman felt that it was important to stick to the original Agreement and therefore proposed that any additions be excluded.

The Chair questioned whether this suggested that the decision to send the draft to the different constituencies meant that they were not allowed to add items. The issues affected the entire university community and the additions could therefore not simply be taken out.

Hussein Suleman expressed his concern about the continuous expansion of the TOR.

The Chair reminded the Committee that the original Agreement involved students and management and therefore a decision was taken to invite other constituencies to make additional suggestions.

Sinoxolo Boyi argued that with reference to point 2 of the sub-committee's draft, whatever additions were made should be to mature and promote the spirit of the Agreement. To state that clemencies could be revoked collapsed the agreement as Council stated that it would either be clemency or full amnesty. He reiterated that students know the boundaries of legitimate protests but were pushed to exceed those bounds. Reiterating the rules was thus redundant.

The Chair ruled that the Steering Committee (SC) was not in agreement with the draft TOR and that while discussion was encouraged the SC also needed to reach conclusion on this. He stressed the importance of inclusivity and was willing to open up the discussion on the extended time required to achieve this.

Edwina Brooks suggested that point 4 was possibly covered by point 1. Point 1 speaks to investigating facts around the protests. This investigation would come up with points as to what was considered legitimate. Point 4 makes the point that there were possibly illegitimate protests.

Nicola Illing indicated that p. 2 (point c) of the Agreement was referred to in Point 4 of the sub-committee draft.

Russel Ally was of the view that the revised TOR was not in the spirit of the TOR in the original Agreement. Issues of clemency and amnesty were mentioned but nothing about revoking amnesty. Since the revised TOR was not in the spirit of the Agreement, every clause was becoming suspect. He expressed concerns about how the process was unfolding given that students did not have the chance to review the Sub Com's draft.

Jeremy Seekings spoke to the fact that there were thirteen signatories to the Agreement. The process currently underway was to ensure broad-based support across all constituencies. The Agreement was the starting point. It was clear from discussions that there was no consistency on legitimacy and the management of protests. Each case where clemency was granted would need to be examined to see how the university should deal with this in the future.

Lindokuhle Patiwe was of the view that Senate was determined to include point 4 while this was being rejected by other constituencies. The Commissioners would need to hear the views of all people. The Commissioners would look at legitimate protests in line with the Constitution. The university may use the laws of the land when students transgress.

Simon Rakei shared the view that the sub-committee did not understand the whole IRTC process. If it wants UCT to enforce the laws of the land then a Senate meeting can be called for this purpose. He observed that particular concerns were coming from parties with particular interests. The 'right wing' felt that they were not consulted. The SC should not be subjected to what UCT was in 1980 when colonial standards prevailed. It was not for the IRTC to discuss legitimate forms of protests.

In the interests of moving forward, Penny Andrews suggested that the elimination of point 4 did not mean that the issues could not be discussed under point 1.

Judy Favish shared that in her experience when one started to flesh out the TOR from the Agreement various ideological contestations emerged. She suggested that the SC might want to stick to a very broad TOR and allow the Commissioners to flesh them out. The other option was for the subcommittee to allow students further time. The Alumni submission had many rich elements but it did not seem to fit into the current framework that was being used.

Max Price addressed the perception of negotiating in bad faith on the boundaries of legitimate protest. He explained that this issue arose from the Rhodes-Must-Fall movement's members on Council and elsewhere who requested guidelines on the use of private security and police on campus. A joint task team was set up between Council and the IF. He reported that while a great deal of discussion occurred on the 'boundaries of legitimate protests' in terms of the law, grey areas persisted. For example, it was clear that violent protests and arson were not permitted but there is a lack of clarity about for example a protest that impedes access to an exam venue and prevents students from writing. He further indicated that these are not covered by the law, courts or the Constitution. He suggested that instead of the task team submitting to Council it could rather submit to the IRTC and in that way, open the topic for more comments on how we are to respond to protests and when it would be appropriate to bring on private security, the police and look at other ways of managing it. Council could then consider the recommendations that emerge from the IRTC process.

Thembelihle Ncayiyana emphasised that students required more time and without student buy-in more protests were likely from various student formations.

Sinoxolo Boyi raised problems in respect of points 2 and 4 of the sub-committee's draft. He, in consultation with student formations, felt that the revised TOR was toned down. The students needed more time to consult and requested a reasonable postponement of the process in order to do so.

Lorna Houston noted that the Steering Committee was unlike other Committees at UCT. Its members were part of a greater process and as such more ownership of the process needed to be demonstrated. In this regard more trust needed to be built in an effort to find meeting points.

Sipho Pityana confirmed the view that agreement was highly unlikely. The heart of the issue was the lack of trust and therefore, as proposed by the Agreement, an external group of people would need to facilitate this process. The Commissioners, he proposed, might serve this process better than he was able to at present. The Commissioners could look at the submissions received.

Sinoxolo Boyi felt that although the constituents might not come to full agreement on all the clauses of the TOR they were likely to agree on some minimum TOR. The constituents could then submit further additions to the TOR to the Commissioners. He proposed that students be given until mid-May. The list of Commissioners agreed by Management and Shackville TRC could meanwhile be publicised so that everyone could say if they agreed as well

as make additional suggestions. Management could forward to the proposed Commissioners the original Agreement and the minutes of the SC.

The Chair cautioned that the sub-committee that was established had drafted criteria for Commissioners and processes. The suggestion to run a process for selecting Commissioners based on what existed before was not feasible. The SC has to agree on the principles and characteristics it wants for Commissioners.

Sinoxolo Boyi felt that it would be possible to reach consensus on criteria.

Simon Rakei pointed out that in addition to the criteria which were suggested; individual constituencies had room to nominate so appointments could occur without criteria.

Lindokuhle Patiwe supported the proposal that more time be given for students to make submissions. The Sub Com was seen as having tampered with the original Agreement and there should be limits of what could be changed. The proposal was thus for the initial TOR in the Agreement to remain and that people could add and there could be further additions from the Commissioners.

Sipho Pityana supported that extra time be granted to consider the TOR until the second week in May. He invited views on the proposal made that the constituents proceed with identifying Commissioners starting with the three who were suggested before

Lindokuhle Patiwe stated that he agreed with the first part of the motion but not the second part. He proposed that people put forward nominations and explain the criteria used to arrive at that nomination. Then at the next meeting the SC would agree on the criteria and then decide which of the proposed Commissioners met the agreed Criteria.

Maanda Malaudzi expressed reservations about splitting the process – that is that the TOR be concluded at a later session but that the nomination of Commissioners proceed without the criteria being agreed upon. He was of the view that this might give rise to the same feelings which students were currently experiencing – that of merely going along with an ongoing process. He also enquired specifically from students what they were going to address within the additional time. He proposed that if an extension was to be considered that the two issues rather not be split.

Sipho Pityana confirmed that the SC was in agreement to extend the timeframe for further input.

Lorna Houston indicated that she had expected to present the Alumni document at the SC meeting and felt that the sub-committee draft was extremely skewed. In her view the Sub Committee ended up reducing the Alumni input because the members came from a particular perspective and because others were not present. She felt that there was a need for more people to participate. She suggested that a facilitated session with the full SC would help the constituents work through the TOR so that some agreement (if not consensus) was reached.

Thembelihle Ncayiya stated that a few hours during the week were insufficient and proposed that a Saturday could work better.

Simon Rakei supported the idea of having a facilitator and also proposed that the SC has an additional chair (Co-chair).

Sipho Pityana endorsed the idea of a facilitator and did not oppose the idea of an additional Chair for the Steering Committee.

Sinoxolo Boyi accepted the proposal to have a facilitated session but corrected that it should be held with the entire Steering Committee and not the Sub Committee. He understood that during the period of extension management would approach the proposed Commissioners to check on their availability but not say that they had been appointed.

Sipho Pityana restated the need for an extension. The right criteria could not be decided if the TOR had not been agreed to. He perceived that the main issue was the lack of trust amongst constituencies and suspicion of management. He felt that an external facilitator was required and raised the question about how this person should be chosen.

Rorisang Moseli explained that it was the task of the Steering Committee to formulate TOR and that a facilitator was required to do this as it solved the issue of positionality. He questioned the utility of having a Co-chair.

Simon Rakei felt that it was not appropriate for an external party to make decisions on behalf of the Steering Committee and that a Co-Chair could assist in this regard.

Lorna Houston said that the Steering Committee had a life beyond the decision on the TOR and that what she meant by a facilitator was someone who could help the Steering Committee do the process another way. Despite the differences the members were required to come up with something that they could agree upon. Agreement did not necessarily mean consensus – it meant engaging in a give and take process and being prepared to be reasonable. The facilitator would have the skill to assist with this and would not make decisions.

Sipho Pityana said he was willing for a Co-Chair to be appointed for the SC if it would help the process. He was also willing to have a facilitator if it would help. He felt that what was most important was to have a process that enjoyed the confidence of all the stakeholders. So perhaps the facilitator could facilitate the discussion on a Co-chair as well.

Nicola Illing felt that the facilitator would address issues of mistrust. Nicci observed that it was problematic if all suggestions from the Senate representatives were viewed with suspicion, irrespective of their merit. Nicci felt that the facilitator would help address issues of mistrust

Lindokuhle Patiwe was of the view that a Chair was required for the Sub Committee and a Co-Chair was needed for the Steering Committee to assist the Chair. He was not sure if this was going to be one person.

Max Price clarified that Lorna Houston was saying that a day-long workshop of full Steering Committee was required with at least one member of each constituency present in order to work towards agreement of the TOR's. He suggested that the facilitator look at submissions before the time.

Russell Ally suggested that Nomfundo Walaza be asked to facilitate as she was familiar with the context and enjoyed trust.

Sipho Pityana thanked all the members for their co-operation and assistance.

The meeting closed at 6:55pm.

Approved:.....

Chair:.....

Note: The minute will be tabled for approval at the next sitting scheduled for the first week of August 2017.