MESSAGE FROM THE OMBUD

This is my second last report as Ombud at UCT. It is not a good news report. Instead, in line with the tenets of the ombuds' approach in terms of feedback, it is an honest reflection on my experiences within the reporting period.

In previous reports I have expressed appreciation for the university's decision to have an ombuds office and to entrust me with the task of ensuring fairness, equity of treatment, safety and justice. I have personally seen the office taking its place in the University business over the years and have been humbled and encouraged by the cooperation I have enjoyed from many of its citizens at various levels. By the third year, this success led to the request to UCT by the office of the Minister of Higher Education that UCT's ombud office assist other universities to set up ombuds offices.

In part, this request spoke to what was working at UCT. It also showed the growing acceptance that the idea of an ombud is attractive and worth spreading across the sector to promote ethical standards and innovative methods of conflict resolution in line with the general rules of operation. It also indicated recognition that an ombuds office can help to identify sources of problems that may hinder the proper functioning of universities. In another reflection of the appreciation of this office, three former senior UCT staff members who left UCT and are now Vice Chancellors elsewhere, as soon as they were settled in their respective institutions, all three of them contacted me about establishing an office of the ombud in their institutions.

In the 2018 report, I wrote, "I am grateful to all my visitors, since it is their stories and experiences that give me information on what needs fixing, unfairness, inaction and actions by the university". I added that I equally appreciate the openness of the university members in leadership or management positions to help deal with emerging issues effectively. I wrote

that I find the University of Cape Town forward thinking and mature in allowing for this kind of scrutiny and vulnerability.

Fast forward to the current reporting period, 1 July 2018 to 30 June 2019, and the above situation changed dramatically. The scrutiny and feedback no longer seemed welcome, at least from the highest office at UCT. It seems that I was naïve to assume that there would be cooperation and continuity from the new administration, given that its executive was largely drawn from within the university.

The office of the Vice Chancellor, Deans and Executive Directors (not excluding other senior members of staff) are important offices for the success of my office. Not only do they sometimes make decisions or calls of judgement that appear to be unfair, which lead to complaints to my office, they are also the people I often go back to with recommendations on how I think a particular issue could have been handled and why. The nature of my feedback and approach, in line with an organisational ombuds approach, has been to meet and engage, explain what I see as unfair or unreasonable in the decision taken, and discuss how it can be remedied. Sometimes this leads to changes in policy or in a process that was followed. In the past I generally appreciated these engagements because they fostered careful thinking on my part and engendered respect and legitimacy for my office and its unique role on campus.

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

I have said in the past that ombudsing is not opposed to formal justice systems as an available option to anyone. However best practice for most universities shows that

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procedural justice, a sense of fairness and interest in avoiding expending university resources in legal fees, time and public reputation, are generally the most viable option. Besides, not many university students can afford litigation costs.

During this reporting period a number of work-related complaints came to me about professional interactions with the VC where people felt bullied, silenced, undermined, rebuked and/or treated unfairly. Their pain was visible. Some affected bystanders also came to express fear and told me how they were impacted individually by different incidents. My usual approach is to be guided by the visitor on what they want to achieve by bringing the issue to my attention. Not one of those who brought these issues wanted me to approach the VC as they feared retaliation. The bystanders said they would not want to experience what they saw first-hand happen to others. What concerned me was how 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 chiefly on the visitors' own well-being, their capacity to deliver in terms of working conditions, and the general expectations of human dignity, respect, fairness, social justice upon which the university values are based as also enshrined in the Constitution.

A quote from the UCT Values states: *"To refrain from speech or conduct that demeans or humiliates others"*. Many of the UCT-based visitors told me that this was not their experience with the VC. They reported that she used words that were experienced as combative and violent – such as "fighting in a ring" and that she, as the VC, would ultimately "win while the other is destined to lose". Knowing this was unfolding, I became increasingly concerned about a number of things, including the bullying policy that the university has not yet finalised, and the myriad of UCT communications that speak about UCT being a community.

I see these communications as using the word "community" in a false and inauthentic way. Communities are built, they are not created automatically wherever there is a group of people with a common mandate. The experiences highlighted here do not happen and go unchecked in real communities, especially not in the healthy ones. Politeness and acting as if "everything is fine" creates an illusion that is difficult to sustain since it is a false reality. Deluding oneself about what is true grows into a culture of not questioning things. The visitors said that their compelling commitment to the university was what kept them going

despite these experiences. I doubt this will be sufficient in the long run. Where there are undiscussables, problems persist and worsen. The need for genuine feedback to achieve true collaboration is painfully apparent.

An occurrence that took place late in 2019 and is therefore outside this reporting period, but which I think reflects the current executive's seeming aim to silence, erase my office or change its mandate was the request to explain the interface between my role and academic decisions. Drawing from the Terms of Reference of the office, the job description and how the work should be done, I explained my role at UCT. It became apparent that the Executive did not understand the role of the Ombud, that they had not been reading the reports, or that they wanted to recreate the role in a manner that did not interfere with academic decisions. I am the first to respect the autonomy of the academics to do their work, but when personal motivations lead to unfair processes and outcomes, people will complain, and I have to respond. UCT is not a retail enterprise, but an academic institution in which a large number of the complaints are bound to be academic in their nature. Ombuds in retail, for example, intervene in sales-related problems.

Even though the ombuds office at the University of Cape Town is an office of Council and reports to the Chairperson of Council, it functions, although independently, in collaboration with the members of the university. Negative remarks from the VC about my office concern me on several levels. Among others, I wonder how these views might impact the University's capacity to deliver on fair outcomes where her office is involved as well as potential watering down of my effectiveness and the gains of the office over the years.

I have also felt that when views are not accepted, this non-acceptance sometimes has less to do with the validity of the point of view offered than with a readiness to deal with alternative viewpoints or a resistance to being seen as having failed or missed key considerations in evaluating an issue.

Yet my office does not judge, a point that I reiterate every time I engage with members of the University. Engaging with respect and suspending judgement are among the main characteristics of my office. These characteristics apply across the board in my engagement, whether you are the person initiating a complaint or the person complained about. Yes, the role involves giving feedback that the recipient may not be ready for. However, it should not

be perceived as threatening – especially given that the office of the Ombud has no formal powers to apply sanctions – and hence there is no need to behave defensively to avoid a threat, embarrassment or anything else associated with being "wrong". I am aware that feedback from my office may lead to looking at what was previously seen as a "closed" issue yet again in the light of my recommendations. This may require suspending the basic notions about ourselves and who we are. I will be the first to say that is a frightening proposition to the ego.

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

I have at times worried that the views of the Executive might influence how other members of the University engage with my office. However, except for push-back from some Deans, commitment to help deliver fair outcomes across the university is growing, and, in Elie Wiesel's words "There is much to be done, there is much that can be done"[1].

To love and hate the Ombud at the same time is an understandable and sometimes valid emotional response. However, respect for the office and its work is not negotiable in the light of the Office's legitimate function and how it relates to the work members of the university do. I would be concerned if senior members of the University loved me (all the time). My primary focus has never been to create friendships. Instead, I have endeavoured to establish, at the least, functional independent relationships.

I do not need enemies either, at least not permanent ones. Instead, I wish there was enough love and trust amongst the Executive itself and other colleagues and teams across units and departments to ease the University's delivery on the academic project which is at its core. In their paper, "From chaos to community at work", Joel and Michelle Levey wrote "Just as prejudice, hatred, and violence spring naturally from a turbulent and undisciplined mind,

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[1] Elie Wiesel, acceptance speech on the occasion of the award of the Nobel Peace Prize in Oslo, 10 December 1986 https://www.nobelprize.org/nobel_prizes/peace/laureates/1986/wiesel-acceptance_en.html.

love, and compassion spring naturally from a mind that has been tamed and is able to be really present with others" (1995).

Reporting to the Chair of Council and the independence of the office of the Ombud are liberating factors. I am also grateful that Council took a resolution to appoint an Associate Ombud to help with the workload and to focus primarily in the faculties that are far from the geographical centre of the university, namely the Health Sciences, Graduate School of Business and Hiddingh. To a certain degree, I am grateful for the emergence of a difficult working relationship with some members of the Executive. It presented me with an opportunity to learn more about trust, conflict resolution, ombudsing, leadership and, most importantly, about myself. The latter will be one of the many take-aways for me from this role at the end of the year.

In this report I wish to recognise the support of the outgoing members of the current Council. My express gratitude goes to the outgoing Chairperson and my line manager, Mr Sipho Pityana, and the outgoing Deputy Chairperson, Ms Debbie Budlender, for their wise counsel, guidance, leadership and respect for the independence of the role of my office in all our interactions. "Ndiyabulela".

Submitted with respect,

Zetu Makamandela-Mguqulwa

Introduction

The overall task of the Ombud is to be a resource for dispute resolution, to protect the interests and rights of the members of the university community from injustices and inefficiencies, delays and complication or unfair application of the university rules, interpersonal conflicts and help explain university policies, where appropriate.

While there are other offices that deal with disagreements, and ideally speaking, the best place to resolve any conflict is exactly where it occurred, the Ombud is unique in the sense that the office has characteristics of Independence and Confidentiality and works outside of formal structures of the university. The power of the office rests upon its reputation for fairness and respectful concern for all university members, both the one who initiates a complaint and the respondent. With its broad view of what does not work at the university, the Ombud may make recommendations for changes in policy, practices and procedures where appropriate. (The full Terms of Reference can be found at http://www.ombud.uct.ac.za/omb/tor)

Universities, like many other organisations, sometimes fail to manage conflicts effectively, yet conflict can potentially be a valuable tool for change and learning. Universities navigate many challenges with limited capacity to manage interpersonal conflicts. Left alone, whether consciously or unconsciously, conflict tends to fester over time and affect the ability to cooperate and work relations in general. Gaps emerge, uncertainty grows and impasses become difficult to overcome.

Conflict management should be a skill set for any person responsible for other people in a work relationship. There is increased awareness of the general cost and effects of poorly managed conflict in the workplace. This is the cost that can usually be reduced in any organisation. Workplace conflict contributes to mental health complications, absenteeism and presenteeism, unduly high legal costs, high turnover rates and waste of time of managers spent in trying to resolve the problem. When there is competency in dealing with conflict, it will not be necessary for the Ombud to rush off to act in the face of a harrowing tale. I have in this reporting period exercised the ability both to fight some fires and in other cases watch those responsible deal with them.

Overview of statistics

This year, the total number of people who visited the office is 663 compared to 658 from the previous report. The gender split is more or less balanced, with 316 male visitors, 344 females and 3 visitors self-identified as MX. In resolving the issues that were brought to the office, the Ombud made contact with 773 other people. We conducted a number of presentations with a total audience of 453 participants.

The numbers are not a complete reflection of what does not work well at UCT pertaining to any particular issue but I hope that the Ombud interactions help to improve the university experience. Not all people with the same problem would come to the Ombud. There are many other avenues that are available to assist and where they work they should be commended. A standard question I ask in my office is where else the visitor took the issue and was not assisted.

The people who approach the offices seek different types of assistance. Some people bring issues whose resolution involves some form of informal investigation to understand the issue fully. This may involve one or more people and then a resolution is sometimes found, and sometimes not. Where there are other respondents to contact, the issue is logged as a "C" for consultation. Other visitors make contact just to clarify a point or seek information on the fairness of a decision or application of policy when in doubt. We count this as "I" since we have provided information only.

When we have routine meetings with members of staff who contact the office to test the views they have on an issue or who want an objective view or are invited to give feedback on a matter where their offices were involved, I still use "I" for these meetings since these members of staff are not responding to any issue in which they have been implicated and which I have approached them about like typical respondents do.
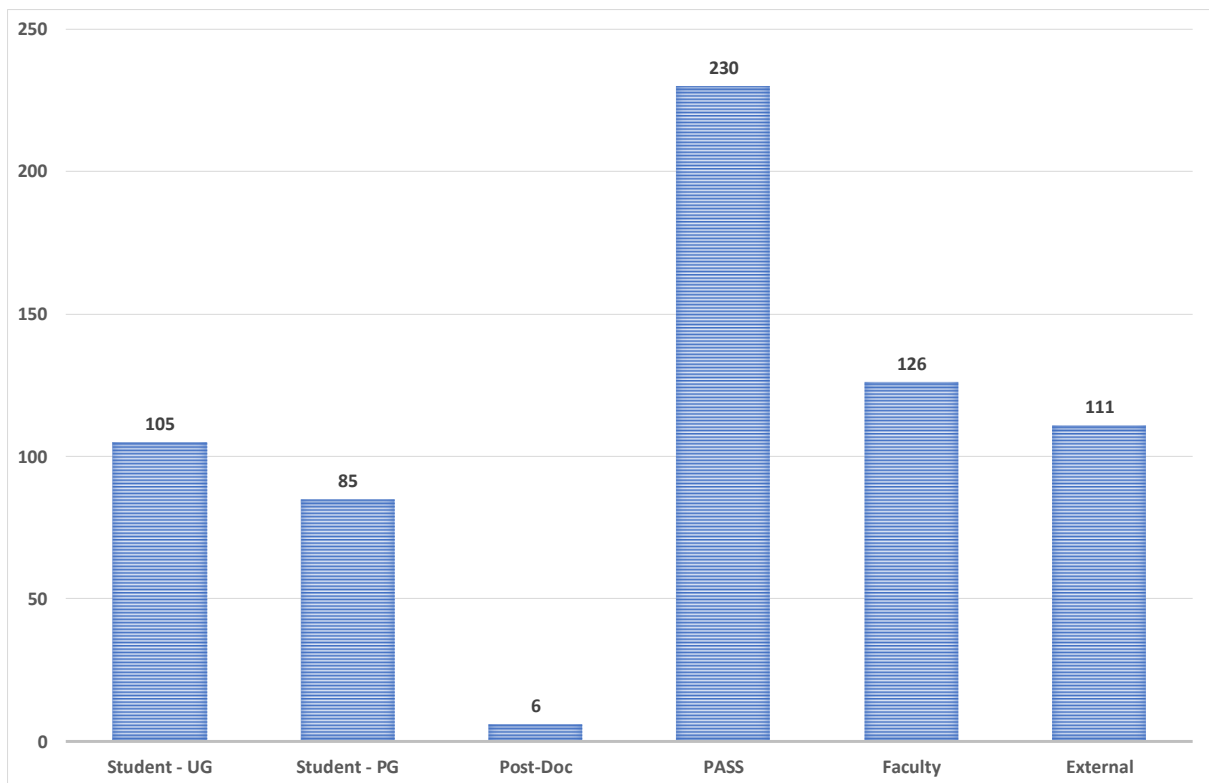
Graph 1: Visitors by Constituency

PASS staff members, just like in previous years, were the most regular visitors in this period at 230. This is significantly less than the 280 who came in 2018. There is a sharp rise in the number of academics, from 77 in 2018 to 126 in this period. Similarly, there were more external visitors in this period than in the previous period. Undergraduate student visitors showed a decline of 75. Postgraduate students were 65 in the previous reporting period and they are at 85 this year. This year, Postdocs are a stand-alone group, while previously we included them in the Postgrads since only 2 people came.
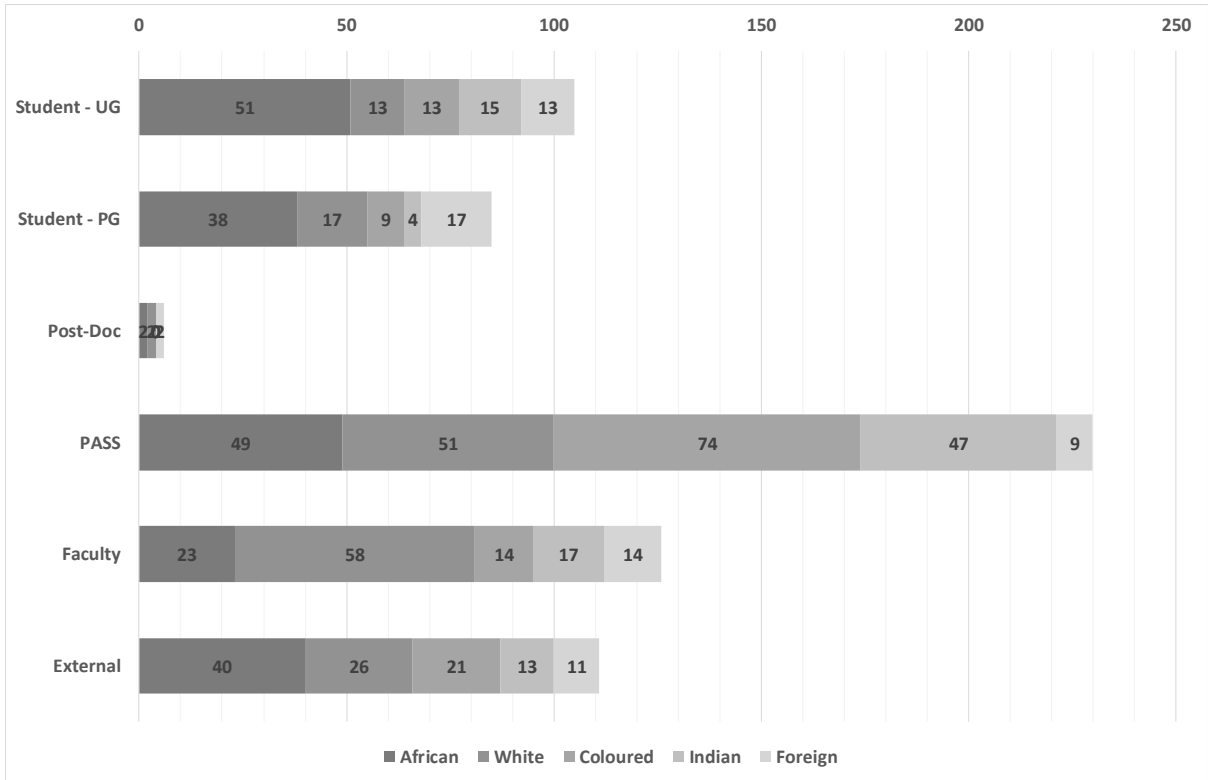
Graph 2: Visitor Constituency by Race

Above is the race breakdown for the different constituencies in the reporting period. The 663 visitors brought a total of 1866 issues. While the total number of visitors increased by only 5 between 2018 and 2019, this small increase brought an overall increase of 414 issues.

IOA Issues Category:	Number	Percentage
Compensations and Benefits: Questions, concerns, issues or inquiries about the equity, appropriateness and competiveness of employee compensation, benefits and other benefit programs.	99	5.3%
Evaluative Relationships: Questions, concerns, issues or inquiries arising between people in relationships (i.e. super-employee, faculty-student, colleague-colleague, student-student)	213	11.4%
Peer and Colleague Relationships: Questions, concerns, issues or inquiries arising between people in relationships (e.g. manager-employee, supervisor-student, faculty-student, faculty-PASS, faculty/PASS-outsourced, colleague-colleague, student-student)	153	8.2"St%
Career Progression and Development Questions, concerns, issues or inquiries about administrative processes and decisions regarding entering and leaving a job, what it entails, (i.e. recruitment, nature and place of assignment, job security and separation).	200	10.7%
Legal, Regulatory, Financial, and Compliance: Questions, concerns, issues or inquiries that may create a legal risk (financial, sanction, etc.) for the organization or its members if not addressed, including issues related to waste, fraud or abuse.	265	14.2%
Safety, Health, and Physical Environment: Questions, concerns, issues or inquiries about safety, health and infrastructure –related issues.	219	11.7%
Services/Administration Issues: Questions, concerns, issues or inquiries about services or administrative offices including from external parties.	303	16.7%
Organisational, Strategic, and Mission Related: Questions, concerns, issues or inquiries that relate to the whole or some part of an organization.	206	11.1%
Values, Ethics, and Standards:	208	11.14%

| Questions, concerns, issues or inquiries about the fairness or organizational values, ethics, and/or standards, the application of related policies and/or procedures, or the need for creating or revision of policies, and/or standards. | | |

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Table 1: Issues according to the IOA Reporting categories

As in all previous years except 2018, the number of issues categorised as Services and Administration is trending upward. This reporting year, it shot up from 201 (last reporting year) to 303. Issues of service and administration are spread across several activities of the university. Wherever people are given service, this category applies. It will remain high for as long as, for example, people are given information that is not accurate or is incomplete, and/or those who provide the service are abrupt and treat students, in particular, without care. I have seen a situation where a service provider writes to inquire on an issue, the explanation on the phone is inadequate and does not respond to the question. The service provider requests that the information be re-considered since it is not a helpful response. The exact same information is reduced to writing without any additional effort.

What might have influenced the increase in this category is the number of students who came to complain about how DPR ("duly performed refused") decisions were reached. There have been a significant number of students bringing issues pertaining to mental health and DPR, with decisions impacting on their return and coursework.

The rigidity in the application of rules is the biggest area of complaints that students and sometimes their families bring to my office. For example, a first year student realised that she might not be able to afford the fees decided to deregister and missed the deadline by a day, yet the university insisted on full payment of semester fees and payment for a full year for a whole-year course.

In another case, a student who saw a person who raped her in the exam venue for the first time since the incident was triggered by the encounter, failed to write the exam and went to

her place of residence. The university insisted that even under these conditions, the student ought to have remembered to access wellness services on that day not the next. There was no consideration of the person's state of mind or any other factors that might have come into play.

The second highest category is Legal, Regulatory, Financial and Compliance which rose by 65. The category has some overlap with Services and Administration. Taking the fees example, there will be matters that belong to both categories.

Harassment, including sexual harassment and disability-related, are among the bigger subcategories in category 5. Some of the students and families whose children went through the University Tribunal and the naming/outing exercise in respect of gender-based violence complained about how the matter was approached by the university. Matters of employment equity also belong here and have been topical at UCT during this reporting period.

Peer and Colleague Relationships went up from 102 to 153. In this category supervision issues came up and incivility in relationships where colleagues bully one another. This can happen, especially, if there is some power that can be used, although the power relationship need not always be an evaluative one, as the case may be for category 2. Issues pertaining to trust, respect and diversity were often raised compared to last year.

Values, ethics and standards was at 136 previously and increased substantially to 208. In this category there are issues of ethics, university values, conduct and policies that are not covered anywhere else, fair application of administrative guidelines, concerns about the values and culture of the organisation, and research misconduct.

The increase in these numbers may be seen as negative or positive, depending on who is asking and why.

Outreach Activities

- Ms Makosazana Nxumalo from UniZulu visited the office in September 2018 to gain information towards setting up an Ombud's Office.

- Prof Johannes Fronemann from North West University visited the office in October 2018 to explore the role and nature of a university Ombud's Office.

- The UCT Ombud attended the Military Ombud Conference, the "10ICOAF and Africa Day Symposium" from 29-31 October in Johannesburg where she acted as a panellist speaker.

- The Public Protector, Adv. Suné Griessel, and the Public Protector's assistant visited the Ombud on 8 February 2019.

- Mr Mziwodumo Rubushe from the SA Competition Commission visited the Ombud on 6 March 2019 to appreciate the nature and role of an Ombud's Office.

- The UCT Ombud gave a presentation at the Cape Town City Conference for Leaders, "Ombudsing as an Institution to Provide Good Governance" on 12 April; she had been invited by the Cape Town City Ombudsman.

- The UCT Ombud gave a presentation at Cape Peninsula University of Technology on 30 April 2019 at the "Strengthening Transformation in Higher Educaction" transformation roundtable discussion.

- In addition to the work I do on campus, as an International Ombudsman Association (IOA) member, I am involved in International Committee work.

Observations and Recommendations

This part of the report bothers me a great deal. Until now, I have not had the resources or capacity to follow up on what happened with previous recommendations in terms of responses from the Executive. Below I raise a select list of issues that I have noticed in this period that in my view warrant the university's attention.

1. **Decision making and decisions**

a) South Africa is a constitutional country, it cannot be that when people are requested to exercise fairness in decision making, they respond as if they are asked to act unlawfully or have a higher moral ground to uphold. S 33 (1) of the Constitution states, *"Everyone has the right to administrative action that is lawful, reasonable and procedurally fair".*

What is fairness? I am not sure if people stop to really consider what this means when they make decisions. It appears to me that when people think about fairness they think about personal favours or breaking the rules, while fairness is a legal term in itself. Even though consistency is a core requirement for fairness, consistency and fairness are by no means the same thing. Fairness does not require that everyone be treated the same. My experience up to now is that often people make decisions that are uniform and sterile and that produce an outcome that has no bearing on the purpose of the rule itself. Often people speak about not wanting to create a precedent. Yet my recommendations are on a case-by-case approach and they set no precedent.

b) It is unfortunate that sometimes people entrusted with the responsibility to decide may have a way of understanding complex problems that is limited by their own world view and inability to see or think beyond certain parameters to make reasonable and lawful accommodations even when they are necessary. What is unfortunate is that often these are people with discretionary powers. It important to note that these powers are conferred on them to help realise the university's mission and vision. Hence university staff ought to be more discretion-competent.

2. **Bullying**

I had hoped not to have to issue further reminders about the bullying policy that is still not in place after a recommendation made seven years ago. However, policies do not always regulate behaviour, people do. There is a growing use of public humiliation, manipulating and intimidating the seemingly powerless, using passive aggressive behaviours and flaunting

power and authority. I hear that committee structures are sometimes used by bullies to entice others to act together as allies who then, too, become complicit in these behaviours. I would like the current Council to make a plea to the university to finalise the bullying policy. Additionally, can people be kinder and more respectful to each other. The late Muhammad Ali, one of the world's most celebrated boxers, is known for the quote "I wish people would love everybody else the way they love me. It would be a better world".

3. Selection Committees

There have been a number of complaints about how selection committees are run. The University's processes are clear, and the onus is on the Committee members guided by the Chairperson to do the right thing. Failure to do so creates tension and loss of faith in the university's governance and its authority. The application of the University's Employment Equity Policy has sometimes been problematic leading to internal and external scrutiny. Chairpersons of these committees must familiarise themselves with the rules and not make them up as they go. Those whose fate is decided in these processes do not feel as if they have been treated with dignity. This is contrary to the university values. I strongly urge UCT Human Resources Department to provide proper guidance and protect the recruitment policies of the university and their legitimacy.

4. Talent retention

People are leaving the university. Leaving is not always a bad thing but some of those leaving are people the university would benefit from retaining in the long run. I have been approached by some of them and by others who also are looking at leaving. People cite a number of issues as contributing to their leaving, some of which are outlined in this report. It is in these "exit meetings" that I was advised that the people concerned decided not to participate in the online exit interview system. While not having face-to-face exit interviews may save the time of staff, the online approach is cold and impersonal, especially considering that people are still interviewed in person when joining the university. I am also aware that Human Resources is not always trusted by people since they are an on-the-

record office and are sometimes seen as servicing management rather than ordinary staff members.

5. Ombud's services at UCT

The use of the office is growing but it is worth noting that there is a comment in the Inclusivity survey pertaining to the lack of clarity about the office's role and impact. The perceived effectiveness of the office does not rest on the actions of the Ombuds office alone, hence it is important that the people who receive recommendations from my office treat the recommendations fairly and openly so that an important service such as this one is not deliberately reduced to a gate to nowhere. The Ombud services serve as a conscience of the organisation and the university Council created the office to add value to the university experience.

6. Mental illness

There is positive talk at the university about understanding and supporting mental illness yet when it comes to delivering reasonable accommodation, the university sometimes falls short. There is suspicion that students suffering from some form of mental illness fake their illness in order to abuse the system. While there may well be cases of this sort, the university is required to assess each case individually and assist those who do not appear to be attempting to manipulate the system such that fair outcomes are achieved.

In conclusion

While my role is not to sing praises about what works at the university but to highlight the gaps, I am grateful for the opportunity the position affords me to change the individual experiences at the university and to many members who assisted the office to realise the successes. I wish to extend gratitude to Dr Birgit Taylor for her signature warmth in receiving all our visitors. Without her, this report would have been impossible.