

PEOPLE, NOT STONES

**REPORT TO THE COUNCIL OF THE UNIVERSITY OF
THE FREE STATE**

FROM THE INDEPENDENT PANEL

**APPOINTED TO INVESTIGATE THE XEROX SHIMLA
PARK INCIDENT AND RELATED EVENTS**

AT UFS IN FEBRUARY 2016

(22 NOVEMBER 2016)

CONTENTS

	Paragraphs
A INTRODUCTION: <i>Don't destroy what you don't understand</i>.....	1
B APPOINTMENT OF PANEL.....	10
C PANEL MEMBERS.....	15
D THANKS.....	17
E SCOPE OF INVESTIGATION; TERMS OF REFERENCE.....	20
F PROCEDURE.....	23
G LIMITATIONS.....	28
H LIGITIMACY; TRUST; EXPECTATIONS.....	29
I WITNESSES.....	34
J THE STORY, BASED ON THE EVIDENCE.....	35
Earlier events.....	36
<i>Racism not addressed?.....</i>	<i>36</i>
<i>Reitz.....</i>	<i>38</i>
<i>#Fees must fall.....</i>	<i>42</i>
<i>Alleged victimisation of activists.....</i>	<i>43</i>
<i>Outsourcing must fall.....</i>	<i>98</i>
<i>January 2016: Plans to implement insourcing.....</i>	<i>105</i>
<i>The weeks before Shimla Park: Contract workers protest for insourcing.....</i>	<i>107</i>
Monday morning 22 February 2016: lockout; arrests; shutting down “all projects on campus”.....	119
“Let’s go to the rugby!”.....	132
On the way to Shimla Park: decisions; eggs; a middle finger; and a phone call from “prison”.....	143
Singing and violence in the Park	161
The match continues.....	196
Stand-off at the tiekie.....	206
Bail.....	233
Swart falls.....	243

Another day, another memorandum of demands.....	251
Steyn on fire.....	258
Tswelopele – but no progress.....	265
After Tswelopele.....	288
K FINDINGS; CONCLUSIONS; IMPRESSIONS.....	293
Labour issues.....	293
Alleged victimisation.....	294
Peaceful protest.....	304
Attack on the Park.....	313
Crucial “if not” moments.....	315
Transformation.....	329
Urine and eggs ... and a volkstaat: racism continuing?.....	330
“Swart gevaar”.....	345
Police conduct.....	352
Security.....	360
Intelligence	362
Leadership.....	363
Hate speech.....	367
Positives.....	371
<i>“Dad, why do you still work at that place?” and “A hole in my heart”</i> : human costs and sensitivity.....	372
Artefacts and other property.....	381
Disciplinary proceedings.....	386
Power; poverty; neglect: a point of no return?.....	390
The virtue of openness.....	399
L RECOMMENDATIONS.....	402
M END NOTE: <i>Roelfie and the Hammerman</i>.....	403

A INTRODUCTION: *Don't destroy what you don't understand*

- 1 Central to the student and other protests of the nineteen sixties against the Vietnam war, capitalism and Western chauvinism and colonialism was the iconic song by the 2016 Nobel Prize winner for Literature, Bob Dylan, called "The times they are a' changin". One of the most memorable phrases in it is: "Mothers and fathers across the land, don't criticise what you don't understand". He added: "Your sons and your daughters are beyond your command".
- 2 Dylan expected a lot. To criticise what one does not understand is human, especially since most of us understand so little. But could we at least ask one another not to **destroy** what we do not understand?
- 3 In Germany, the land of Immanuel Kant, who taught us to understand the limitations of subjectivity, a wise Polish professor once said: "Each matter has its thousand sides – or at least its two." This investigation has shown, amongst other things, how even good faith perspectives can differ; how our language reflects our prejudices and preferences; and how easily we get carried away by emotions like anger and fear and feelings of power or humiliation.
- 4 Protesters, who refer to themselves as "the revolutionary backbone of the university" are labelled by others as "trouble makers", "racists" and even "thugs" who invaded the campus. What management refers to by saying "they broke down the fence", is formulated by protesters as "we succeeded to penetrate". What many describe as "disrupting" classes and other academic activity, is proudly stated by activists as "we closed down all projects on campus". What some see as "the game we love", is viewed by others as proof that "rugby is more important than the lives of students and workers".
- 5 From the narrative of events according to evidence below, it can be seen how protesters were swept along by waves of frustration, anger, humiliation, grievances and – according to some critics – opportunism, to invade a rugby field with disastrous consequences and to successfully bring down the statue of an apartheid politician and thereafter failed to do the same to one of a Boer hero. Some proceeded to dislodge and try to destroy a sculpture on campus. Witnesses gave different accounts of why they tried to destroy this sculpture. One said that he saw that another protester had tried but failed to break down the sculpture, so he decided to complete the project. Another explained that the sculpture depicted a man on a horse, or cow, holding a leash with a chain around the neck of another man, on foot, next to the horse or cow. The meaning of the sculpture is obvious, the witness said. It portrays the

colonialist and apartheid past and celebrates white supremacy over black people. For a city like Bloemfontein, honouring a Boer hero on a horse would not be unusual. But this sculpture is not one of those.

- 6 The work is called “Bull Rider” by Willie Bester. It is situated at the Thakaneng Bridge, opposite the information centre. According to a website, Bester is “coloured” and is considered one of our country’s most important “struggle artists”. He often works with debris and scrap metal and his art became well-known in the 1970s and 80s for its resistance and protest character. “Bull Rider” is described as “a satirical view of a power struggle, which raises questions about our social demographics but ... alludes to the fact that we are all interconnected and dependent on one another”.
- 7 A first team rugby player was angry about the fact that protesters disrupted the game for which he and his team mates had trained so hard, to which he had been looking forward for so long. Yet the events bothered him for weeks so that he could not sleep. In answer to a question whether he understood why the protesters were protesting, he admitted that he had no idea. When told that he and his team could perhaps do much to foster understanding, he asked: “Het meneer enige idees hoe ons dit kan doen?” (Sir, do you have any ideas on how we could do this?)
- 8 Out of the above contrasting recollections and perspectives one has to distil a picture of what happened factually; why it happened; whether it could have been avoided and how it could be avoided in future; how the damage and pain that were inflicted should be addressed; how criminal, delictual and social justice could be achieved; and – especially – how the University of the Free State (UFS), higher education in South Africa and our country as a constitutional democracy based on human dignity, equality and freedom, could go forward.
- 9 Mercifully, not all of these questions can or have to be addressed in this report. What we should try to remind ourselves at the outset though, is *not to destroy what we do not understand*.

B APPOINTMENT OF PANEL

- 10 On 7 March 2016 the Vice-Chancellor and Rector, Professor Jonathan Jansen, explained his idea of a “commission of enquiry”, or investigation, into the events at Shimla Park on 22 February 2016, as well as events leading up to the incident and following on it, to Professor Leon Wessels and the chair of the Independent Investigating Panel (Panel). The chair was

requested to lead the investigation and to identify “a senior black female advocate” to be his fellow panel member. It was then agreed that a “senior advocate” was not necessarily required.

- 11 The chair soon afterwards accepted the invitation and – after consultation with Professor Wessels – proceeded to solicit the participation of a second panel member, an evidence-leader and a scribe, who filled in as a panel member.
- 12 Thereafter, the Council of UFS (Council) decided to appoint the Panel. The appointment was done on the basis of a written consultancy agreement.
- 13 On 5 August 2016 the contract and terms of reference were signed by Professor Jansen. These were later signed by the chair of Council, Judge Ian van der Merwe. This document and the signature on it were undated, but – according to the staff member of UFS who coordinated and administered the project – the chair of Council signed the terms of reference on 8 September 2016.
- 14 Panel members understood the investigation to take place under the auspices of the Institute for Reconciliation and Social Justice (Institute) at UFS. The chair was first contacted by Professor Andre Keet, director of the Institute. The dean of the Faculty of Law, Professor Caroline Nicholson, exercised an oversight role. Advocate Inez Bezuidenhout of the UFS Legal Aid Clinic assisted.

C PANEL MEMBERS

- 15 The members of the Panel were:
 - Johann van der Westhuizen – Justice of the Constitutional Court of South Africa until 31 January 2016; former judge of the North Gauteng High Court; extra-ordinary professor of the Centre for Human Rights, University of Pretoria and honorary professor at the Faculty of Law, University of Cape Town; Inspecting Judge of the Judicial Inspectorate of Correctional Services;
 - Phoebe Labuschagne – State advocate, Asset Forfeiture Unit, National Prosecuting Authority of South Africa; and
 - Molebogeng Kekana – Lawyer with the Legal Resources Centre.
- 16 Advocate Mduduzi Skhosana of the Johannesburg Bar served as the evidence leader.

D THANKS

- 17 Ms Annelie de Man of UFS deserves much credit for handling the administration and coordinating the business of the Panel with efficiency, patience and grace. Advocate Bezuidenhout assisted and advised ably and keenly. Professor Nicholson kept a watchful eye. Mr JC van der Merwe of the Institute provided invaluable assistance in liaising with students and staff and encouraging reluctant witnesses to give evidence. The chair of Council wrote sternly, but spoke encouragingly and with understanding to the Panel chair.
- 18 Two individuals, who did not always agree on relevant issues, deserve much appreciation and thanks. Without them the investigation would not have taken place and enjoyed the good participation it did. They are the Vice-Chancellor and Rector, Professor Jonathan Jansen, who apparently initiated and kicked off the project with inspiration and enthusiasm; and Mr Lindokuhle Ntuli, the President of the Student Representative Council (SRC), who supported the investigation from the beginning, assured the Panel that students would come forward to tell their stories and then persuaded and assisted many to do so.
- 19 All workers, students and staff members of UFS who came forward and cooperated with the investigation deserve to be thanked. Each of them made a contribution. With few exceptions, recollections and views were presented with apparent honesty and integrity.

E SCOPE OF INVESTIGATION; TERMS OF REFERENCE

- 20 According to the terms of reference, the investigation “relates to the Xerox Shimla Park incident and all events relating to the incident that transpired before, during and after the incidents”. Thus this report deals with events before, during and after the Shimla Park incident that were presented by witnesses as relevant. Other possibly relevant aspects are not dealt with.
- 21 Paragraph 6 of the terms of reference states:
- “6.1 The investigation will be confined to the stated jurisdiction and any occurrence directly or indirectly related to the Xerox Shimla Park incident, including any occurrence preceding or following the incident.
- 6.2 The investigator has the authority to bring matters of importance that fall outside this scope to the attention of the Council... by stating such in the report.

6.3 Any enquiry into individual liability is excluded from the scope of the investigation. The scope ... does not include an enquiry into any individual action(s) to determine misconduct, criminal liability and/or civil liability of an individual.”

22 Paragraph 5 of the terms of reference states the “objectives of this investigation” as “to gather evidence to assist ... Council in establishing or refuting” a list of 17 items, related to the conduct of “individual students and/or student associations and/or student leadership”; members of security services; etc.

F PROCEDURE

23 After consultation on the UFS campus with Ms De Man, Ms Bezuidenhout, SRC President Ntuli, Mr Van der Merwe and Vice-Chancellor Jansen, and after making written proposals, the Panel met with students at a previously publicised mass meeting, referred to as a “meet and greet”, on 17 May 2016. The mandate of the Panel was explained, members were introduced, students and staff were encouraged to come forward and confidentiality was promised to those who might need it. The fact that the report would go to the chair of Council and not to UFS management was made clear. Concerns were addressed. (See below.)

24 Thereafter Mr Skhosana consulted with potential witnesses on and off campus on several occasions.

25 Evidence was heard on campus on 4, 5, 10, 11, 12, 22, 23, and 24 August, as well as on 20 September 2016. Written submissions and other documentation was received, audio-visual evidence was taken into account and inspections on site took place. The visual and documentary evidence is available. Requests for evidence to be put forward were made in writing and by telephone.

26 The hearings took place in the Law Faculty building, Professor Keet’s office and a guest house off campus. Although the venues could not accommodate large groups, the hearings were (with few exceptions) open. Several students attended the proceedings.

27 Some witnesses appeared before the Panel more than once. Professor Jansen addressed the Panel on the second day of the hearings and thereafter made further written submissions. He declined an invitation to make oral representations again, closer to the end of the hearings, and indicated that he would respond in writing to questions, if any.

G LIMITATIONS

28 Due to its nature, the investigation had limitations. Although chaired by a judge, the Panel was not a “judicial commission”. Witnesses could not be subpoenaed or otherwise compelled to give evidence. All of them were prepared to take the oath or to solemnly affirm that their evidence would be truthful. They did not have legal representation. Witnesses were not cross-examined. Panel members politely pointed out where evidence appeared to be improbable, inherently contradictory, or to differ from the versions put forward by others. Except in clear instances, credibility findings could not be made and factual disputes resolved. Rather, openness and frank responses were encouraged. Hearsay evidence was accepted, but accorded less value than direct eye or ear-witness evidence.

H LEGITIMACY; TRUST; EXPECTATIONS

29 From this and other investigations and discussions and contact it has become clear that there is an unhealthy level of suspicion and distrust between management and protesting students, academics and workers on several campuses. Those protesting for change accuse management of power abuse, secrecy and a lack of transparency by taking decisions “in boardrooms” and “behind closed doors”. Management seems to suspect protest leaders of being controlled or manipulated by political leaders or some kind of “central command” off campus; and being opportunistic in order to gain popularity and power, or to avoid the consequences of bad academic performance.

30 At the “meet and greet” mass meeting on 17 May 2016 several students expressed their reservations about the integrity and value of this investigation. Their misgivings included that (a) management previously reneged on agreements or ignored grievances; (b) the investigation was not the first of its kind and that visits and reports by e.g. the South African Human Rights Commission had yielded little result; and (c) that Council or its chair could not be trusted. Questions were asked as to whether the contents of the report would be made public and what would happen if Council ignores the findings and recommendations of the Panel.

31 Disappointment was expressed that “black brothers” again “brought a white man here to solve our problems”. In spite of the explanation from the side of the chair that the Panel’s mandate did not include the disciplinary proceedings and that the Vice-Chancellor and Council chair had decided not to suspend them, after being approached by the Panel, some students pleaded for further efforts to put the hearings on hold.

- 32 To a large extent the distrust and possible lack of legitimacy of the investigation were successfully addressed. Encouraged by the SRC President Ntuli and Mr Van der Merwe, and hopefully by the Panel's conduct as well, activists seemed to talk openly and offered to carry the bags of the Panel's chair to the car after a long day. The student who did not want a white man to solve his problems gave entertaining and valuable evidence. In response to a question from the panel chair, he explained that he had been taught "never to trust a white man". Yet, he told his story.
- 33 The investigations opened the door for trust – but the seriousness of expectations should not be underestimated.

I WITNESSES

34 The panel heard oral evidence from 43 witnesses comprising present and former students, UFS lecturing staff and management and contract workers deployed at UFS. The witnesses are listed below in their order of appearance, with descriptions of their association to UFS and other organisations at the time of their appearance before the Panel. The Panel also heard evidence from a witness who wished to remain anonymous at a location off the premises of UFS. Written submissions were received, some from anonymous academic staff members. Some witnesses made audio-visual material available. The witnesses were:

- (1) Mr Lindokuhle Ntuli: president of the SRC; member of the Legal Behemoth Moot Court Society, which he founded; and of the South African Students Congress (SASCO).
- (2) Mr Trevor Shaku: honours student in history, a research assistant at the Institute; member of the Workers and Students Forum; and interim national secretary of the Socialist Youth Movement. (or Young Socialist Movement)
- (3) Mr Bongani Mazula: BA student in Governance and Political Transformation; chair of the Young Communist League at UFS; and member of SASCO and the African National Congress (ANC) Youth League
- (4) Professor Jonathan Jansen: Vice Chancellor, Rector and academic head of UFS until the end of August 2016
- (5) Mr Nqobile Chamane: BSc student; executive head of the SRC Sports Committee; and member of SASCO
- (6) Mr Christopher Rawson: Masters student at UFS; candidate attorney at the UFS Law Clinic; member of the SRC in 2014
- (7) Mr David Buchanan-Clarke: Student

- (8) Mr Rathulo “Cobe” Lee: law student until January 2016
- (9) Ms Lihlumelo Toyana: Masters student in the Department of English at UFS; qualified photojournalist and documentary photographer
- (10) Mr Teboho Ntshalong: BSc in Geology graduate; member of SASCO; and chairperson of the Black Movement Forum
- (11) Mr Anathi Nyadu: Honours student in film and visual arts; resident of Tswelopele male residence
- (12) Advocate Inez Bezuidenhout: Lecturer in the Faculty of Law; director of the UFS Law Clinic
- (13) Dr William (“Willy”) Nel: Lecturer in the Department of Educational Psychology; research associate at the Institute; chairperson of the UFS Institutional Forum; and part-time head of Armentum male residence
- (14) Mr Jacobus Cornelius Gert (“JC”) van der Merwe: acting director of the Institute; philosopher
- (15) Mr Siyamcela Mtamzeli: Honours student in Sociology; founding member of the Workers and Students Forum; member of the Pan Africanist Congress (PAC) of Azania; coordinator of the Unsilence UFS campaign; student employee at the Institute
- (16) Ms Cornelia Faasen: Director of Student Life and Leadership at UFS and former Dean of Students
- (17) Dr Frederick Roelofse: head of the Geology Department
- (18) Dr Maria Lis Lange: Vice Rector: Academic
- (19) Mr Tshepang Mahlatsi: law student; prime of Tswelopele at the time of the Shimla Park incident; member of Students for Law and Social Justice (SLSJ) and the Transformation Committee established in response to the events at Shimla Park
- (20) Mr Motlatsi Molefe: contract worker at UFS under Fidelity Security Services (Fidelity).
- (21) Mr Sandile Ismail Baleni: Member of the Workers and Students Forum and the task team concerned with insourcing at UFS; contract worker currently employed under Phadisi Development Project CC (Phadisi), which provides UFS with landscaping services
- (22) Ms Nercis Letsaba: member of the contracted cleaning staff at UFS under Bidvest Prestige Cleaning (Prestige); member of the Workers and Students Forum
- (23) Professor Nicholas (“Nicky”) Morgan: Deputy Vice Chancellor: Operations; member of the Rectorate. (Professor Morgan appeared with two members of his team: Ms Judith Katreen Du Preez, director of employment management at UFS, and a colleague.)
- (24) Mr Gcinuwoze Elias Gatebe: student; branch secretary of the Young Communist League; and former branch secretary of SASCO
- (25) Mr Lee Goliath: librarian and the head of Karee residence

- (26) Mr Jakobus Hendrikus (“Dougie”) Heymans: assistant director of Kovsie Sport: Rugby; coordinator of Varsity Cup matches for the UFS rugby team, the Shimlas; rugby coach
- (27) Dr Karen Lazenby: Registrar: Systems and Administration
- (28) Mr Pieter Jakobus du Plessis: Executive assistant in the office of the Vice Rector: Operations; part-time head of Villa Bravado residence
- (29) Mr Sikhululekile Luwaca: law student; SRC member: Student Associations and Dialogue; member of the Workers and Students Forum
- (30) Mr Wilhelm André Kotzenberg: student in Quantity Surveying; first team (Shimlas) rugby player
- (31) Mr Pietrus Hendrik Calitz: full-time head of Tswelopele residence
- (32) Mr Siyabulela Lufele: UFS graduate in social science; postgraduate student in labour law
- (33) Mr Noko Masalesa: Director UFS protection services. (Mr Masalesa appeared with Ms Evodia Malody, the supervisor of the CCTV room at UFS.)
- (34) Mr Muammer MoAfrika: chief whip of the student parliament; student in Governance and Political Transformation
- (35) Ms Ju-Mari Pretorius: drama student and Afriforum campus coordinator
- (36) Ms Chantelle du Preez; Chairperson of Afriforum Youth Kovsies; second year BSc student in Human Molecular Biology. (Ms Du Preez appeared with Ms Pretorius.)
- (37) Ms Tsietso Mafoso: SRC: secretary general; final year student in Human and Societal Dynamics
- (38) Mr Tshepiso Laurence Malebo and Mr Mvelisi Mathumbu gave evidence together. They are contract workers at UFS under Phadisi.
- (39) Mr Philelwa Gilwa: BA student majoring in political science; member of the Workers and Students Forum; chair of the Pan Africanist Student Movement of Azania (PASMA), the student movement of the PAC
- (40) Professor André Keet: Director of the Institute; acting Vice Rector; advisor to the Rectorate on “academic citizenship”
- (41) Ms Lacea Loader: Director of Communication and Brand Management; UFS spokesperson

J THE STORY, BASED ON THE EVIDENCE

35 This part of the report tells the story of what happened at Shimla Park on 22 February 2016. In order to explain the event more fully and based on the evidence, the report refers to incidents before and after that day. The evidence of each witness is not stated separately. Rather, the report provides a narrative based on a summary of the evidence and by and large follows the chronological order of events.

Earlier events

Racism not addressed?

- 36 The build-up to Shimla Park began before the national protests around university fees in 2015. Mr Christopher Rawson, a masters student and candidate attorney at the UFS law clinic, mentioned that in 2014 two white men – one of whom was a student of UFS – allegedly tried to run over Mr Musi Dumane Gwebu on campus. UFS was allegedly unresponsive for two days. Some students were aggrieved by the perceived non-action and Mr Gwebu turned to the courts for recourse. The white student was expelled. This notes the first event the Panel was informed of, that underpins a perception among students that UFS management is slow to respond to racism.
- 37 Mr Rawson recalled from his year as a member of the SRC that UFS did not appear to address issues of discrimination – be it racial, religious or gender-based. The unsuccessful attempt of the 2014 SRC to engage UFS management in changing the policies around the placement of students in residences is one example. Another is when a residence member called a fellow student “the k-word” and the matter was mediated only at residence level. According to Mr Rawson, UFS generally did not follow due process in taking disciplinary steps against students charged with misconduct. The Gwebu incident, however, was different. It was one of the more overt instances of discrimination, so UFS acted.

Reitz

- 38 The events of 2008 at Reitz residence are well-known and were mentioned to the Panel as one of the chapters in the history of UFS. Even though Reitz happened eight years ago, it might still be seen as one of the causes of the atmosphere on campus in 2016.
- 39 The witnesses did not describe the Reitz saga in their evidence. It is unnecessary to fully describe and analyse it in this report. The events and debates around it are dealt with in detail and depth by JC van der Merwe and Dionne van Reenen in their recently published book *Transformation and Legitimation in Post-apartheid Universities – Reading Discourses from ‘Reitz’*. On pages 8 and 9 the following is stated:

“(T)he University of the Free State Council, in 2007, adopted a policy that stated, amongst other things, that residences on the Bloemfontein campus were to racially integrated beginning in 2008. The ‘Reitz incident ... took place in the aftermath of this announcement. At the Bloemfontein campus, the second half of 2007 was characterised

by a fierce opposition to the planned desegregation of residences originating not only from the white Afrikaner student cohort on campus, but also the broader Afrikaner constituency in the Free State, and arguably, the country. White Afrikaner alumni, opposed to racial integration (or desegregation) of residences, vehemently responded in the media, and one political party, the Freedom Front Plus (FF+), threatened the university with a court interdict in an attempt to halt the implementation of the policy.

It was during this period (August/September 2007) that student residences on the Bloemfontein campus hosted their annual “cultural evenings”. These evenings take on different forms in different residences and have been a much-loved tradition for many years. The purpose of these evenings is for all students to participate in some kind of cultural activity – be that dancing, singing, acting or poetry. For most residences, the occasion is a highlight on their yearly calendar.

Hazing (the tormenting or harassment of new students or recruits by subjecting them to strenuous, humiliating or dangerous tasks) and other hegemonised traditions formed the backbone of student life, especially in white male residences. These traditions were constructed within a belligerent masculinity – based on racial exclusivity, gendered norms, cultural particularities, and so on. Events such as cultural evenings are usually closed private residence functions and the only-residents permitted to attend are invited partners or resident students. Customarily, the Student Representative Council (SRC) member allocated to a specific residence also attends, as well as the head of the residence – usually a UFS staff member who occupies the role of a ‘warden’ in the residence. The programme of the evening usually takes the form of a competition. During the annual cultural evening, all performances are judged and, at the end, an overall winner is announced. In most residences it is compulsory for all students to participate – either individually or as part of a group.

That year, four students in the President Reitz residence chose to make a video. This was within the accepted competition rules which allowed for senior students to make a video instead of performing on stage.”

“At the 2007 cultural evening held at the President Reitz residence, the video described won first prize. As this was a closed residence function, and a once-off event, few people outside of the residence would have known about the contents of the video or its existence. Residences generally functioned with a high level of secrecy. It was only a few

months later, in February 2008, that the rest of the university community became aware of it.”

40 The contents of the video are described on pages 11 to 23 of the book. Amongst other things, black people of between 40 and 52 years old were depicted being forced by students to “down” beer and other substances which might have been urine; eat a brown substance with some meat in it, together with chunks of garlic; and run races. The accompanying voice over contained several snide references to integration and previously disadvantaged people.

41 According to the Chair of Council at the time, Council on 7 March 2008 unanimously condemned the offensive and racist Reitz video in the strongest possible terms. Council also labelled the video as an insult to women, to older persons and to poor, defenceless and vulnerable working people. Two of the four students involved obtained their degrees; while two others left UFS in their final year.

#Fees must fall

42 2015 marked the year of two student movements in South Africa. First was Rhodes Must Fall, which started at the University of Cape Town. Later Fees Must Fall was born out of the University of the Witwatersrand. It was concerned with financial exclusion. Students at UFS joined it later than others. The protests were peaceful and constructive in raising the issues. The UFS Council commended the student leadership at the end of 2015 for conducting the protests peacefully. The Fees Must Fall movement ended nationally on 22 October 2015 when President Jacob Zuma announced a zero percent increase of university fees for the following year.

Alleged victimisation of activists

Thabede

43 SRC President Mr Ntuli told the Panel that in January 2016 he was approached by Mr Nkosikhona Thabede, an Accounting student who complained of being racially discriminated against. Mr Thabede forwarded Mr Ntuli an e-mail that he (Thabede) had addressed to Professor Jansen on 15 January 2016, seeking the Vice-Chancellor’s assistance.

44 Mr Thabede’s first complaint was that he failed one of the modules for which he was registered and had been given an opportunity to write a special exam in December 2015. After this special exam he remained with an average mark of 45%. His faculty manager informed him

that a second special exam would be written on 13 January 2016 and that Mr Thabede would be allowed to write it. While preparing for the January 2015 special exam he requested a refund from his student account of some money that was not utilised in the 2015 academic year.

45 According to the e-mail earlier addressed to the Vice-Chancellor and later forwarded to Mr Ntuli, Adele from the Bank SETA colluded with other staff members to decline processing the refund. Initially Mr Thabede had been told that he would get refunded, but later on he was told that he would only get the refund if he passed the special exam.

46 In the e-mail he relates how he overheard Adele whispering to a colleague of hers that if Mr Thabede wrote the second special exam, his script would either not be marked or it would be marked very strictly so that he does not get the 60% he needed in the exam to boost his final mark from 45% to 50%. Having heard this from Adele, Mr Thabede asked that his script be marked by an independent person and not his lecturers.

47 In the e-mail he further relates how disappointed he was when he was told by Ms Cornel Crous that “accounting was not for black people”.

48 In a response to Mr Ntuli’s request for Professor Jansen’s intervention, the Vice-Chancellor indicated that he had tried to assist Mr Thabede and that there was nothing that could be done for him, as he had failed. It was also Professor Jansen’s view that Mr Thabede was dishonest and had made false accusations against staff members. Mr Ntuli testified that the SRC viewed this as victimisation of a student.

Ntuli

49 Mr Ntuli testified that in 2015 he had been offered articles of clerkship commencing in 2017 at law firm Phatsoane Henney Attorneys. The firm also provides legal services to UFS.

50 On 22 June 2016 he received a letter from the firm provisionally withdrawing the offer and inviting him to make representations why the offer should not be permanently withdrawn. The reasons advanced by the firm were Mr Ntuli’s alleged well-publicised and self-acknowledged involvement in incidents of conflict relating to UFS and the Vice-Chancellor.

51 In his response on the same day Mr Ntuli highlighted that whatever inferred conflicts were referred to in the letter from the firm, emanated from fulfilling his mandate as the SRC president and a representative of students. He stated that the firm knew when it made him

the offer that he would campaign for the SRC president position and that he had indicated to them that there may be disagreements with UFS when he executes that mandate. He emphasised that the perceived conflicts arose in the course of seeking to transform UFS, something that was necessary to align it with the new South Africa.

52 The offer of articles was nevertheless withdrawn. In Mr Ntuli's view UFS pressurised the firm to withdraw the offer. This, according to him, was another example of the victimisation of student activists.

Mazula

53 Mr Mazula studies for a BA in Governance and Political Transformation. He, together with other students, protested to Professor Jansen's office on 15 January 2016, where they demanded that students who could not afford the registration fee should be nonetheless allowed to register in the 2016 academic year.

54 He testified that on 22 January 2016 he was called to Dr Karen Lazenby's office to collect a letter. He went to collect the letter, signed by Dr Lazenby. Upon reading it, he discovered that it was a letter of exclusion. When he enquired with his programme director and Dr Lazenby's office as to why he had been allowed to register if he was not eligible for re-registration, he was not given a clear answer. The Dean of Humanities informed him to enquire from the author of the letter.

55 On the morning of 26 January 2016 he came to campus and found his photo posted at the main gate. He was told by security personnel that he was not allowed on campus, since he had been deregistered.

56 Mr Mazula then approached the Dean of Students, Ms Cornelia Faasen who asked security personnel to bring him to her office. She advised him to draft an appeal against his exclusion and forward it to her. The appeal was forwarded by Ms Faasen to Vice Rector Dr Lis Lange.

57 On 29 January 2016 Dr Lange upheld Mr Mazula's appeal on the grounds that the wrong method had been used to calculate his credits.

58 According to him, the fact that his photo was posted on all entrances to UFS and that security personnel had been informed not to allow him onto campus affected him in a very adverse

way. He even had to take a break from his studies and return home for a week, due to the stress caused thereby.

59 Mr Mazula thinks that he was targeted for his activism.

Lee

60 Mr Rathulo “Cobe” Lee was a second year LLB student in 2015. He was one of the leaders of the protest on 15 January 2016. He testified that at the end of the protest march and due to the small number of participants, it was decided that another protest would be staged on 18 January 2016.

61 On the morning of 18 January 2016 the protesters converged at the Student Centre where he was called aside by the SRC Deputy President, Ms Mpho Khati. She warned him to be careful because UFS was looking into his affairs and that Ms Faasen had asked about him.

62 The SRC Deputy President noticed that Mr Lee’s Facebook page was open on Ms Faasen’s computer. Mr Lee assured Ms Khati that he would be careful but he did not take what he was told seriously as he thought Ms Faasen just wanted to check what was happening on his page. Due to poor attendance of the march on 18 January 2016, the protest did not go ahead. A decision was then taken to hold the protest once more senior students had returned to campus after recess.

63 While at his residence in Brandwag on the morning of 20 January 2016 Mr Lee received a WhatsApp message from Mr Papi Masina, informing him of an embarrassing picture of him that was displayed at the main gate. On further probing, Mr Masina informed him that the picture displayed Mr Lee wearing only a towel with his upper body exposed. This photo was shown to the Panel at the hearing.

64 Mr Shaku, Mr Mazula and others also confirmed to him the presence of the photo at various entrances. Mr Mazula further confirmed that as was the case with him, there was a note on the photo that Mr Lee must not be allowed on campus. Mr Lee then decided not to come to campus.

65 On 21 January he received a call from Dr Lazenby’s office to come and collect a letter. He obliged and found that the letter excluded him from UFS.

- 66 As a result of the posting of his photo, Mr Lee opened a case of *crimen injuria* with the SAPS. On 25 January he lodged a complaint with the South African Human Rights Commission on the infringement of a number of his constitutional rights.
- 67 On 27 January 2016 he, Thembisile Mhlebi, Bongani Mazula, Alhajra Siswe and Sizwe Zingita received printed copies of e-mails between top management wherein their exclusions were discussed. These e-mails were left by an unknown person under the door of Mr Mazula's room in Brandwag, according to the evidence.
- 68 Mr Lee was asked what psychological effect the exclusion and the publication of his photo had on him. He explained that the e-mails stripped him of his humanity. The e-mails put him through a lot of trauma, to the extent that he could not deal with the pressure and became suicidal. His parents were extremely concerned about him.
- 69 What he found disturbing, is that his exclusion did not follow the normal process. His exclusion was discussed by top management and a compromising photo was published for all to see.

Shaku

- 70 Mr Trevor Shaku is studying towards a BA Honours in history and is an intern at the Institute. He testified that he was a member of the Workers and Student Forum, a movement whose aim it was to fight for insourcing of various university services that are offered by private entities.
- 71 Between its inception in October 2015 and February 2016 the movement had marched and submitted memoranda of demands to UFS management, seeking among other things salary increases for contract workers and an undertaking from UFS that members of the forum would not be victimized. Mr Shaku testified that UFS assured them that there would be no victimization as a result of their march.
- 72 During the protest on 15 January 2016, at which there were attempts to disrupt the first year welcoming function, Mr Shaku was warned by Professor Nicky Morgan that he would pay for his participation thereat, that is according to Mr Shaku's evidence.
- 73 On Thursday 18 February 2016 he got a letter terminating his contract at the Institute. The reason for his termination was his participation in the protest.

74 Prior to Mr Shaku's dismissal from the Institute, the Deputy Director of the Institute, Mr JC van der Merwe, had been called by Professor Jansen to inform him that he (Professor Jansen) had a problem with Mr Shaku, who was disrespectful. According to Mr Van der Merwe, Professor Jansen asked to be given the work that Mr Shaku had done at the Institute. An appraisal of Mr Shaku's work was also requested by the Rector. Mr Van der Merwe informed both Mr Shaku and Professor Andre Keet of these requests. Mr Van der Merwe gave his appraisal and informed the Rector that he had no reason to doubt Mr Shaku's work.

75 The morning following the request of the appraisal, the Vice-Chancellor made a further request for the contract of employment of Mr Shaku and those of other interns at the Institute.

76 When Mr Shaku informed Mr JC Van der Merwe that he had been fired, the latter was surprised as he was the Acting Director of the Institute and he had not been consulted about the decision to dismiss Mr Shaku.

Ntshalong

77 Mr Teboho Ntshalong was a final year BSc Geology student in the first semester of 2016. He was supposed to register during the week of 22 February 2016, but could not due to the shut down in the same week.

78 He testified that he was one of the students who removed the statute of CR Swart outside the law building. The removal was caught on video and posted on YouTube. On 29 February 2016 he went to the geology building to enquire about a test from a lecturer. The head of the Geology Department, Dr Roelofse, spotted him and called security officers to escort Mr Ntshalong from the building.

79 The following day he went to enquire from Dr Roelofse as to why he had called security to remove him from the building. Dr Roelofse responded that Mr Ntshalong was a criminal and that he (Dr Roelofse) would see to it that Mr Ntshalong is not registered for the 2016 academic year. Dr Roelofse stated that if Mr Ntshalong was registered, he would resign from UFS. This conversation was recorded by Mr Ntshalong – without Dr Roelofse's knowledge at the time – and played to the panel. The recording was also submitted to some media houses that made enquiries about the incident.

80 After the restoration of the normal academic programme, Mr Ntshalong applied for late registration. In a letter dated 2 March 2016, from Dr Lazenby, the application for late

registration was declined. He then sought the intervention of Ms Faasen and lodged an appeal to Dr Lange. In the letter of appeal Mr Ntshalong cites victimisation and Dr Roelofse's undertaking that he would see to it that Mr Ntshalong is not registered as reasons why he was not being allowed to register.

81 On 9 March 2016 Dr Lange upheld the appeal and Mr Ntshalong was allowed to register. He completed his degree in June 2016. His application to study for an Honours degree was unsuccessful. He believes that his application was declined as a result of his role in the protest earlier in the year.

82 Dr Roelofse was invited to give his version of events to the Panel. He disputed that Mr Ntshalong was targeted. According to him, his decision to call security to remove Mr Ntshalong from the Geology Department was motivated by safety concerns of staff members in the building. As the head of the department, he had to ensure that his colleagues were shielded from the "violent" and "unstable" Ntshalong. He testified that Mr Ntshalong had been identified in a YouTube video participating in the removal of the CR Swart statue using his geological hammer. Dr Roelofse also referred to the protesters as "thugs" on a departmental notice board. He explained that he regarded all those who broke the law as criminals, indeed thugs.

83 Dr Roelofse insisted that he was genuinely concerned about the safety of equipment and staff in his department and mentioned that Mr Ntshalong could attack even him from behind with his hammer.

84 After Mr Ntshalong was registered, by a letter dated 1 March 2016 Dr Roelofse tendered his resignation. This resignation was withdrawn two days later after Dr Roelofse's meeting with the Dean of the Faculty of Natural and Agricultural Sciences, Professor Vermeulen, where he was assured that geology students who had acted violently would be arrested and they would not be registered. Dr Roelofse indicated to the Panel that he was disappointed that this did not happen. Yet, he still works at UFS.

E-mails and "troublemakers"

85 Before the exclusion of Mr Mazula and Mr Lee and the dismissal of Mr Shaku, there were email discussions between top management members about activists. Dr Lazenby provided copies of these discussions. These started on 14 January 2016, in an e-mail sent by Ms Lacea

Loader, UFS Director for Communication and Brand Management, to Dr Lazenby, informing her about the intended disruption of the first year welcoming function.

86 In an e-mail sent by Mr Andri Kotze to the Dean of Law, Professor Caroline Nicholson; the Vice-Dean of the Law Faculty, Professor Rita-Marie Jansen and Dr Brand Claassen on the morning of 20 January 2016, Mr Kotze advises the recipients that he had a meeting the previous day with Professor Jansen and Dr Lazenby.

87 According to the e-mail, Professor Jansen had asked Mr Kotze to motivate to Dr Lazenby if Mr Lee could be excluded academically. The last sentence of the e-mail reads in part: “the student is apparently a trouble maker and Prof Jansen wants him off the campus asap. Dr Lazenby will draft the letter of exclusion and send it to the student.”

88 Professor Nicholson responded on 25 January 2016 and confirmed that the student had failed to comply with the progression rule of the faculty and that he can be academically excluded.

89 Another email was sent on 22 January 2016 by Dr Lazenby to various recipients. In this e-mail she advises the recipients that the exclusion letters of “protest students” AS Zingitwa, BM Mazula, T Mhlebi and RC Lee, as requested by “Jonathan”, are attached.

90 In an e-mail sent by Professor Jansen to Dr Lazenby on 20 January 2016, with the subject “summary assessment of the troubled students”, the Vice-Chancellor urged Dr Lazenby to push other colleagues to do the assessments as soon as possible.

91 On Thursday 21 January 2016 Ms Marica Coetsee, the assistant director in the office of the Dean of Humanities, addressed an e-mail to Dr Lazenby and copied in it to Ms Jo-Anne Naidoo and Professor Botes, the Dean of Humanities. The subject of the e-mail is “Feedback: Student BM Mazula (2012154981)”. The e-mail gives a summary of Mr Mazula’s academic history and confirms that the latter student can be academically excluded, because he has only completed 35% instead of 50% of his curriculum. The only problem, Ms Coetsee highlights, is that Mr Mazula was already registered for 2016.

92 In light of the fact that Mr Mazula was already registered, Professor Botes suggested that he be allowed to continue with his studies under the strict condition that he should pass all his first semester modules failing which he would not be allowed to continue his studies in the second semester. This e-mail was forwarded to Professor Jansen by Dr Lazenby.

- 93 In response to this e-mail, Professor Jansen complains of the fact that the “system lets in those without any academic capability but lots of disruptive capacity”. Professor Jansen then sought the view of Dr Lazenby on whether the Dean’s suggestion should be followed, or Mr Mazula should be excluded. Dr Lazenby suggests immediate termination to avoid claims of unfair treatment by those whose circumstances are similar to Mr Mazula. The Vice-Chancellor then leaves the decision to Dr Lazenby. As already stated, on 22 January 2016 Mr Mazula received his letter of exclusion.
- 94 When asked about these e-mails and the allegations of victimization, Professor Jansen denied that any student had been victimised. In the case of Mr Mazula, he testified that no student had been excluded on the basis of their political activism and that if Mr Mazula were victimised he would not have been invited back to campus. According to him, Mr Mazula’s appeal succeeded in the normal course of affairs.
- 95 Professor Jansen stated that it was not abnormal for him to enquire into students’ academic records as he did in the case of the aforementioned students. He denied any attempt to identify troublemakers for exclusion. Normal procedures were followed. When the contents and dates of the e-mails were put to him, he declined to comment and said that “there is nothing in these e-mails”. When it was put to Professor Jansen that the e-mails – especially their dates – might create an impression different from his version, he stated: “That would be an unfortunate impression.”
- 96 When asked for her views on the exclusion of student activists, Dr Lange told the Panel that it was not abnormal for the Rector to ask for students’ academic records. Nor was it strange that the process leading to Mr Mazula’s exclusion was initiated by the Professor Jansen. Dr Lange testified that subsequent to the events narrated above, the system of reviewing students’ records had been changed to include a number of members of the Rectorate. In response to further questions – and after students who were present at the hearing at that time had been asked to leave the room – Dr Lange stated that the initiative of the Rector and the exclusions were indeed “to get rid of trouble-makers”.
- 97 On the termination of Mr Shaku’s services at the Institute, Dr Lange testified that it was not advisable to dismiss him. Dr Lange had tried to advise Professor Jansen, Professor Morgan and others that they could not dismiss Mr Shaku for exercising his rights.

Outsourcing Must Fall

- 98 Protests after the Fees Must Fall movement were about insourcing and minimum wages and were initially led by workers and later supported by students. Protests for insourcing started at UFS in the weeks leading up to the Shimla Park incident and contributed immensely to the build up to the incident.
- 99 After experiencing a victory – a zero percent increase on tuition - students now had the needs of the workers on the agenda. Mr Trevor Shaku told the Panel how he got the UFS contract workers together for the protests in January 2016. He and other student leaders had a meeting on 31 October 2015 in Newtown, Johannesburg, to “concretise”, in other words, to develop a structure for the Fees Must Fall movement. Coming out of the meeting was the recognition of the needs of workers and the commitment by the students to advance those needs. The key issues were insourcing and minimum wages.
- 100 Mr Shaku approached Mr Baleni who worked at UFS as an employee of Phadisi, one of the companies that provide outsourced services to UFS. At a meeting on 6 November 2015 a group of workers and students unanimously voted to submit a memorandum of demands to UFS management on 10 November 2015. The memorandum would bring into focus the workers’ grievances related to unfair labour practices, as well as their demands around insourcing and decent wages. It deliberately did not state a specific amount as the minimum wage. The workers and students left it open for UFS to propose the amount. The memorandum was submitted to Professors Jansen and Morgan and Dr Choice Makhetha, the Vice-Rector of External Relations at the time. As the member of the rectorate in charge of operations at UFS, Professor Morgan represents management in matters concerning insourcing and wages, according to the evidence.
- 101 Mr Shaku testified that UFS management responded on 11 November 2015 and agreed to end outsourcing. It proposed a minimum wage of R5 000 for all contract workers. And it committed to no victimisation, redeployment, or intimidation of workers who took part in the protests. At the hearing, Professor Jansen emphasised that UFS believed in insourcing, but that it wanted to make the transition in an affordable way – a way that would not “sink the ship” or “burn the furniture to heat the house”, as he put it. He added that there was no lack of commitment from UFS management and that it was not the first time that universities in the country had considered insourcing. The plan at UFS was to insource services in phases and to keep the conversation going throughout the process. UFS made concessions in the

meantime: contract workers would receive a decent wage of R5 000 at the end of the year and their children would study for free.

102 Workers and students met again on 24 November 2015 and formed the Workers and Students Forum (WSF). The WSF was responsible for charting the way forward for insourcing at UFS. It would peruse financial statements and devise a plan as to how best contract workers could be absorbed directly into the UFS workforce. But the process of insourcing ran into a glitch, apparently when some security personnel received only part of their remuneration for November. Some of them did not receive it at all. One – a single mother – fainted from the distress. Mr Shaku spoke to Professor Morgan and those in charge of the Bloemfontein branch of Fidelity. They committed to make payments by 11:00 the next day. When the commitment was not upheld, the security personnel boycotted their posts. Then another commitment was made: the payments would be made by Thursday 26 November 2015.

103 The WSF, National Education Health and Allied Workers' Union (NEHAWU), Union of Personnel of the University of the Free State (UVPERSU) and UFS management – together referred to as “the working group” – held a meeting on 3 December 2015. The mandate of the group was to facilitate the process of insourcing. Management agreed to provide the rest of the group with financial records. The information was critical to the determination of whether UFS could afford to insource services. The group resolved to extend the deadline to complete the framework for insourcing by one month from December 2015 to January 2016. The next meeting was set for 14 January 2016.

104 Leading up to the January meeting, some of the contract workers did not receive the R5 000 they were promised at the end of December. The reason advanced for payments of around R4 600 was that the amount of R5 000 was the package amount or the cost to company of each worker – not necessarily the net amount they would receive in their bank accounts. Added to this, three security personnel were redeployed for questioning their pay of less than R5 000. It was alleged that workers who questioned the redeployment of their colleagues were intimidated. They were told they would lose their jobs if they did not stop probing. So, now the workers had at least three bones of contention: wages; redeployment; and intimidation. This, according to witness Shaku.

January 2016: Plans in motion to implement insourcing

105 As agreed, members of the working group had their first meeting of the new year on 14 January 2016. There was some friction about UFS not honouring deadlines. It was not a fruitful meeting, because management, on the one hand, and the workers and students, on the other, could not find each other. Consequently Professor Morgan opined that the task of finalising the plan for insourcing could not be completed. What Professor Jansen described to the Panel as “an exquisite process of producing and sharing information” among the workers, students and UFS management, came to a head.

106 On the same day the SRC and students submitted a memorandum of demands concerned with free higher education including doing away with registration fees. They received a response the next day, 15 January 2016. UFS said it could not afford not to charge registration fees. Nor could it provide free education. Even before what Mr Shaku calls “the revolutionary core of the university” received the response, they had resolved not to accept anything short of the scrapping of registration fees. Mr Shaku added that Professor Morgan approached him to say that he (Mr Shaku) would have to call out all the students involved in pushing for the changes.

The weeks leading to Shimla Park: Contract workers protest for insourcing

107 The workers marched on 28 January 2016 to remind UFS of its commitments which the workers noted in a memorandum for UFS’s attention. It addressed certain issues. First was the R5 000 demand. Second, the three Fidelity personnel who were redeployed were to be allowed to return to their UFS posts. The intimidation of workers had to stop. Fourth, UFS was urged to meet its time commitments. Protests had generally become more aggressive on a national level at the beginning of 2016.

108 UFS contract workers met with Professor Morgan on 1 February 2016. He allegedly insinuated that the workers were being misled by students who were failing academically. The workers did not take kindly to this and felt the comment undermined the collective effort of the workers and students. At a mass meeting that afternoon the workers updated the students of what had transpired between them and the professor. The discussions also addressed a suspicion among the workers that their employers were “stealing” their provident fund contributions. The workers resolved to go on strike from 7 to 11 February 2016.

109 Early in February Mr Shaku met with Mr Henk Smith of the Legal Resources Centre and Mr Mametlwe Sebei of Lawyers for Human Rights to prepare the necessary legal documents,

as well as to seek a commitment to provide the workers with legal representation, if they got arrested during the protests. The protests did not go ahead on the initial dates because Mr Shaku had to attend a funeral in Limpopo. He returned to Bloemfontein on 14 February 2016 and met with the workers the next day. The WSF reaffirmed their earlier decision to go on an unprotected strike. It started on Thursday 18 February 2016, four days before the Shimla Park incident.

110 Prior to the strike, Prestige called a meeting on 16 February 2016 to present its employees with an interdict and to warn them not to embark on a strike. This did not deter the group. Mr Shaku emailed Professor Morgan a memorandum containing six demands.

111 The strike was divided into three stages. The first three days would consist of peaceful protest, followed by three days of mild, provocative action like knocking over rubbish bins. The final stage would intensify the protest indefinitely and it would involve emptying rubbish bins into UFS corridors. The plan was somewhat flexible: the protesters would decide on a way forward – either a tactical retreat or a call to carry on striking – once UFS engaged them. The way forward would depend on the prevalence and severity of the issues at the time of UFS's reaction.

112 The workers went about their protest peacefully and in the presence of the police officials on Thursday, 18 February 2016, at the main gate of UFS. Behind the gate the student parliament convened. At some point the protesters entered the campus and moved to the student centre, sang, and then made their way back to the main gate. There was a low turnout of students, so Mr Shaku and other protesters went to the sitting of parliament to rally students to join the protests. They also created a poster calling for student participation. Later that day Mr Shaku received the letter signed by Professor Morgan that served to terminate his employment as a research assistant at the Institute, due to his participation in an unprotected strike.

113 On the second day of the protests (Friday 19 February 2016) the buses transporting the contract workers were not allowed onto campus. The workers disembarked at the main gate and gained entry to their workplace through the turnstile pedestrian gates. Word spread about Mr Shaku's dismissal. Workers and students were aggrieved deeply by this, but continued protesting peacefully but for an incident of stone throwing by "a couple of rogue individuals".

114 Professor Morgan addressed the protesters at the main gate. He said – in response to one of the songs they were singing – that he is not "masepa" (shit). The song goes: "Leentse

ka bomo. Ke masepa ntho ena.” (You did this deliberately. This is shit.) Mr Shaku stated to the Panel that Professor Morgan might have thought the song was directed at him. Professor Morgan’s remark incited the protesters. It was then suggested among the group that they disrupt the rugby match at Shimla Park the following Monday. Another suggestion was that the group go to the Callie Human Hall, where Professor Jansen was giving a talk. In the end the protesters agreed that neither of the suggestions were viable. They resorted to continue striking on Monday 22 February 2016.

115 On the initiative of Professor Jansen, Professor Andre Keet met with the WSF in a “township” on Sunday 21 February 2016 to negotiate a settlement to end the workers’ strike. During the negotiations the WSF alerted Professor Keet that the following day would be the last day of peaceful protests, according to their plan. An agreement regarding the seven demands was struck on Sunday afternoon. That, however, did not in itself mark the end of the strike, because the workers were adamant that the strike had to end through the same process it had begun – by resolution at a mass meeting – and not via SMS as suggested. So the compromise, which Professor Keet on behalf of UFS thought to be reasonable, was that the workers would call off the strike around noon the next day (Monday 22 February 2016), after relaying what was discussed at the meeting on the Sunday to those who were not there. The workers’ would then meet with management for the formalisation of the agreement and the decision to end the strike would kick in officially.

116 NEHAWU too proposed a meeting with the WSF in Dinaweng (a Bloemfontein township), but the protesters were unwelcoming of the meeting request because it had taken the stance that it would not support the strike in view of labour laws.

117 Professor Keet said to the Panel that Professor Jansen had given him broad parameters within which he could negotiate with the workers. This made for productive and relatively smooth negotiations. His leeway included finances. Professor Jansen had given him enough scope to present to the workers a minimum wage of R7 000. This figure had been bumped up from the R5 000 UFS had promised workers towards the end of the previous year. But the negotiations never got the point where Professor Keet had to “take the higher amount out of (his) pocket.” He only told Mr Shaku about it.

118 Professor Keet said the fact that the workers stuck to the R5 000 demand instead of the newly available and higher R7 000, which they had probably heard of from Mr Shaku, is an illustration of how sophisticated the approach of the workers was and how sensitive they were to the risk of retrenchments later, if they went for the higher amount. The workers foresaw

the potential of collateral damage to insourcing if they took the R7 000. It was also an act of goodwill for the success of the negotiating process that they were seized with at that moment and for the longer term implementation of insourcing. The workers did not make blind demands.

Monday 22 February 2016: lockout; arrests; shutting down “all projects on campus”

119 When the workers arrived at the main gate the following morning, Monday 22 February 2016, they were denied entry, as their access cards had been deactivated. They considered this to be a lockout, which baffled and angered them given the agreement, although not yet formal, they had reached with Professor Keet.

120 According to Mr Noko Masalesa, the director of the UFS protection services, the workers were denied entry to the campus on the instruction of the various contractors under whose employ the protesting workers fell, because their employees (the workers) did not follow the required legal procedure before embarking on the strike. Added to this, the workers had allegedly disrupted classes on Thursday 18 February and had forcibly removed other workers who were not on strike from their work stations on Friday 19 February 2016.

121 A resolution to deactivate the workers’ access cards was taken at an early-morning meeting between the contractor-managers and the UFS protection services on that Monday, before the contract workers arrived at the campus. The plan that came out of the meeting was for the contractor-managers to address the workers at the main gate about their labour issues and to communicate to them how far the negotiations with UFS management were. Mr Masalesa said to the Panel that the contract-managers did indeed try to engage the workers at the main gate as planned, but that the workers were not interested in listening to them.

122 The workers protested at the main gate in the presence of the police who looked on. The protesting workers then decided to walk to another gate to test their cards and to confirm whether they had indeed been locked out. Mr Shaku and a few other UFS students were with them. The group made their way towards Gate 5, or the medical gate, along Nelson Mandela Drive, a public road. The police moved along this route with them.

123 Mr Gcinumoze Gatebe, a student activist, was in their midst and shared with Mr Shaku his concern about the protesters walking in the road. Mr Gatebe thought that it would give the police a reason to act against them. The two of them agreed that the student activists in

the crowd would act as marshals to prevent the protesters from walking in the road. Mr Gatebe was himself one of the marshals and pointed out during his testimony that they had succeeded in keeping the crowd off the public road.

124 The protesters turned off Nelson Mandela Drive and walked down DF Malhere Avenue – the road on which the other gate was located. Some of them marched carrying placards calling for Mr Shaku’s reinstatement and for outsourcing to “fall”. The protesting group did not make it to Gate 5. Before they could reach it, the police approached them from the opposite direction (up DF Malhere Avenue) and blocked off the road. Facing the police, the protesters sat in the middle of the road (in the vicinity of Kovsie Church on DF Malhere Avenue) and sang protest songs.

125 Mr Gatebe told the Panel that the police informed the protesters that they had an instruction from UFS not to allow the protesters onto campus. The police then ordered the protesters to move off the road. The protesters eventually complied and stood up in order to make their way back towards the main gate. They had their backs to the police, who followed them back towards the main gate.

126 Ms Lihlumelo Toyana, a photojournalist and UFS Masters student, was present. She was one of the witnesses who told the Panel that the police then suddenly shot rubber bullets and detonated teargas at the protesters – from behind – as they were making their way back to the main gate. The protesters scattered and some were arrested in the scurry. Ms Toyana showed an image of a police officer whom she said hit her with a riot shield and pressed her against the fence with it as she was moving back with the protesting group. In the moment the police officer allegedly shoved her, she exclaimed that he could not treat her in this way to which he retorted in Sesotho that she was not allowed to take a photo of him.

127 Ms Toyana added in her testimony that the police identified and picked Mr Shaku out from the crowd and arrested him close to the main gate. He did not offer any resistance to the arrest. A fellow protester willingly gave himself up for arrest: He said he was going with his leader. Ms Toyana captured this moment too in an image, which she presented to the Panel. Mr Shaku testified that the police ticked his name off a list when they arrested him. A total of 36 protesters were arrested the morning of Monday, 22 February 2016.

128 The protesters who were not arrested gathered at the main gate and demonstrated some more. Ms Toyana mentioned that Professor Keet tried to bring calm to the protesters. In their discussions with him, the protesters added a new demand to be settled by UFS management,

namely the release of those who were arrested. Professor Keet promised to make attempts to procure the release of their comrades and to have Mr Shaku reinstated at the Institute. Professor Keet explained as part of his evidence that his vision was to devote his efforts to securing the release of the arrested workers, including Mr Shaku, in order to leverage that achievement in further discussions with the protesters – and in that way – to stabilise the situation.

129 Word of the arrests of the workers and Mr Shaku in particular spread quickly among the student activists. Some who appeared before the Panel said they felt that their mother- and father-figures – the contract workers who had supported them during Fees Must Fall the previous year – needed their help. Mr Mazula and Mr Mtamzeli set off to “shut down all projects on campus”, because they felt activities at UFS could not carry on in the normal course in light of the arrests and the workers’ angst.

130 The two of them and Mr Gatebe went to the SRC offices and told the SRC President that he had to take the responsibility of seeing to it that Mr Shaku – a student – and the other protesters were released from custody. Until then, the SRC had supported the protests about insourcing only in principle. Mr Gatebe said in his evidence that through the arrest of Mr Shaku the workers’ strike directly affected and involved the student community. Mr Mtamzeli testified that he and Mr Mazula made their stance clear: The SRC could no longer sit on the side-lines. After hearing them out, the SRC President assured the activists that the SRC would intervene and join the protests.

131 Mr Mazula’s and Mr Mtamzeli’s next stop on their path of halting activities on campus was the student centre, where they made it clear that they were shutting down campus because of the arrests. And they appealed through a loudhailer to the students present to join the protests. Then they went to lecture rooms and the library to inform students about what had happened. They instructed students to stop what they were doing and to vacate the various buildings. Both of them stressed to the Panel that although they did all of the above firmly, they were in not at all physically forceful or violent. Mr Mtamzeli conceded however that their approach might have been intimidating. He said they “went rogue”.

“Let’s go to the rugby!”

132 Mr Muammer Moafrika, the chief whip of student parliament, told the Panel that he heard singing coming from the direction of the main gate when he entered campus through the Rosemary gate on Monday 22 February 2016. He attended a morning lecture and thereafter

went to the main gate. On his way there, he came across Mr Mazula who informed him that Mr Shaku had been arrested.

133 Mr Moafrika explained further that it had become apparent that Mr Shaku's arrest meant the workers' strike was without a leader and Mr Shaku's leadership duties would remain unfulfilled. Mr Moafrika said that despite this awareness, he had no intention of himself taking over Mr Shaku's "revolutionary duties". Mr Van der Merwe and Professor Keet also conveyed the heavy impact Mr Shaku's dismissal and arrest had on the protest: It left the protest without a leader for some time and changed the dynamics and mood of the protest. The arrest in particular was said to have festered anger and taken away the element of discipline. Mr Mtamzeli testified that he felt "the gloves were off" and that management was "playing dirty" by dismissing Mr Shaku.

134 By the time Mr Moafrika got to the protesters at the main gate, they had been in the sun for a while and complained of thirst. They gave him their water bottles for him to fill up, as he was on the other side of the locked gate. He got them water and spoke to Professor Keet, who was still with the protesting workers, about finding a way for them to move closer to the gate so they could stand in the shade. Professor Keet spoke to the police and they allowed the protesters to move closer to catch some shade.

135 Mr Moafrika asked the protesters about their plan of action for the rest of the day and advised them they had two options. They could go to Professor Jansen at Shimla Park to vent their grievances; or they could wait for him to respond in his own time. Mr Gatebe's evidence supports this account. He testified that the contract workers decided for themselves to go to Shimla Park, after student activists had given them the option either to go to Shimla Park, or to go home. Mr Moafrika added that he thought it would be unproductive to wait for a response and that he was in favour of going to Shimla Park to proactively seek a response from Professor Jansen. The contract workers agreed and decided to go confront the Vice Chancellor at Shimla Park.

136 Students also had deliberations among themselves about the way forward. Around midday the SRC called a mass meeting at the Student Kgotla (an amphitheatre at the student centre) after the SRC President's assurance to Mr Mazula and Mr Mtamzeli that the SRC would become actively involved in seeing to it that Mr Shaku and the workers were released. The discussions at the mass meeting were about the arrests of that morning, but also about the contents of the SRC's letter of Sunday 21 February 2016 to UFS management concerning the alleged victimisation of student activists.

137 Mr Sikhululekile Luwaca, the SRC member for Student Associations and Dialogue, said to the Panel that it was clear at the mass meeting that the group wanted access to UFS management. One of the students and a member of the Economic Freedom Fighters (EFF) suggested that the protesters go to Shimla Park later because Professor Jansen would be there to watch the rugby. Mr Luwaca added in his evidence that one of the views expressed at the mass meeting was that the workers were denied access to the campus to prevent them from disturbing the rugby match.

138 The plan was to go to Shimla Park to get an audience with Professor Jansen who seemingly did not have the time to respond to the SRC's letter, or to attend to the workers' plight and arrests, but had the time to go to a Shimlas rugby match. The protesters, as Mr Gatebe explained, would "pause the game", speak to management and then allow the game to resume.

139 Mr Luwaca said that the sentiment among the protesters was that the importance given to the rugby match was a reflection of white supremacy at UFS. Mr Gatebe mentioned in his evidence that they chose to go to Shimla Park also because they were aware that the media and cameras would be present if UFS management responded with the "UFS arrogance" that the students had become accustomed to, so then it would be exposed for all to see.

140 After the mass meeting at the Student Kgotla Mr Ntuli went to the main gate. He went out to tell the workers what had been discussed by the students, most importantly the decision to go to Shimla Park. Mr Ntuli laid down two principles for the protest to be led by him: There would be no violence and there would be no damage to property. In his own evidence Mr Ntuli calmly and softly stated that the plan was to "disrupt" the rugby match and speak to the Vice Chancellor.

141 Mr Moafrika's evidence was that Mr Ntuli spoke to the security guards to let the workers onto campus so that the students could buy them something to eat. But he says they did not divulge to the security guards their "revolutionary strategy" to grant the protesters access to the campus so they could go to Shimla Park. Mr Gatebe testified that the students gave the contract workers access to campus "because our student [Mr Shaku] was involved". The workers entered the campus and went to buy food with the students at Thakaneng Bridge (the student centre). The students and workers strategised and sang at the student centre to pass time and then headed for Shimla Park around 15:00 or 16:00 where the Shimlas would later play their first rugby match of the season.

142 The nature of the evidence presented to the Panel was such that it is not possible to form an entirely clear picture regarding the exact time of the mass meeting, or even whether more than one meeting perhaps took place. This is understandable.

On the way to the Park: decisions; eggs; a middle finger; and a phone call from “prison”

143 On their way to Shimla Park the protesters passed Karee, a male residence on campus. A white man in the residence pelted the protesters with eggs and shouted the “k-word” at them. Mr Mazula added that the word “monkey” was also used. Another flipped the middle finger at the protesters passing by. In his evidence, Mr Gatebe described these incidents as the surfacing of the “culture of whiteness at UFS”. A pocket of protesters remained at the residence to identify the culprits and report the matter to the residence head. Mr Gatebe was one of those who stopped at Karee.

144 Mr Lee Goliath, full time residence head of Karee, arrived home from attending to his duties at the UFS library and picking up his son from school to find a group of students gathered in front of and in the foyer of the residence. His fiancé and daughter were standing with them. The students explained to Mr Goliath that there had been incidents of egg throwing, a racist slur and an offensive hand gesture directed at them. Mr Goliath said to the Panel that he saw the egg shells on the ground and immediately contacted Dr WP Wahl, Assistant Director of Residence Life, and Mr Quintin Koetaan, Senior Director of Housing and Residence Affairs, to inform them of what had happened and to warn them that the situation might get out of control. The two of them arrived at Karee shortly after the call.

145 The protesting students at Karee initially wanted to go into the rooms themselves to find the egg-thrower but they were persuaded against the idea. Instead they pointed out to Mr Goliath the room from which the eggs were thrown, but there was nobody when Mr Goliath went to check. Mr Goliath also presented photos of Karee residents to the protesting students, but it turned out that the person they identified as the culprit, Mr Goliath said, was not at the residence at the time.

146 The protesters did identify the person who pulled the middle finger at them. He was a first year student who went to a living area within the residence referred to as “the beehive” and saw the protesters outside. Mr Goliath explained to the Panel that when the student who made the offensive hand gesture was questioned about his actions, he alleged that the

protesters saw him in the beehive and called him a “settler”, which provoked him to flip his middle finger at them.

147 Mr Goliath informed the Panel that the person who threw the eggs and allegedly used the passers by the “k-word” still had not been identified. Mr Mazula on the other hand testified that the culprit was identified and he changed his outfit after insulting the protesters, so he would go unnoticed. The culprit was spotted at Shimla Park where and the registration number of his car was jotted down. Mr Goliath heard this version for the first time when it was put to him at the hearings.

148 Mr Goliath shared with the Panel his view that the culprit who threw the eggs and verbally insulted the protesters was not necessarily a current resident of Karee, because there were students at the residence earlier that day who used to reside at Karee. Mr Goliath added that it was unlikely that the person was a first year student, because first year students do not live on and very rarely go to the side of the residence where the eggs were thrown. He also mentioned that it did not follow as a matter of course that the egg-thrower was the student-resident assigned to the room pointed out by the protesting students because Karee residents generally leave their doors unlocked and anyone could have gained access to the room.

149 The UFS counselling services were called to Karee later that afternoon, because of how emotional and disturbed the protesting students were. Mr Goliath’s evidence was that the protesting students behaved in a disciplined manner at Karee and stayed calm, despite feeling very upset and insulted. The counsellors were readily available, because the episode at Karee happened during a period when there was an atmosphere of unease on campus. The UFS investigating officers also came to take statements. Some of the protesting students stayed at Karee to cool off. According to Mr Goliath, UFS was still investigating the incident.

150 The rest of the protesters went ahead on their route to Shimla Park. Mr Masalesa informed the Panel that it had only been about three weeks since he had joined the UFS security team when the events of 22 February 2016 occurred. He testified that he and about three UFS security personnel followed the protesters to Shimla Park. Mr Masalesa tried to speak to them, but they did not give him much attention. He managed though to get the attention of the SRC President who told him they were on their way to watch the rugby match. Mr Masalesa said to the Panel that his response was then that the SRC President should be careful not to do anything that would force the police to act.

151 The protesters did not cooperate by moving off the road leading to Shimla Park. Mr Ntuli's version was that he advised the protesting group to turn back when they saw the police for fear of the "parents" (workers) among them getting arrested.

152 Mr Moafrika and Mr Anathi Nyadu, an honours student, also mentioned that Mr Ntuli stopped the protesting crowd to convey a message from Mr Shaku who phoned from the police cells to say the protesters should not go to Shimla Park. Mr Shaku testified that his message to the protesters was that it was not a good idea to go to Shimla Park because of the racial tensions in the country. Protesting at the rugby match would, Mr Shaku warned: "play into their white arrogance". Mr Ntuli also spoke about Mr Shaku's call from "prison".

153 Some of the protesters heeded the call and aborted the Shimla Park plan. But this was only temporary, because they soon turned around again and carried on to Shimla Park after Mr Moafrika's and the EFF chairperson's interventions. The two of them reaffirmed the decision to go to Shimla Park and overruled Mr Ntuli's attempts to ditch the Shimla Park plan. Those who had already turned away from Shimla Park turned around and joined the protesters going to the rugby stadium again.

154 Mr Masalesa said that his concern with the protests of Monday afternoon was that the protesters were violating the Fees Must Fall interdict by disturbing the free flow of traffic. Mr Masalesa found it necessary to phone Lt Col Munsamy to inform him that the protesters were on their way to Shimla Park and that they were doing so in a way that violated the interdict. The police had been on standby in accordance with the protocols that they had with the UFS security team to enforce the interdict if the need arose. The police made their way onto campus after the phone call from Mr Masalesa.

155 Mr Masalesa testified that he found it necessary to call the police onto campus because the nature of the protests had changed – they had become "disruptive and violent". And the number of students who had mobilised from the student centre to the main gate earlier in the day was too big for campus security to contain. Mr Masalesa referred to the "looting" by the protesters at the student centre before they made their way to Shimla Park as an example of how the protest had escalated.

156 The police managed to go ahead of the protesters during the delay and discourse about whether or not to proceed to Shimla Park notwithstanding Mr Shaku's advice. Mr Moafrika said that when they were confronted by the police, he and other students produced their student cards and told the police they were going to the rugby match and that they were

entitled to do so. Mr Lufele said the police let them through after an assurance that the protesting group would not do anything out of line when they got to the stadium.

157 The protesters were still walking in the middle of the road and blocking the flow of traffic to the rugby match and, for the second time that day, the police asked them to get off the road. (The first time was on DF Malherbe Avenue shortly before the arrests.) A quarrel broke out between the police and the protesters in the area of the UFS cricket field where the police had created a barricade. Mr Ntuli was almost arrested at this point, but he escaped from the grip of the police with the help of protesters. The protesters threw stones at the police to distract them while he ran away from them towards Shimla Park. The rest of the protesters followed.

158 Mr Mazula's version of what happened during the encounter with the police was that Lt Col Munsamy "pulled" Mr Ntuli when he was talking over the loudhailer. Mr Mazula then pulled Mr Ntuli behind him, away from the police. In the process a white police officer pulled out his gun and cocked it, which prompted the protesters to challenge him to shoot them by yelling: "Shoot us! Shoot us!" Lt Col Munsamy and another officer quickly condemned the actions of the white officer and asked him what he was doing: How could he think of shooting students who did not have weapons on them? The protesters ran through the police as they were having an argument about cocking the gun. Mr Mazula was the only witness who mentioned the alleged use of the gun.

159 The police did not chase after the protesters. The Panel heard different reasons from witnesses as to why the police did not follow the protesters to Shimla Park. Mr Van der Merwe testified that he had heard the police saying that they were not armed and would not be able to properly defend themselves against the protesters.

160 Mr Masalesa told the Panel that after the protesters had run past the police, he asked them what their plan was. The police expressed their reluctance to act because of their protocols around "situation appropriateness" which Mr Masalesa told the Panel required the police not to do anything that would fuel the situation. Also, the stadium was not covered by the interdict which added to the police's reluctance to follow the protesters Shimla Park. Mr Masalesa and the UFS security personnel followed the protesters.

Singing and violence in the Park

161 The protesters got to the perimeter of Shimla Park and had to overcome another obstacle. Security personnel and a group of white students had seen them approaching and shut the gate. Afriforum members, stood directly in front of the gate to obstruct the protesters from entering. Mr Siyabulela (“Siya”) Lufele, who was carrying the loudhailer that the SRC President used, testified at the hearings that the protesters tried to explain to the group blocking the gate that they only wanted to talk to management and then they would leave. But the people blocking the gate still kept it shut.

162 Mr Gatebe said that the protesters asked the white group at the gate why they would not let them enter the stadium. Their response was that it was their rugby match and the protesters had just come to fight. The protesters said to the group that they too were there to watch the rugby. Mr Gatebe impressed upon the Panel that the white women blocking the gate were “reasonable” and simply wanted the protesters to enter in a specific way. But the altercation between the two groups – the protesters and the obstructers – heightened as they hurled insults at each other. The black students exclaimed that they were being denied access to the stadium because of their race. And according to Mr Gatebe the white group called the protesters “k*ffirs” more than once.

163 Ms Ju-Mari Pretorius and Ms Chantelle du Preez were two of the people blocking the gate. Ms Du Preez is the chairperson of Afriforum Youth at UFS and testified that they were at the gate to recruit new members, to “build spirit” between Afriforum and UFS students and to hand out Afriforum freebies before the rugby match began.

164 Ms Pretorius is the Afriforum coordinator at the Bloemfontein campus. She told the Panel that they had closed the gate as a precaution, because they got word of the protesters approaching and were worried for the safety of the students queuing to purchase match tickets at the gate. According to Ms Pretorius the protesters “arrived at the gate violently” and started kicking her and one of her male counterparts in front of the gate. She also said that the protesters started throwing rocks at them as they were approaching. Ms Du Preez echoed the sentiments of Ms Pretorius that they closed the gate to protect the safety of students. Ms Du Preez said that reflected part of what Afriforum stands for – protecting the rights of students, including their safety.

165 The protesters were not deterred by the resistance they encountered at the gate. They shoved the obstructers against the gate to force it open. The gate was opened very briefly

and some protesters gained entry to the stadium during this opening. Some of the protesters who did not make it through moved to another gate to the left of the gate that was blocked by the Afriforum members and security personnel. The gate on the left was not properly locked and the protesters were able to open it and gain access to Shimla Park after removing the wire that was keeping it shut. The rest of them stayed at the gate where the Afriforum members were and continued to try gain entry there.

166 Ms Pretorius told the panel that after she and the others who were standing in front of the gate were pushed against the gate, causing it to open, they turned around – now behind the gate – and shut it again so the protesters still outside could not come into the stadium.

167 Ms Pretorius continued to state that while they kept the gate shut a second time, a black man came from behind her and suddenly slapped her across the face. Ms Pretorius said that she was shocked and could not believe that a man could hit her. She looked at him and then approached him to confront him. As Ms Pretorius charged towards him he hit her across the face again – this time with the megaphone (loudhailer) that he was holding. The blow was so hard, that Ms Pretorius fell and was unconscious for a short while. She was later dropped off at home after she regained consciousness and she laid charges with the police the following day. She later had to receive treatment for her neck and for concussion.

168 Mr Siya Lufele was one of the protesters to make it through the brief opening of the gate. His version of events as between himself and Ms Pretorius was slightly different. Mr Lufele testified that he had assaulted Ms Pretorius because she called him a “k-word” during the altercation that started when the protesters arrived at the gate. When questioned about this at the hearings, Ms Pretorius strongly denied calling anyone a “k*ffir” and said it is a word she would never use.

169 Mr Lufele’s version goes on to state that after he had gained entry to the stadium, he noticed that the gate had been shut again and that a staunch, white man was the person with the most power in keeping it closed. Most of the protesting group was still on the outside of the stadium, so Mr Lufele wanted to remove the biggest obstacle behind the gate in order to open the gate for the rest of the protesters to enter the stadium.

170 In preparation for the task of removing the white man from the gate, Mr Lufele said he first had to tie his own shoe laces. In the process of approaching and pulling the white male (who was standing next to Ms Pretorius) to try move him out of the way, he heard Ms Pretorius

shout something in Afrikaans that, to Mr Lufele's mind, could be translated as "Watch out for the k*ffir!" This remark was accompanied by a kick.

171 Then Mr Lufele slapped her. Ms Pretorius then charged towards Mr Lufele. And then he hit her across the face with the loudhailer he was carrying. His reason for slapping her was that he was fed up with hearing the protesters complain about white students calling them "k*ffirs" over and over again and that he was not going to allow that word to be used in reference to him.

172 Ms Du Preez explained that Ms Pretorius was carried out of the way after she had fallen, so as to avoid her getting stomped on by the protesters rushing through the gate. She added that Mr Mazula went up to her and asked her to point out who had hit Ms Pretorius. But the assailant had already fled from the gate. Several white men chased Mr Lufele when he ran away after assaulting Ms Pretorius. They allegedly alluded to the protesters that black men were "women beaters".

173 Eventually all the protesters who entered the stadium – through the gate with the obstructers and the gate that had been secured with a piece of wire – gathered and sat in open stands on the north-west side of Shimla Park. In response to questioning, Professor Jansen mentioned that the group of protesters were distinguishable from the rugby spectators because they (the protesters) sat on the side of the field which is usually not occupied. And they were not wearing the red Shimlas t-shirts.

174 The protesters sang whilst they were in the Park. Mr Moafrika said to the Panel that the older people of the protesting group grew tired of singing and were anxious to enter the field and deliver their message to Professor Jansen. Mr Moafrika advised them that if they were going to enter the pitch whilst the match was on, they had to wait for the ball and rugby players to move away, to the other side of the pitch. The moment play moved to the other side of the field, Mr Moafrika said he told the person holding the loudhailer to announce to the protesters that it was time to enter the field.

175 Mr Gatebe's evidence was similar to that of Mr Moafrika. Mr Gatebe stated that some of the protesters were prepared to wait for half time before entering the pitch, but that others wanted to go on during the first half because they were tired and had issues with public transport the later it got in the day. Mr Gatebe also said that "the radicals" were part of the contingent that did not want to wait for halftime because they had just been called "k*ffirs" at the gate.

176 During the first half of the match, about 20 minutes after kick-off, the protesters moved onto the pitch. They stood in a circle in the middle of the pitch and sang the “Solomon Mahlangu struggle song” for the purpose of stopping the match and getting the attention of UFS management. The protesters explained to the Panel that they held hands as a symbol of peace and to demonstrate that theirs was a non-violent protest. Mr Ntuli and Mr Luwaca stood in the middle of the circle and Mr Ntuli declared over the loudhailer: “We are not here to fight!”

177 Professor Jansen was in the VIP suite at the time the protesters were still seated in the stands – before they went onto the pitch. He told the Panel that he noticed the protesting group descending onto the pitch and panicked because he could not spot any police officers or security personnel in the vicinity. When he reached for his cell phone to call for security, he realised that he had left it plugged into his car charger. Professor Jansen said he then dashed to his car and tried to call security, but to no avail. He then called a member of the UFS staff, possibly Ms Cornelia Faasen, the Director of Student Life and Leadership at UFS and former Dean of Students. But at the time of giving his testimony, Professor Jansen could not recall for sure whom he had called.

178 The referee called the players off the field when the protesters entered the pitch. Mr Moafrika confirmed that this was what the protesters wanted according to their plan. The rugby players ran down the tunnel into the changing rooms.

179 The spectators sitting in the stands were displeased with the disturbance and booed the crowd on the pitch. Some were more agitated than others. Mr David Buchanan-Clarke heard some who were from an off-campus UFS male residence called Heimat, say: “Ons gaan hulle bliksem.” (We will beat them up.)

180 Four or five spectators then went onto the pitch. They were cheered on by the other spectators as they made their way down and entered the field to confront the protesters. They threatened that they would end the disturbance quickly if the protesters did not hurry off the pitch. The protesters did not budge but instead insisted over the loudhailer that they were not there to fight – they were there only to meet with Professor Jansen.

181 Mr Luwaca and Ms Du Preez stood in between the opponents in an attempt to prevent a fight. But their interventions proved to be ineffective when one of the spectators on the pitch

signalled for reinforcement from the spectators still in the stands. The white spectators responded and moved onto the field in droves, or in Mr Moafrika's words, "like a tsunami".

182 Mr Van der Merwe and Professor Keet had arrived at Shimla Park shortly before the protesters moved onto the pitch. They heard screams coming from inside the stadium and went to see what was happening. They saw the protesters in the middle of the pitch and realised that the screams were coming from the spectators. Mr Van der Merwe and Professor Keet started making their way to the middle of the field to speak to the students with the aim of preventing a fight. But they did not make it to the protesters because they got caught in the path of the stampede of spectators who were moving from the stands down to the pitch.

183 Professor Keet was knocked to the ground twice and his shirt was torn when the spectators used it to yank him to the ground. He said he received protection from Mr Van der Merwe when he was on the ground, which prevented him from sustaining serious injuries. Professor Keet was disorientated and flustered after the experience and retreated from the scene to have a beer to calm his nerves. In his view, as expressed at the hearings, it was impossible at that point to manage the situation. Mr Van der Merwe testified that the attacks on Professor Keet were probably deliberate and racially motivated, and that he was not targeted because he is white.

184 The spectators started beating up the protesters on the pitch. Mr Nyadu was one of the protesters who were attacked. He told the Panel that some spectators "moered" him until he fell. They then kicked him as he desperately tried to protect his head while he was on the ground. The first group of spectators that attacked Mr Nyadu stopped, but then a second group took over.

185 Mr Mazula said the spectators grabbed his dreadlocks, pulled him to the ground and beat him as he was trying to diffuse an altercation between his friend and a spectator. His eye was swollen shut the next day as a result of the assaults.

186 Mr Nqobile Chamane, the executive head of the SRC Sports Committee, was attacked by three or four spectators when he tried to help Mr Mazula and again after he escaped from the first round of attacks and ran to the changing rooms. He stressed that he felt intense pain in his head after he had been beaten and that he could not see clearly. Mr Chamane testified that he attended the match as part of his SRC duties and then decided to join the protesters when he saw them in the stands at Shimla Park. He did not know about the plan to go to Shimla Park beforehand.

187 Mr Moafrika said he was confronted with a rugby-like “spear tackle” when he tried to run away from the spectators and that his backpack broke his fall as he hit the ground. The spectators punched and kicked him, but he was not too badly hurt by the kicks because the spectators who attacked him happened to be wearing flip-flops. But part of Mr Moafrika’s suffering while he was down was caused by one of the spectators grabbing and squeezing his private parts, so he said.

188 Ms Toyana showed the Panel images of a worker lying unconscious on the pitch. She also presented images of a white man whose lip was bleeding and of white spectators who appeared to be assisting the protesters. The unconscious worker in the image was Mr Molefe, who was then 39 years old. White spectators punched him in the head and tripped him. Once he fell to the ground, they kicked him in the kidney area of his back until he passed out.

189 Mr Molefe handed to the Panel a newspaper article containing an image of him being carried by three white males, some of them wearing Shimla t-shirts. He identified the men in the image as the people who assaulted him. He was adamant that they were not helping him off the field as an act of kindness. Mr Molefe regained consciousness in an ambulance parked at Shimla Park. The paramedics in the ambulance then said to him that they were taking him to the hospital, but Mr Molefe declined. He got off the ambulance and then got a lift to a taxi rank and went home.

190 Mr Molefe expressed during his testimony that he felt ashamed of what happened that night and that he still felt physical pain six months after the fact. (More of his testimony in this regard is discussed below.) He never thought the beatings would be the result of the workers’ strike. He did not foresee that the spectators would beat them for protesting, because, he said: “We were not fighting.”

191 Some of the injured protesters received first aid from paramedics at Shimla Park. Mr Chamane was one of them. He stated that while he was in the paramedics’ room a white man walked in cradling his injured hand. He was followed by a white woman wearing a UFS top who commended the man for beating up the “k*ffirs”. Mr Chamane said he then stormed out of the room and out of the stadium. He walked passed police officers who, on Mr Chamane’s version, laughed at him and asked in Sesotho what he was doing on the pitch in the first place.

192 The protesters threw stones into the field from behind an embankment as they ran away. The spectators who were the targets of the stone throwing picked up the stones and threw them back in the direction of the protesters and taunted the protesters at the embankment to come back so they could “donner” (hit) them some more. They also laughed at the protesters and made comments to them in Afrikaans. The onlookers in the stands cheered on their fellow rugby supporters for clearing the field of protesters. They cheered for the rugby players too when they came back onto the pitch to continue with the match.

193 Professor Jansen said he only caught a glimpse of the last moments of the assaults by the time he got back from collecting his cell phone from the car. According to Professor Jansen’s evidence, he did not have a definite plan to go to the rugby match that evening. He had other urgent work to complete, so he was in two minds about going to Shimla Park.

194 UFS management was having a meeting in Professor Jansen’s office when they came to know of the students’ plan to go to Shimla Park. They received reports of students throwing stones at the police in the vicinity of Shimla Park. This, Professor Jansen testified, was the reason he decided to go to the rugby. He added that he knew a disturbance at the rugby match (or any sporting event in South Africa) would be catastrophic.

195 The idea to take the protest to Shimla Park was against the advice of Mr Shaku. He spoke to the SRC president from the police cell and told him not to put the workers in danger. Mr Shaku foresaw that a trip to Shimla Park would not end well. He thought it was a bad political decision, given the racial tensions in the country at the time. The protest would be turned into a racial issue and, according to him, the conservative, white spectators would not let the protesters off easily. Mr Shaku testified that the idea was suggested as early as Friday, 19 February 2016. Even then Mr Shaku and most of the workers thought that Shimla Park was a no-go.

The match continues

196 Professor Jansen testified that after the mayhem on the rugby pitch UFS staff members and management “set up shop” in the grand stand to do damage control. Mr Van der Merwe testified that Professor Jansen asked him and Ms Faasen for advice on whether the match should continue. Ms Faasen said in no uncertain terms that it should be called off. When asked about this at the hearing Professor Jansen said that he lacked the authority to call off the match – the rugby match was organised and managed by Varsity Cup, not UFS.

197 Mr Dougie Heymans is the assistant director of Kovsie Sport: Rugby and the coordinator of Varsity Cup matches for the UFS rugby team, the Shimlas. On his evidence, representatives from both teams together with Varsity Cup officials – Mr Marius van Rensburg, a member of the executive committee, and Mr Duitser Bosman, the chief executive officer – also had discussions about whether or not the match should resume.

198 Mr Heymans explained that the Varsity Cup protocol provided that the match could continue if it was safe for the players and spectators. After ensuring there were sufficient security measures in place, Mr Heymans informed UFS management that the match could go on shortly. He told the Panel that Professor Jansen was busy on his cell phone when he consulted him about resuming the match and seemed to be preoccupied and in a state of shock. But he gave Mr Heymans the go-ahead nonetheless.

199 Mr Heymans refuted in his evidence that there were no security personnel visible on the field before the attacks. According to him, SecuriForce personnel could be seen around the field in orange bibs and campus security in green bibs. Mr Heymans said he organised the security. Mr Masalesa also mentioned that security at the rugby event was the responsibility of SecuriForce, which had been organised by Kovsie Sport.

200 Professor Jansen testified that he saw the referees calling the players back onto the field and thought he could not do anything about it because the referees had their own chain of command. And, on his version, only the chair of Council could call off the match on behalf of UFS. All he could do, was assume his role of communication together with Ms Lacea Loader, the UFS spokesperson. Professor Jansen said the two of them spoke to parents, drafted and released statements from the suite at Shimla Park. The rugby match continued in the background.

201 Professor Jansen also shared with the Panel that his and other staff members' concern was their inability to prevent the incident. This was new to them, as the three UFS campuses were typically peaceful. He added that it made them realise that UFS needed another layer of security in a crisis situation.

202 Mr Wilhelm André Kotzenberg played his debut rugby match for the Shimlas on that Monday. He explained that the players stayed in the changing rooms for around an hour while the coaches deliberated the next step after the protesters entered the field and then got attacked by the spectators. Mr Kotzenberg said the other team, the Nelson Mandela Metropolitan University (NMMU) Madibaz, said that they did not feel safe to go back onto the

field and wanted the teams to share the points and “call it a day”. He thought the proposal of the NMMU Madibaz was not much more than a tactical move. The Shimlas were the favourites to win. He personally wanted the match to continue, so he could complete his debut and because it was the Shimlas’ first game of the season and their only one at home.

203 Mr Kotzenberg said there were mixed reactions from the rugby players when they were informed that there had been “a serious fight” on the pitch and that the protesters had been “vanquished”. Mr Kotzenberg elaborated that some, like himself, were excited to go back onto the field. Others were upset and angry that it took a fight for them to be able to continue with the match. Mr Kotzenberg also said that he was not aware of any Shimlas players who did not want to finish the match. And he said that once the players got out onto the pitch, to a stadium full of spectators, the atmosphere was “amazing”. He proudly added that the Shimlas won by far that night.

204 Mr Heymans testified that it was important to him for the rugby match to continue because the Varsity Cup is a high profile tournament. It was conceptualised by former Springbok captain Francois Pienaar and Mr Derick De Vries, a corporate executive. One of its purposes is to showcase and nurture rugby talent at intervarsity level. It also runs social responsibility programmes like the Pink Shorts campaign concerned with bringing awareness to gender-based violence.

205 Mr Heymans felt the protesters insulted UFS when they trespassed onto the field and disrupted a peaceful rugby match. He referred to rugby as “the game we love”. He strongly condemned the actions of the spectators. He described that Monday as the second worst day of his life – after the day his father died. It was a sad day also for the sport and for UFS, he said.

Stand-off at the tiekie

206 After the protesters’ plan had gone horribly wrong at Shimla Park, they escaped and gathered at the student centre to regroup. Deeply aggrieved and angered by the attacks, they decided to go to Abram Fischer residence, more commonly known as “Vishuis”, to avenge their assaults.

207 The protesters initially contemplated going to Beyers Naudé residence. Beyers Naudé was previously known as JBM Hertzog, named after the former prime minister of the Union of South Africa, a statue of whom still stands in front of the UFS residence. Mr Moafrika testified

that he wanted to go to Vishuis because his attackers at Shimla Park were wearing red Vishuis hats. Mr Nyadu also said that the protesters identified that their attackers as from Vishuis because they were wearing the uniform of the residence.

208 Mr Moafrika told the Panel that only about nine protesters went with him from the student centre to Vishuis. He then went back to the student centre to call more of them. Mr Gatebe explained in his evidence that there was no longer proper coordination among the protesters. Mr Gatebe also said that they had decided to go to Vishuis to wait for the student-residents to come back from Shimla Park, so they could beat them up. He added that they were waiting specifically for students wearing the Shimlas supporter t-shirts.

209 Mr Ntuli opted to go to the SRC offices to draft and circulate a statement calling for a campus shut down for the rest of the week. He explained to the Panel that the protesters went to Vishuis probably because it is associated with rugby at UFS. Its first-year residents were spotted at Shimla Park dressed in their uniform – red hats and ties, white shirts and dark pants.

210 The protesters gathered and waited for white students coming from the rugby match at the traffic circle outside Vishuis called the “tiekie”. Mr Kotzenberg, a resident of Vishuis, told the Panel that he was at a post-match function when he received a phone call about what was happening around the tiekie. Some of the protesters were carrying sticks and stones and, according to Ms Du Preez’s, at least one of them was carrying a whip. Mr Chamane testified that he was carrying a stick.

211 According to witnesses the atmosphere was highly charged. A couple of students who appeared before the Panel went as far as to say that the anger they felt could have driven them to kill somebody that night. Mr Chamane said: “I was very angry, if one of them came to me, I would have moered them”. Professor Keet testified that there was a fear that lives were in danger.

212 Ms Du Preez said that she and those she was with ran away when they first got to Vishuis after the rugby match because the protester who was holding a whip called the other protesters when he saw Ms Du Preez and her company coming. She later came back to Vishuis. A bigger group of rugby spectators – students and non-students – also arrived and gathered outside Vishuis. Dr Lange testified that some of them were carrying weapons like cricket bats. Mr Kotzenberg said that he stood in front of Vishuis with first-year resident students.

213 The police arrived and positioned themselves on the south side of the tiekie to monitor the situation. Dr Lange and other witnesses explained that the police stood with their backs to the white group, facing the black group. Mr Gatebe was the only witness to state that the police formed two lines – one in front of the white students and one in front of the black students.

214 Dr Lange testified that she tried to get the white students to go into their residence. This did not work. So, she asked them at least to increase the gap between themselves and the black students. They did not budge. Ms Du Preez mentioned that the people inside the residence felt they were being held hostage by the protesters outside. Mr Van der Merwe and Dr Lange said they removed stones from the black students' hands and advised them against violence. Ms Du Preez told the panel that Dr Wahl instructed the white non-students to leave, because they had no right to be on campus, but they refused and instead called more people for reinforcement.

215 Mr Mtamzeli mentioned that he was approached by an “Indian” police officer, who asked him to organise leadership for the black group and said he would do the same with the white group. The idea was for the leaders to talk with the aim of dispersing their respective groups. Mr Mtamzeli said, in the process, he encountered a black police officer who told him there was nothing to talk about between the two of them and said: “You are the problem.” Mr Mtamzeli said it was at that point that he believed what he had been warned about – that the police were against the black students.

216 Mr Van der Merwe testified that one of the people in the white frontline introduced himself as a member of the Afriforum neighbourhood watch and said they had come to protect their students and university. He was one of the first people to throw objects at the black group. He ran a few paces and threw a brick at the protesters. The Afriforum group was seen to provoke the black students and raise the temperature on campus.

217 Dr Lange and Mr Van der Merwe testified that UFS staff members, including Dr Wahl, Ms Faasen and Dr Lange herself, tried to persuade the white group to disperse because, as they were heightening the tensions and provoking the black students who by then were boiling with anger. The men among them refused but told the women to leave. According to Ms Du Preez, Mr Johan Hattingh, who was the Afriforum neighbourhood watch coordinator in the Free State at the time, gave the white women a lift in his bakkie to the medical gate. Other members of the neighbourhood watch were waiting for them there.

218 Both black and white groups sang. Mr Chamane and Dr Lange mentioned in their evidence that the white group sang “Die Stem”. Several witnesses said the white group was arrogant and aggressive and that some of them were inebriated. Dr Lange explained: “Some white spectators were absolutely drunk. They brought their drunkenness from Shimla to campus.” Mr Van der Merwe testified that the white group was dismissive of Dr Lange’s efforts to bring calm and order and responded to her pleas in Afrikaans, even though she is Argentinian and English-speaking. They declared that they were not going to back down this time. And that they were not willing to listen or speak to her in English. Dr Lange said they beat their chests with their fists and chanted for Afrikaans: “We want Afrikaans!”

219 The white group continued to tell Dr Lange that UFS would now have to deal with “the monster” it had created when it did away with Afrikaans (as the only medium of instruction) and enabled black students to study – in English – at UFS. The white students and people who appeared to be parents bellowed that Afrikaans was not going anywhere. With reference to the campus shut down of the previous year due to the protests around Fees Must Fall, they were steadfast that they would not allow black students to have their way again. There would be no campus shut down this time.

220 The situation got worse when a religious group (Christian Revival Church) arrived and positioned themselves somewhere in between the two sides. What annoyed the black students was that the group sang and prayed in their direction. The sentiment among the black students was that they were being prayed for because they were problematic. The group of black people did not appreciate this and told them not to pray for them. They asked: “What about the white people?” The witnesses expressed that emotions were very high. Some people broke down in tears.

221 The evidence on which side threw stones or objects first is unclear. Some witnesses said the protesters started the exchange: others said it was the people inside Vishuis who threw hard objects first. The residents inside threw the stones that had been thrown into Vishuis back into the crowd or protesters. They added to that eggs, water bottles and coffee tins. This caused the protesters to duck towards their adversaries (the white group) on the eastern side of the tiekie to get out of the line of the flying objects. This lessened the distance between the two groups.

222 At some point Dr Lange went into Vishuis to find out who was throwing the objects. Mr Kotzenberg testified that he too went inside the residence and saw protesters running

towards and then throwing a stone at a Ford Ranger. He also said that the black protesters threw the rocks with so much force that they smashed through the windows and cracked the tiles on the bathroom walls on the opposite wall. Mr Maselesa showed the Panel pictures of broken windows as a result of the exchange and retaliation between the two groups and of the broken windows and windscreens of the cars that were parked in the vicinity.

223 Mr Moafrika mentioned that the police told the black students to leave. They challenged the instruction and asked why they were the only ones being told to leave; UFS was their campus too, not just that of the white students.

224 Dr Lange expressed her frustration with the police. She said that other than the Indian police officer who helped her in an intervention to get one of the most aggressive older white men to leave, the police (and campus security personnel) were “useless” in controlling the crowds. And they did not assist in the attempts to keep the white students inside Vishuis, which made the situation even worse because, the more the white students came out and taunted the black students, the worse the situation got.

225 Dr Lange told the Panel that around midnight the police fired rubber bullets and stun grenades to break up the standoff. The black students fled. She added that there was a distinct sense that the police’s actions were directed squarely towards the black students. Professor Keet testified that the police’s actions after they had shot the first round of stunt grenades to disperse the crowd were disproportionate and inappropriate. Mr Kotzenberg testified that he saw the police shooting rubber bullets at white people. He was the only witness saying that the police directed their actions to disperse the crowd towards the white group as well.

226 Dr Nel, the residence head of Armentum, a male residence down the road from Vishuis, testified that he heard a loud boom emanating from the direction of Vishuis and went out into the road to see what was happening. There was a commotion. People were scattering. Two of them were Armentum residents who ran to Dr Nel at the residence and told him that the police had chased them as they were walking back to their residence. They said the police went straight past a group of white men holding hockey sticks and other implements to get to them. Dr Nel said that the two black Armentum residents said the police fired shots behind them as they ran away.

227 A number of bakkies were reportedly spotted by several witnesses on campus that night. Each bakkie was occupied by white men carrying some implements and arms. Dr Nel testified

that the bakkies were driven around campus aggressively at high speed. The bakkies were also used to barricade the gates of the campus. It was said that the white men also fired shots when the police opened fire. According to Ms Du Preez, there was only one bakkie with white men from outside on campus.

228 Mr Ntuli testified that while he was still in the SRC offices, he got word that white people in bakkies were looking for him and Ms Mpho Khati, the Vice President of the SRC. He said that the bakkies were seen and shots were heard at Colnorus, Mr Ntuli's erstwhile residence. But he could not be found there, as he was still at the SRC offices. In any event, he had moved and was living at Kopsie Inn at the time. He decided to stay at the offices with other students to avoid the danger.

229 Mr Masalesa said that rubbish bins had been emptied and set alight outside the main building and that he was struck by a stone when he went to the building to extinguish the fire. He did not see who threw it. Mr Maselesa was injured and thereafter booked off work by a doctor for a couple of days. My Nyadu testified that he and a handful of students were told by security personnel to leave the area when they went to see what was going on at the main building after hearing about the fire.

230 After the crowds had dispersed outside Vishuis, Mr Van der Merwe went to the Institute with Professor Keet and other colleagues. Some students were standing outside the residence opposite the Institute's offices, Villa Bravado. Others sought refuge in the offices of the Institute.

231 According to witnesses, the police that night seemed to be "on a mission" to clear the streets of UFS. The black students were trapped on campus because the Afriforum neighbourhood watch blocked the gates and only allowed white students, particularly females, to exit campus. Ms Faasen, Dr Lange and other UFS staff members transported black students off campus and dropped some of them at their various homes.

232 Mr Kotzenberg said of the incidents at Shimla Park and Vishuis that it was sad that the Shimlas won the Varsity Cup the previous year (2015) and then had these events, which made UFS look bad, happen to UFS this year. The rest of their rugby season was a disappointment. He added that as a rugby player, he handles disappointments and has moved on from what happened at Shimla Park, but that as a student of UFS he still has "a hole in [his] heart" because of the incidents.

Bail

233 Advocate Inez Bezuidenhout, a lecturer in the Faculty of Law and the director of the UFS Law Clinic, testified that she had received a phone call from Professor Keet on Monday 22 February, asking for her to assist with securing bail for the protesters who had been arrested that morning. She organised a lift with Mr Rawson, a candidate attorney at the clinic, and went with him to Parkweg Police Station (Parkweg) where they met Professor Keet.

234 Ms Bezuidenhout testified that upon their arrival at Parkweg the investigating officer advised them there would be no bail for the protesters until the addresses of the arrested workers and Mr Shaku were verified. She and Mr Rawson offered to provide the police with a list of addresses to speed up the bail process.

235 The police were reluctant to grant bail. And, according to the evidence of Professor Keet, they frustrated the UFS staff by sending them from pillar to post. Professor Keet told the Panel that he thought it might have been a delaying tactic to ensure that the protesters spent at least one night behind bars. But he was desperate to get the protesters released, because he had made a commitment to do so and also because he needed their release as a positive point he could raise to facilitate future discussions with the protesting workers.

236 After further discussions the police agreed to grant bail if UFS, through its Rector, produced a letter stating that the workers would stop protesting once they were released. Lt Col Munsamy was perceived by Advocate Bezuidenhout and Mr Rawson to be harsh and combative during the negotiations. On the other hand, Professor Keet testified that Lt Col Munsamy was helpful even in getting food to the protesters in the holding cells. Ms Bezuidenhout and Professor Keet nonetheless moved quickly to secure the letter, because the transfer of the arrested workers from Parkweg to other facilities was imminent. The women would be transferred to Bainsvlei Police Station (Bainsvlei) and the men to Grootvlei Correctional Centre (Grootvlei).

237 Ms Bezuidenhout and Professor Keet obtained the required letter from Dr Lange which, as Professor Keet explained, stated the charges against the arrested workers would be dropped and that the workers would be released from police custody if the WSF called off the strike. It was signed by Professor Jansen. Advocate Bezuidenhout and Professor Keet went back to Parkweg to present it to the arrested protesters. They told the workers and Mr Shaku that the police required them to sign it individually before they could be released. There was

a sense of distrust in the cells because the letter came from UFS management. All the arrested protesters refused to sign.

238 Ms Bezuidenhout mentioned that Lt Col Munsamy called off all negotiations for bail after he had received a phone call informing him that the protesters were on their way to Shimla Park. The police's concern was the likelihood of the arrested protesters joining the rest at Shimla Park upon their release. The police, led by Lt Col Munsamy, rushed to Shimla Park. Professor Keet and Mr Van der Merwe then also went to Shimla Park with the hope of intervening to stop the protests. Advocate Bezuidenhout and Mr Rawson remained at Parkweg. Ms Bezuidenhout tried to call Mr Ntuli also to try stop him from leading the protesters to Shimla Park, but he did not answer his phone. She then sent him text messages saying that he and the protesters should not proceed to Shimla Park or else it would make it difficult to get the arrested protesters released from custody. According to her, Mr Ntuli did not reply.

239 The UFS staff did not manage to secure bail for anyone on Monday 22 February. Advocate Bezuidenhout told the Panel of the husband of one of the arrested protesters, who had tried all day to get his wife released because they had an infant at home who needed to be breastfed. The police did not seem to care. She added that it was also later revealed that one of the protesters had chronic diabetes and went without medication for the two days of detention.

240 On the following day, Tuesday 23 February, attempts to confirm the addresses of the arrested protesters and to secure bail continued. UFS staff members helping them needed to source about R15 000 in cash. The legal representative for the arrestees tried without success to get bail amounts to be lowered. Mr Shaku and two others were identified as ring leaders, so bail was set higher for them. This gave the impression that the police had indeed been provided with a list of names for specific arrests, as suspected by students and workers.

241 Mr Rawson and Ms Bezuidenhout went to the Institute to join others, including Mr Van der Merwe, Professor Keet and Dr Nel in raising the funds. Bakkies were again parked outside the gates and Afriforum supporters and other white people said they were there to protect white students trying to get off campus. Some had guns in their holsters. There were also two bakkies outside Vishuis. After some difficulty, the UFS staff entered campus and went to the Institute to start a fund raising initiative for the bail money.

242 Ms Bezuidenhout and Mr Rawson rushed back to Parkweg after a call that the police were about to transport the arrested workers to other police stations. They saw a bus leaving Parkweg when they got there. It was taking the women to Bainsvlei, but turned around, because there was not enough space to accommodate all the women. The men had already been transferred to Grootvlei. After raising the bail amount Professor Keet went to Grootvlei to bail out the men. Mr Van der Merwe, Mr Rawson and Advocate Bezuidenhout bailed out the women at Parkweg and dropped them off at their individual homes.

Swart falls

243 The protesters were set to meet at 07:00 at the student centre the morning after the Shimla Park incident, Tuesday 23 February. Members of the SRC met at 06:00 to prepare for and discuss how to manage the imminent protests, as they were alive to the black students' intense anger. To this end the SRC agreed to maintain the initial principles of the protests – no violence against anyone and no damage to property.

244 The protesters gathered at the main gate instead. They sang and spoke about their suffering at the hands of “white fathers and sons” at the rugby the previous night. What came of the discussions, was that theirs was a fight against the system, not simply the white individuals who assaulted them. The fight was bigger than the racial tensions – it was a fight against UFS bureaucracy that maintained the status quo. They channelled their anger towards the statue of the first State President of the Republic of South Africa, Mr CR Swart, because in their view the values upheld by UFS were aligned to those that Swart stood for during apartheid.

245 Also present at the gathering were EFF members in red t-shirts, as well as members of the ANC Youth League. Ms Toyana told the panel that some students took exception to the presence of the political parties and the apparent contestation for political space and publicity, because the protests were non-partisan. That did not restrain the political parties. Mr Mtamzeli testified that the provincial chairperson of the ANC Youth League used the protests as an opportunity to hand out ANC t-shirts and the national president of SASCO called him (Mr Mtamzeli) to ask about the level of visibility of SASCO at the protests.

246 Student leaders urged the protesting contract workers not to get involved in the removal of the Swart statue, because the police were patrolling the campus and it was not worth it to risk any more arrests of workers.

247 The students set off in the direction of the statue. Some broke away from the group and went to various residences to seek revenge once more. Others burned bins outside the main building. But the majority went straight to the statue outside the building that houses the Faculty of Law. They tried to dismantle the statue. Some chipped away at it, using rocks, Mr Ntshalong wielded his geological hammer and they tried to burn it with burning tyres and plastic bags. It was a way of letting out frustrations with how fellow black students were treated at Shimla Park. The first attempt to remove the statue was unsuccessful, because the police dispersed the students.

248 The students regrouped at the main gate. A smaller group of about eight went back to the statue to finish off what the rest had set out to do: They dismantled it and threw it into a pond outside the building, which was known as the CR Swart building. The protesting students labelled the building with graffiti as the “Sobukwe Law School”. Some of them also smashed the glass panels of the notice boards inside and wrote “Sobukwe is back”. The Panel was told that the EFF members wanted to go as far as torching the building, but the students refused for the reason that they, not the EFF members, were the ones who studied at UFS and needed the facilities. The students only had the intention of taking down and defacing symbols of colonialism and apartheid, not burning buildings. In the end the building was not burned and it is now officially called Equitas.

249 Other buildings were also marked with the protesters’ desired names. Akasia, a female residence, was graffitied with the name “Winnie Mandela House”, Wag-‘n-Bietjie, a residence for female students, was called “Charlotte Maxeke” and the library was “renamed” the “Biko Learning Centre”. Ms Toyana explained that former president Nelson Mandela’s name was deliberately left out in the renaming process, seemingly because some students thought that other struggle heroes also had to be recognised and acknowledged. She went on to share her view that this might have been because the Pan Africanist Student Movement of Azania (PASMA) was at the forefront of the Fees Must Fall movement.

250 Mr Chamane testified that he received images later that day of the Swart statue in the water. They found it symbolic that the statue came down at the instance of students, as they had long asked UFS management to remove the statues of apartheid heroes. The memorandum of demands about scrapping registration fees also included a demand for UFS to accelerate transformation. The destruction of the Swart statue brought a sense of peace and calm to the protesting students. They celebrated because this was an overdue achievement for them.

Another day, another memorandum of demands

- 251 Professor Keet and Dr Nel told the Panel that on Wednesday 24 February students met at the Institute to draft a memorandum of demands for, among other things, Professor Jansen to resign, Mr Shaku to be reinstated at the Institute; and for the removal of statues and symbols of apartheid, which would include changing the names of certain buildings. Professor Keet explained further that there was fracturing and contestation among students on what the priority demands were and whether to submit the workers' and students' demands together. The WSF decided they wanted to run the workers' process separately and not collapse it into the students' process because they were close to finalising an agreement.
- 252 Students asked Professor Keet to facilitate the process. The workers added two demands to their standing list of demands: no victimisation; and no dismissals. The agreement they had reached at the meeting with Professor Keet on Sunday 21 February, that was intended to be tabled around midday on Monday 22 February, was eventually confirmed on Wednesday 24 February.
- 253 The demands were underpinned by the shared sentiment of the black students and workers that the protest at Shimla Park would not have been necessary if Professor Jansen had responded promptly to their letter about the victimisation of students, or if he had intervened swiftly when the contract workers and Mr Shaku were arrested on the morning of Monday 22 February. Mr Luwaca testified that some students even said the assaults at Shimla Park could also been avoided if Professor Jansen had come out of the stand to address them.
- 254 The students also demanded the acceleration of transformation at UFS in terms of the institutional culture and the symbols and statues on campus. They submitted the memorandum and gave management time to reply.
- 255 The agreement of Sunday 21 February with the new demands were put on an official letterhead and Professor Jansen signed it. Mr Shaku read it to the workers at a meeting at EWB. The workers were satisfied and the strike was called off, which meant that the Workers and Students Forum would withdraw from any further protests. The protest belonged to the students alone with the SRC President at the helm. Students involved in the protests found the announcement to be problematic, because they had not been consulted about the decision to end the strike, yet they had contributed to the protests. And no reasons were given to the students for ending the strike.

256 Mr Mtamzeli, a founding member of the WSF, testified that some students called Mr Shaku a sell-out for calling off the strike. Trevor Shaku was advised to leave campus as a precautionary measure because of the EFF's dissatisfaction with the decision. Mr Mtamzeli added that he thought Mr Shaku was well poised to make the call, because he had been arrested with the contract workers and had spent time with them in the police cells. Mr Shaku knew what the mood was, made a judgment call and Mr Mtamzeli supported him – as did the workers – because things had not gone according to plan and the WSF had lost control of the protest. Mr Mtamzeli said it had grown into a platform for “cheap political scores”.

257 UFS management, through Dr Choice Makhetha, gave its response to the students' memorandum of demands of Thursday 24 February 2016. Mr Nyadu, Mr Ntuli and Mr Mtamzeli were some of the witnesses who conveyed to the Panel that the response was unsatisfactory and gave students the impression that management had no commitment to meet their demands. The perception among the protesting students was that they had not paid much, if any, attention to the memorandum of demands. Mr Ntuli mentioned that the students were also annoyed that the response was not on a UFS letterhead and did not carry any signatures. Mr Nyadu mentioned that the response did not contain a stamp or anything to make it official. The students felt undermined and, in their view, the issues they had raised remained unresolved. Their recourse was then to press on with the protests by removing another statue.

Steyn on fire

258 The students moved from the main gate to the statue of MT Steyn, the President of the former Republic of the Orange Free State. The protesters wanted to remove it. Mr Matamzeli testified that he saw police vans on campus and understood this to be a signal that there would be arrests. Mr Ntuli explained that the police and security personnel were already guarding the statue outside the main building, by the time the students reached it. The protesting students had tried to remove the statue the day before but were unsuccessful. Ms Toyana testified that the geology students among the protesters had said the statue was too high to remove. It was suggested that the statue could be removed using “chemicals”. Mr Ntuli said that they tried to “melt” the statue by burning plastic. He chuckled at the idea.

259 Dr Nel and Mr Nyadu told the Panel that students climbed up the statue using a ladder and carrying flammable material and in the presence of private security personnel and the police. Dr Nel was worried that the students would accidentally set themselves alight. My

Nyadu added that there were also papers and tyre burning at the foot of the statue. The security personnel reacted by chasing the students away and the police fired rubber bullets and teargas. It is here that the police made the first arrests of UFS students that Thursday, 24 February 2016. Ms Toyana testified that journalists were also chased away owing to the police's perception that they (the journalists) were on the side of the students and that their presence was encouraging the students to act in this way. She said she ran to her residence, called ... "President Steyn".

260 Ms Toyana further testified that all black students on campus were chased by the police and security personnel that day – even students who were not part of the protests. No white students were chased – there were in any event not many of them still on campus. The students said they observed a strategy by the police and security personnel to corner the fleeing students towards the area of Tswelopele.

261 Mr Maselesa said Fidelity, the private security company, was called onto campus to help the UFS security team manage the situation. UFS students dubbed them "Boko Haram", presumably after the terrorist group operating in Nigeria. Professor Morgan said that the nickname the students had given to the private security personnel might be indicative of what they (the students) thought of them.

262 Mr Moafrika testified that his impression of Boko Haram was that they came from conflict countries and war zones and did not understand democracy. He also highlighted the communication barrier between them: "They speak foreign languages and do not understand us – then they speak physically." He said that he was intimidated just by looking at them. Ms Toyana thought Boko Haram were mostly Congolese. Dr Lange did not get the sense that they were highly trained. She intimated that they were probably exploited and paid little and said that she would not like to encounter them by herself. Mr Mtamzeli also told the Panel that Boko Haram did not make a student feel safe. Female students had allegedly complained of Boko Haram making unwanted sexual advances towards them.

263 Student witnesses conceded that the removal of and damage to the statues went against the principle of no damage to property during the protests. But, according to Mr Ntuli, the students shared the view that the removal of the statues was justified and that it was the only sort of damage to property they would allow because there was no way of removing them without damage. Mr Mazula said they deviated from their no violence principle, because they were angered by what happened at Shimla Park, including the fact that the rugby match continued after the attacks on the protesters.

264 Although the huge Steyn statue was at some stage on fire, or “heated up”, it did not fall. It is “alive” and well in its position in front of the main building.

Tswelopele – but no progress

265 After the protesting students had been dispersed from the Steyn statue by the police and security personnel, Mr Tshepang Mahlatsi, the prime of Tswelopele residence, and others fled to Tswelopele. “Tswelopele” means “progress” or “new beginning” depending on context. Mr Mahlatsi told the Panel that he and other students were singing outside the residence when the police and security personnel approached them. He said he told the students to go inside, while he stayed outside to talk to the police.

266 Mr Mahlatsi testified that he had gone inside the residence, locked the gates and continued to talk to the police. The police were standing in the foyer and told Mr Mahlatsi to unlock the gates. When he responded that he would not do so, they allegedly pepper-sprayed the students through the gate. He asked a resident behind him to take a video of what was happening.

267 A group of police officers allegedly also broke through an emergency door and entered the building. Mr Mahlatsi said that a resident upstairs screamed to those still in the foyer that the police had entered. The residents, including Mr Mahlatsi, ran to their rooms and locked their doors. He testified that it was obvious that the police were at Tswelopele to make arrests.

268 Mr Nyadu was also at Tswelopele. He sought refuge there after the protesters had been dispersed from the Steyn statue. He changed out of the SASCO t-shirt he was wearing during the protests, into sleep wear to conceal his identity and not to be suspected of being part of the crowd at the Steyn statue. He further testified that the police and private security smashed and then sprayed teargas and pepper spray through the glass panels (emergency escapes) at the top of the doors. Mr Nyadu said this was a strategy to force people out of the rooms so the police could arrest them and raid or search their rooms.

269 Whilst in his room, Mr Mahlatsi heard loud bangs coming from the corridor. He also received phone calls from residents telling him that the police and private security were moving from room to room and breaking doors. He phoned Ms Faasen to tell her what was going. Her response was: “This is now out of control.” Ms Faasen testified that she was at a meeting at Professor Jansen’s house when she received the call from the prime and text messages from SRC members about problems at Tswelopele. Ms Faasen added that after

the call she said to the UFS staff present at the meeting: “There’s an effen sh*t storm at Tswelopele.” But, in Ms Faasen’s words: “No one cared.”

270 According to Mr Mahlatsi, the noise in Tswelopele died down after a while. He opened his door and asked if “they” had left, but as he did this he saw over 10 police officers and security personnel standing quietly outside his door. Mr Mahlatsi testified that he asked one of the police officers to escort him downstairs to meet Ms Faasen. The police officer allegedly started swearing at him and said in Sesotho that Mr Mahlatsi could not “do nonsense” and then expect the police to help them (the protesters).

271 Mr Mahlatsi said he shouted at Ms Faasen once she got to where he was and told her UFS management could not claim to recognise student leadership if it did not even respond to their calls in emergencies. He went downstairs, followed by Ms Faasen, and addressed the media. He presented a video to the Panel of the scenes outside Tswelopele. Ms Faasen appeared to try to console the virtually hysterical young man. Ms Toyana was outside Tswelopele and testified that the residents came out with water on their faces and others with towels to treat the effects of the teargas.

272 Witnesses said that the police and security personnel had a list of students to arrest. It is alleged that the police were given descriptions of protesters – particularly of black, male students with dreadlocks. Ms Toyana said specific students were identified and looked for, including Mr Mazula, because they had dreadlocks. Mr Mahlatsi testified that he had asked the police why they had arrested certain students at Tswelopele. One of them was Mr Philemon Dube, a first year student, who had dreadlocks.

273 Mr Mazula said that he realised he had to cut his dreadlocks after he had heard that someone with dreadlocks was arrested because the police mistook him to be Mazula. The dreadlocks seemed to be the distinguishing feature the police and security personnel were looking for in making certain arrests.

274 Dr Nel testified that Mr Pieter du Plessis, a member of staff in Professor Morgan’s office and part-time residence head of Villa Bravado, shared information with and accompanied the police and private security to Tswelopele to make arrests. Dr Nel allegedly approached Mr Du Plessis and told him to stop as it was “morally wrong”, but he continued nonetheless. Ms Toyana testified that Mr Du Plessis was showing the police all the entrances to Tswelopele. Mr Van der Merwe was also upset with the conduct of Mr Du Plessis.

275 Ms Toyana and Mr Mahlatsi both mentioned in their evidence that Mr Du Plessis pointed out to the police Mr Victor Ngubeni, the chairperson of SASCO, and said: “He is one of them.” Some people, including the secretary to the Dean of Student Affairs, intervened and Mr Ngubeni was not arrested. Ms Toyana presented images and Mr Mahlatsi presented video footage of the scene.

276 In his evidence Mr Du Plessis denied that he had helped the police identify students to be arrested. He said he “was just accidentally with two policemen” around the main building when he saw Mr Ngubeni and said: “He was one of them”. Mr Du Plessis said by that he meant Mr Ngubeni was one of the protesters at the Steyn statue. But Mr Ngubeni told the police he was not part of the group at the statue and the police let him go. Mr Du Plessis said he pointed Mr Ngubeni out on the spur of the moment and admitted that this was a mistake. He added that he realised after making the mistake that he needed to calm down.

277 Mr Du Plessis added that although he had not been assisting the police by pointing out students (other than Mr Ngubeni), he conceded that his actions created the misconception that he was. He did not point out any entry or exit points at Tswelopele, he said.

278 Mr Mahlatsi and members of the residence committee were the most senior leadership present at Tswelopele at the time. The residence head, Mr Calitz, had left a day before (on Wednesday 24 February). No replacement for Mr Calitz was appointed or deployed.

279 Mr Calitz testified that he left the campus because his life had been threatened. According to him, he was approached by 30 to 40 protesters while he was on the phone in his car outside the student centre. The protesters surrounded his car and threatened to kill him by gesturing that they would slit his throat. Mr Calitz said they also showed him their weapons which included a piece of scaffolding, rocks and “knopkieries”.

280 Mr Calitz was traumatised and reported this to his line manager, Dr Wahl, who arranged for a psychologist to consult with him off campus. He was booked off work and advised not to go back to campus. Mr Calitz joined his wife and children in Bloemfontein. He had dropped them off at his in-law’s home the morning after the Shimla Park incident because he did not feel it was safe for them, especially his three-week old baby, to stay on campus. Mr Calitz said he stayed at his in-laws until he returned to Tswelopele on Sunday 28 February.

281 Professor Keet testified that he had received news of the arrests at Tswelopele while he was at a management meeting, which was held off campus because of safety concerns. Ms Bezuidenhout and Mr Van der Merwe told him to hurry to campus, because they thought

he could do something to have the students in police vans released before they were taken to the police station.

282 Professor Keet described the behaviour of the police at Tswelopele as “a total mess”. He said: “It was strategically and practically a disaster.” The students were mishandled. Nothing came of Professor Keet’s attempts to get the students released from the vans. Dr Nel said he witnessed Boko Haram personnel “cheering and chest-bumping” at the end of the events at Tswelopele.

283 According to Mr Du Plessis, glass chemical containers (or brown glass bottles used in chemistry labs) were found in bins around Tswelopele and Mr Maselesa was worried about the possibility of the apparatus being used as a petrol bomb. Mr Calitz testified that there were no petrol bombs found at Tswelopele.

284 Dr Wahl and Mr Koetaan from the UFS department of Housing and Residence Affairs attended a meeting with Tswelopele residents after the ordeal. They told them they were sorry for what the residents had gone through at the hands of the police and the private security and that they would ensure that the students got counselling. The resident-students complained that they could not cook, because the residence smelled of teargas. Dr Wahl and Mr Koetaan said they would provide food for Tswelopele residents and, as far as Mr Nyadu could remember, they did.

285 Mr Mahlatsi testified that there was a message circulating earlier that week to tell white primes of residences to advise their constituencies to leave campus. Mr Calitz admitted to advising the white residents in Tswelopele to leave campus. Before Mr Calitz left campus, he gave a white Tswelopele resident a lift to a bus station in Bloemfontein. He feels very bad about what happened, but through counselling and his faith he has made peace with the incident and put it behind him. Even so, he said: “It is one of those scars I’ll take to the grave.”

286 Mr Mahlatsi was severely emotionally affected by the events at Tswelopele and his academic performance deteriorated. He was absent during the week of tests because he was at home in Parys on the advice of the office of the Dean of Students. He testified that he could not concentrate and suffered from flashbacks. Mr Mahlatsi also said UFS loaded funds onto his student card because, as Ms Faasen explained to him, UFS wanted him to focus on his studies and not have to worry about finances. Later in the year Mr Mahlatsi dropped all but one of his modules and moved out of Tswelopele.

287 Ms Toyana said that she saw the police to be more lenient during the student protests in 2015. Students were given leeway to be robust in their 2015 protests, but the police were “very harsh” this year 2016. In her view, the police took sides and this affected her. She started questioning: “Can we trust the system?” Ms Toyana added that the police’s actions seemed to her as if “the white body matters more than the black body. The white body was not touched. There were no arrests of a white body. And no teargas.”

After Tswelopele

288 Dr Choice Makhetha was alleged to have said in an interview with a national news channel on 1 March 2016 that “nothing happened at Tswelopele”. The Panel was told that this exacerbated the tensions between the students and UFS management. In an email to the Rectorate, she explained why the students were “extremely angry” with her. Her explanation included an email conversation between her and Mr Mahlatsi, who had told her that it was not true that nothing happened at Tswelopele. She wrote that she was not aware of the events that happened at Tswelopele at the time she did the interview. Dr Choice said that she did not feel she owed Tswelopele an apology. However, she respected their anger and would “give them space to be”.

289 The students who were arrested around the Steyn statue and at Tswelopele appeared in court the next day, Friday 26 February. Professor Keet testified that the South African Human Rights Commission arranged legal representation and secured bail for the students around midday without having to pay any bail money. Professor Keet then went back to campus to assist students draft a complaint about police brutality at Tswelopele.

290 On Saturday 27 February 2016, UFS management, the SRC and representatives of political parties and trade unions met with the Premier of the Free State, Mr Ace Magashule. Professor Morgan testified that they discussed issues related to university fees and insourcing. Mr Ntuli said to the Panel the reason for the meeting was for management to rework its response to the students. The students proposed that classes would continue, but that they needed Monday 29 February 2016 for a mass meeting. Professor Jansen allegedly responded that he could not make such an undertaking alone. Mr Ntuli testified that it was later confirmed that classes would resume on Monday.

291 The SRC Executive Committee called an emergency meeting and established the Transformation Committee. It was made up of three SRC members, three residence primes and three chairpersons of associations. Mr Ntuli added that the composition of the committee

was diverse in terms of race and gender and explained that the task of the committee was to look into the state of transformation at UFS, including placements at residences, institutional culture and symbolism.

292 The Transformation Committee started a series of dialogues, the first of which was held on Tuesday 01 March 2016. The dialogue was on the reflections of the Shimla Park incident and “understanding what black pain is and what white privilege is”. Mr Ntuli opined that the dialogues were very productive and brought calmness over the campus.

K FINDINGS; CONCLUSIONS; IMPRESSIONS

Labour issues

293 It is clear from the above that labour issues around insourcing and related matters played a prominent role from late in 2015 up to the events of 22 February 2016. No findings are made in this report about the merits of the labour disputes, one way or the other. The focus is on the negotiations and protest.

Alleged victimisation

294 Several witnesses alleged that activists had been “victimised” early in 2016, by excluding them from the academic programme. The dismissal of Mr Trevor Shaku from the Institute was also mentioned in this regard.

295 The view of the Vice-Chancellor was that there was no victimisation; that checking on students’ academic performance to verify if they qualify to be enrolled was normal; and Mr Mazula’s erroneous exclusion was remedied through the normal appeal process. The Vice-Chancellor regarded the e-mails that were placed before the Panel as insignificant.

296 The contents and dates of the e-mails, as well as the evidence of Dr Lange and Dr Lazenby, support the conclusion though that (a) there was a process of “getting rid of the trouble makers”; (b) the process was initiated and driven by the Rector; (c) the existing process of academic exclusion and appeals was flawed; and (d) at least one mistake occurred.

297 It is unclear whether it is normal UFS procedure for students who have been academically excluded to be immediately banned from campus and for their photographs to be posted at entrances for others to see. It seems unlikely though. But it happened in this case.

298 It is understandable that management was nervous about the possible disruption that looming protests could cause in the new academic year. Thus it was not unreasonable to check whether students still had the right to be present on campus in view of their academic performance. It is not even necessarily wrong to temporarily focus on the academic records of particular individuals like activists or “trouble makers”.

299 The lack of openness and frankness in this regard is however unfortunate. To ignore and refuse to comment on the reference by the Panel to e-mails with obvious implications, seems to indicate disrespect for the Panel and disregard for its task of finding the truth. A forthright explanation of what management attempted to achieve under the difficult prevailing circumstances, with an acknowledgement that mistakes might have been made, would have been preferable.

300 The dismissal of Mr Shaku was also unfortunate. Professor Jansen explained to the Panel that staff members of UFS cannot be allowed to participate in protest against the university. Thus Mr Shaku was dismissed. On the fact that he was later re-instated position, the Vice-Chancellor commented that the issue of how staff members involved in protest should be dealt with, was the topic of an ongoing debate. It might have been good if the dismissal were put on hold until the conclusion of the debate.

301 It is alleged that Mr Shaku’s dismissal was legally irregular. The Panel is unable to make a finding in this regard. However, it seems that as far as Mr Shaku’s activism was impermissible or undesirable, this could have been discussed with him. The probing into his work performance record at first, and the dismissal following on positive feedback about his work, creates an unfavourable impression.

302 Dr Lange indicated that she had expressed herself against the dismissal at the time of the decision. Professor Keet stated or at least implied that he had not taken the dismissal very seriously when he was informed of it, because he was confident that he could arrange Mr Shaku’s reinstatement. This indeed happened. But much damage was done by what seems to be a fairly impromptu, informal and careless approach.

303 No pronouncement is made on whether the exclusions and dismissal could be called “victimisation”. However, these events and the way they were handled clearly contributed to the pollution of the atmosphere leading up to 22 February 2016.

Peaceful protest

304 SRC President Ntuli and other protesters stressed in their evidence that their aim was to protest peacefully. Violence had to be avoided, leaders allegedly repeatedly told protesters.

305 On the way to Shimla Park stones were thrown at some stage by protesters. The intention was allegedly to distract the police, so that the protesters could continue towards the rugby field. No damage was reported.

306 Ms Pretorius, who was working for Afriforum at the gate of Shimla Park, testified that the protesters were “very violent” when they approached the gate. When asked what violent behaviour she was referring to, she stated that the protesters were “throwing stones” and “kicking”. In reply to a question as to whom or what they were kicking, while they were still quite some distance from the gate, she conceded that they were not kicking.

307 According to several witnesses, the protesters walked peacefully onto the rugby field. Mr Moafrika even explained that they took a “strategic revolutionary decision” to wait until the ball was kicked to the far side of the field, presumably to be followed by the players, before they invaded the field from the now empty side closest to them. The protesters went to stand near the middle of the field and sang struggle songs (but according to Mr Ntuli only “soft” or “mild” ones), while holding hands.

308 According to evidence of Ms Du Preez, the President of Afriforum Youth on campus, the protesters were violent when they stepped onto the rugby pitch. They threw stones at the spectators, she said. In reply to a question about where they found stones on a rugby field where a game was being played moments earlier, she said they did not throw stones; they threw beer cans and similar objects, which the spectators had thrown at them, back to the spectators. (According to the evidence, some protesters ran to the outside of the stadium to pick up stones, which they threw at the spectators who had attacked them.) Ms Du Preez then stated that the protesters brought sticks with them, which they threw at spectators. When asked why one would throw away the stick, if it is your only weapon, she stated that the protesters did not throw sticks.

309 Ms Du Preez eventually conceded that the protesters were peaceful when they went onto the field.

310 From the available evidence, it appears that – with the one notable exception of the loudhailer incident – the protest was by and large peaceful, up to when the protesters were attacked by the spectators.

311 This was not necessarily the case later. Dr Lange testified that when angry protesters ran from Shimla Park to Vishuis, a white female student from the Netherlands, who was joyfully jogging on campus with a friend, received a hard slap in the face from a passing black female student, on her way to join the protesters. This kind of cross-fire in which innocent people may be caught, is probably not good for South Africa's international image.

312 Mr Moafrika testified that on his way from Shimla Park to Vishuis he wanted to kill white people and was certain that he would do so as soon as he found a white person. Such was his anger. However, when he and his companions ran into a white student who was on his way to buy snacks at the cafeteria, they just asked him for the direction the others had gone.

Attack on the Park

313 The conduct of the white spectators who left the stands at Shimla Park and attacked the protesters on the rugby field – leaving some of them unconscious – was violent, racist and barbaric.

314 This was put to Ms Du Preez. She agreed with the finding as formulated. She testified that Afriforum would have prevented the attacks if they were able to.

Crucial “if not” moments

315 One of the tasks of an investigation like the present one is to identify what could have been done to avoid the tragic events. This is not easy. Causation is a complex concept in law and in the physical and social sciences.

316 Perhaps the best that can be done, is to identify a number of “if not” moments – incidents that one could indeed ask whether all the bad and sad consequences would have followed, if the particular thing did not happen. These crucial moments include the—

- (a) locking of the main gate on Monday 22 February;
- (b) arrest of Trevor Shaku;
- (c) decisions to protest on the rugby field; and to continue going to Shimla Park in spite of a warning;
- (d) failure of the police and security to prevent the protesters from reaching Shimla Park;
- (e) assault on Ms Pretorius with the loudhailer by Mr Siya Lufele;
- (f) absence of sufficient security at Shimla Park;
- (g) continuation of the rugby match after the violence on the field; and

(h) departure of the head of Tswelopele, without informing the 21 year old prime and other black students of the residence, before the police attack on Tswelopele.

317 It is still unclear who locked the gate, or gave orders for it to be locked. But the locking out of workers and students who might well have been on their way to conclude an agreement negotiated the previous evening played a crucial role in fostering frustration and anger.

318 Professor Keet and other witnesses expressed the strong opinion that the removal of Mr Shaku left a crucial leadership vacuum. South Africa's history has shown that "taking out" leaders who are willing to negotiate, does not solve problems.

319 The decision to proceed to Shimla Park – and to continue to do so after the warning of Trevor Shaku from behind bars not to "endanger" the "parents" – has been severely criticised. Several witnesses are of the view that SRC President Ntuli took the decision. Some described it as "opportunistic". Their view is that Mr Ntuli was not central in the previous year's protests; the SRC did not initially actively support the January and February protests; its role might have been marginal up to the morning of 22 February; and Mr Ntuli jumped at the opportunity to place himself in the centre of events and to establish his leadership, even by risking the lives and safety of others.

320 A simple conclusion is not so easy to reach though. It is not clear exactly when and by whom the decision was taken. For example, Mr Moafrika stated his own role in it. When a crowd – or mob – is highly emotional and different voices call for radical action, it is not always clear who takes decisions. A leader may easily be swept along. The evidence also indicates that on the way to Shimla Park the protesters stopped, turned back and then again turned around to proceed to the Park.

321 On whether the SRC President, or anyone else, was "opportunistic", the Panel cannot make a conclusive finding on the available evidence.

322 The decision was indeed very unfortunate. This is clear from its consequences, which include serious injury and trauma to middle-aged workers. This Panel is not tasked to express itself on the legal liability of Mr Ntuli and other protest leaders. Therefore it does not reach a conclusion on possible negligence, which includes the foreseeability of the violent attack by the spectators on the protesters. Mr Ntuli insisted that he did not foresee it. Mr Shaku seemed to have had a better understanding of rugby spectators in Bloemfontein. One can speculate about the consequences of, for example, a group of white Afriforum supporters walking onto

a soccer field during a match between Orlando Pirates and Kaizer Chiefs (or England versus Italy), holding hands and signing to protest for the future of Afrikaans.

323 The Protesters certainly exercised their constitutional right to demonstrate peacefully. This right should not have been denied by those who tried to end the protest with violence. However, it would not be wise to exercise one's right to free movement by crossing a busy highway in front of an oncoming truck full of bricks. The right to demonstrate, or move freely, does not translate into a "right" to ignore common sense.

324 It speaks for itself that the violence on the rugby field would not have happened if the police prevented the protesters from reaching the Park.

325 Ms Toyana was emphatic that the emergence of Mr Lufele "out of nowhere" at the gate and his blow with the loudhailer to the head of Ms Pretorius was a highly unnecessary and defining moment in what followed. After much confusion and a determined attempt by the Panel to find the truth, a strange and somewhat comical episode took place. Mr Lufele gave evidence. He admitted that he was the one who hit Ms Pretorius. According to him, he did so, because she used the "k-word" towards him and kicked at him, when he tried to remove a burly white man from blocking the gate. The Panel chair asked him to return the next morning, when Ms Pretorius and Ms Du Preez were to give their evidence.

326 Ms Pretorius denied ever having used the "k-word". She did not know who hit her. Mr Lufele was called into the hearing and sat down next to her. He explained that he was the person who had hit her. The same evening he wanted to explain to her "and eventually apologise", but he did not continue to try to contact her when he saw that she was already on television. In the hearing he looked at her and offered his apology. He was, however, not prepared to give the assurance that it would not happen again. This would depend on the "circumstances and requirements of the revolution", he said.

327 Ms Pretorius – a drama student – appeared pleased and indeed slightly thrilled by the apology ... but said that he was not the person who attacked her! He assured her that he was and that she did not recognise him because he had shaved off his dreadlocks. It does not often happen in a tribunal that an "accused" confesses his guilt while the "complainant" professes his innocence. The Panel chair requested the two students to attempt to write a report together, but this was never received. The Panel is thus unable to make a conclusive factual finding on the dispute about what took place immediately before the blow with a loudhailer.

328 According to several witnesses, the resumption of the rugby match was experienced as extremely insensitive and hurtful. It contributed to the anger that fuelled the tiekie stand-off and later events.

Transformation

329 Transformation, or the lack thereof, was repeatedly mentioned by witnesses. In view of one or more recent reports regarding transformation at UFS, as well as the ongoing debate about it, it is not specifically addressed in this report. What appears to be the prevalence of racism is, however, addressed below.

Urine and eggs ... and a volkstaat: racism continuing?

330 The unfortunate events at Reitz residence, as portrayed in the video that became public in 2008, were referred to earlier in this report. These were generally seen as indications of unacceptable racism, probably institutional in nature. Reitz was closed in July 2008.

331 According to evidence presented to the Panel, a residence called “Heimat” was then established off campus, in Bloemfontein, at least in part to accommodate the residents of Reitz. Further, according to the evidence, UFS Council member Mr Dippenaar was centrally instrumental in this. Because the Panel did not regard it as appropriate to invite Mr Dippenaar to present evidence, as he was a member of the body the Panel had to report to, the chair asked for guidance in this regard in a letter to the Vice-Chancellor and to the Chair of Council in August 2016. A letter in October 2016 again referred to this request. No response on his issue was received. Thus the Panel does not have the view of Mr Dippenaar and others involved in Heimat.

332 A student, with no affiliation to any political grouping, testified that when a group of spectators close to him saw the protesters inside the grounds of Shimla Park, before they moved onto the field, one or more of these spectators said that they were going to “bliksem” the protesters. According to him, these white students were the first – or amongst the first – to run onto the field and attack the protesters. The witness said that he recognised these spectators as residents of Heimat.

333 One or more other witnesses stated that they viewed Heimat as the successor of Reitz; and as quite racist.

334 In the absence of evidence to the contrary, the establishment of Heimat appears somewhat sinister, as if it might well have not only apartheid but Nazi connotations. The centrality of differences between black and white in South Africa, our history of apartheid and the controversial ideal of a “white homeland” in far right-wing circles are well-known. The choice of a German word that means “homeland”, or “fatherland”, for a new residence in Bloemfontein, South Africa, to accommodate the inhabitants of a residence that became notorious for racist practices, cannot go unnoticed. Whether this is intended to be a crude and cruel reminder of white supremacy; the result of ignorance, clumsiness and insensitivity; or a good faith attempt to assist with student accommodation, is unknown to the Panel. The message, however, does not appear to be a positive one, aimed at reconciliation and improved race relations.

335 The fact that a gesture was made and eggs thrown at protesters when they passed Karee residence on the way to Shimla Park is understandable on a campus. But the shouting of the “k-word”, perhaps accompanied with the word “monkeys”, is racist conduct.

336 Other recent events on the UFS campus, some of which were brought to the attention of the Panel during the hearings, are disturbing. One of these was that during the June-July recess, white school children were accommodated in one or more student residences presumably for a sports event. Some of them allegedly threw eggs from the windows of the building down at black workers, who were performing their gardening duties. Why did the children do this? Were they just naughty, like many children are, without any racial motivation? Would they have done the same to white people the age of their parents? Did they feel that on a campus where incidents like these are known to happen, they are free to give expression to their contempt for black people, or for workers?

337 The written response from the Legal Clinic to an enquiry from the side of the Panel was that the perpetrators were not UFS students, but school learners. It would be disappointing if this is indeed the only response of UFS. Given its history, UFS management could be expected to consult with the workers who were again humiliated on campus; try to find out from the organisers of the sports event at least which team from which province or school and which coaches, managers or teachers were responsible; and try to prevent similar events in future. If UFS indeed took steps in this direction, of which Panel members are unaware, it is to be commended. If not, ongoing perceptions of racism at UFS are understandable and likely to gain strength.

338 Another disturbing aspect, especially in view of the Reitz experience, is incidents of fluid that could be urine being poured over black people by white students. One such incident

allegedly took place from a vehicle on campus, before the Shimla Park events. Another took place in June or July 2016, **after** the trauma of Shimla Park. White students were allegedly refused exit from the campus by a black female security guard, because they did not have their exit cards with them. They went back to fetch the cards and then poured fluid over the security guard.

339 As to the first of these two incidents, the Panel was informed by a senior member of UFS management that the fluid had been tested and found to be water, not urine. On the security guard incident the Panel was informed that her clothes were sent for laboratory tests, to determine whether the fluid was indeed urine. Apparently a disciplinary hearing is scheduled for December.

340 This testing of the fluid cannot provide a solution. The relevance of whether fluid poured by white students over a black person is urine, tea, or water, is little. The pouring could be nothing other than an attempt to remind black people of Reitz and of white supremacy – to humiliate, intimidate and instil fear. The fact that the fluid, after laboratory testing, turns out to be something other than urine may even make the insult worse. It adds an element of tricking and mockery, by showing the victim up as being too “stupid” to even know the difference between urine and tea, water, or whatever else.

341 If a holocaust survivor is kidnapped, blindfolded and taken into a chamber with the word “Brausebad” (“shower room”, used in gas chambers in Nazi extermination camps) above the door, the intense fear and indignity suffered by the victim would hardly be less if the episode turns out to be a hoax and the “Brausebad” a wine cellar in a luxurious house.

342 As indicated earlier, students gave evidence that a staff member of UFS told a black student early this year that “accounting is not for black people”. In his evidence in August, the Vice-Chancellor stated that this incident was being investigated. Attempts from the side of the Panel to find out if the investigation has been completed and what the outcome was have been unsuccessful.

343 The appearance of white men, who are not students, in bakkies on campus to protect “their” students seems like racism.

344 From the above, it appears that racism at a level unacceptable for a university, even in South Africa, continues to exist and racist conduct continues to occur on and around the UFS campus.

“Swart gevaar”

345 Dr Lange referred to a spectre promoted for many years by the apartheid regime, namely the “swart gevaar” (black peril). This attitude appears to exist to some extent on the UFS campus; and may certainly be related to racism. A few examples illustrate this.

346 If Ms Pretorius and Ms Du Preez were not simply untruthful about the alleged violent conduct of the protesters, they might have indeed perceived dancing, toy-toying or walking as “kicking”, when they saw the approaching black protesters as a danger.

347 The loudhailer attack by a black man on a white woman at the Shimla Park gate unfortunately fed into the possible existence of a “swart gevaar” mentality. According to the evidence, a white student immediately afterwards shouted that black protesters were “women beaters”. Then white male students chased the attacker.

348 During the tense stand-off between mainly white residents of Vishuis and mainly black protesters the evening of 22 February, the Christian group positioned themselves between the two groups and prayed for peace. This seems laudable. However, according to several witnesses they faced the black protesters, with their backs to the white students. This signified to some protesters that they, the black group, were regarded as the threat, not the white students. Mr Moafrika testified that the Christians prayed “to drive out the demons inside us, (the black students)”.

349 It is understandable that Mr Calitz felt unsafe on campus, after the alleged previous threats to his safety. It is less understandable that he took white students into his confidence, assisted one of them to exit Tswelopele and left the very young black prime and black students to face the police.

350 Assuming that the head of Geology’s fear that his student would hit him with a hammer from behind was genuine, it appears to be unreasonable and perhaps neurotic.

351 The identification of suspects, based on a person’s dreadlocks, also resembles old attitudes that “all black people look the same” and that all are probably guilty of criminal conduct.

Police conduct

352 Versions of witnesses regarding the conduct of SAPS outside the main gate on the morning of 22 February, on the way to Shimla Park and later on and off campus differ. Some

witnesses, especially those involved in management, praised the police and Lt Col Munsamy in particular for their professional conduct. Others saw the events differently.

353 Serious concerns were expressed about how the SAPS selected those who were arrested outside the main gate. Some were certain that police were given “a list” of people to arrest. The impression of Ms Inez Bezuidenhout was that the police chased the protesters and arrested the slowest amongst them, those who were unable to run fast, or who stumbled and fell. Mr Rawson and Ms Bezuidenhout found the conduct of police – including Lt Col Munsamy – arrogant and aggressive.

354 Ms Toyana testified about her physical altercation with a police officer.

355 Mr Mazula gave evidence about a gun being cocked and pointed at Mr Ntuli. No other witness, including Mr Ntuli, mentioned this. Some witnesses opined that while Lt Col Munsamy’s conduct was fair, another officer – perhaps Captain Du Toit – was rude and aggressive.

356 Several attempts were made to hear the version of SAPS. The Panel chair spoke to Lt Col Munsamy over the phone. At some point the Panel was informed that SAPS could only respond to written questions; and only with the approval of higher command structures. A list of written questions and statements was sent to Lt Col Munsamy. He messaged by SMS that he would respond after 17 November. To date, no response has been received.

357 The subject of this investigation is of course not the conduct of SAPS, in the first place. The focus is on the management, staff, students and workers of UFS. However, it cannot be denied that the conduct of police, as well as perceptions of their conduct, have played a prominent role in campus dynamics.

358 For example, many black students, as well as black and white staff members, have perceived the police to be on the side of white students and biased against black students and other protesters. The Panel heard that SAPS randomly arrested black students on campus, even ones who were not involved in the protest, whereas few if any white students were arrested. Accounts were given of derogatory remarks by black police officers in particular, to humiliate black protesters.

359 Strong views have been expressed about the conduct of the police during the raid on Tswelopele residence. The Panel has been urged to call for an investigation by the Independent Police Investigative Directorate (IPID) in this regard.

Security

360 The absence of sufficient security at Shimla Park is remarkable. Professor Jansen indicated his surprise when he could not see security officials when the trouble started.

361 The conduct of security officials from Boko Haram has been criticised by several witnesses as unacceptably biased and brutal.

Intelligence

362 No clear evidence was presented as to whether “better intelligence” might have prevented some of the sad events; and what kind of intelligence gathering would be acceptable on the campus of an academic institution. Thus no finding is made in this regard.

Leadership

363 Strong and decisive but fair leadership is always essential, but more so in circumstances of change, uncertainty and volatility. It is unfortunate that the Vice-Chancellor and SRC President were not able to cooperate more fruitfully.

364 It is well-known that the Vice-Chancellor is intellectually impressive, eloquent and charismatic. He has a strong presence, which some (even on the Panel) find intimidating. He has done much for transformation on the UFS campus and has communicated with students more than his predecessors, according to witnesses. It is a pity that he seems to have been touched negatively by criticism and the “must fall” slogan, which has been applied to many people, policies and symbols. It is furthermore unfortunate that he seemed to have become involved in a personal battle or contest with the SRC President, a student in his early twenties.

365 During evidence, a senior management member expressed the opinion that “the ego of the SRC President is no smaller than that of the Vice-Chancellor”. Again, it is unfortunate that this comparison has to be made. The SRC President has been described to the Panel as a strong leader, but also as opportunistic, manipulative and intimidating; as well as too closely aligned to SASCO. Views to the opposite were also expressed. On all of these, the Panel cannot express a definitive opinion. Mr Ntuli was found to be a calm and clear witness, who helped the Panel to function.

366 The student and academic leadership of UFS deserve to be congratulated on the relative peacefulness of the recent protests about fees, compared to the unacceptably violent and destructive conduct that has been seen on some other campuses.

Hate speech

367 Oral and written submissions were made to the Panel about alleged racist “hate speech” by the SRC President. Transcripts from his Facebook page were sent to the Panel in sealed envelopes. At least one witness stated that he felt very scared when hearing or reading the SRC President’s references to white people. Anonymous academic staff members wrote to the Panel that they felt insecure in their jobs, inter alia, because of the SRC President’s ongoing racist remarks.

368 Mr Ntuli brought transcripts of his Facebook statements to the Panel. Not only willingly, but eagerly, he explained why he said what he did and gave some insight into his anger as a black person from a very modest background. He saw no need to apologise and referred to one or more white students who had approached him for an explanation and ended up not only understanding, but crying.

369 In the Panel’s view the remarks about “white bastards”, as well as “racism” and “racists” (like Penny Sparrow and Gareth Cliff) that must “literally fall” and go to the “grave”, do not amount to hate speech, or constitutionally unprotected speech in terms of section 16 of the Constitution. It might of course well be hate speech if a white person makes the same remarks about black people, given South Africa’s apartheid history. Given the context of the remarks, the anger is understandable and the figurative meaning is clear.

370 However, the Panel debated Mr Ntuli’s statements with him and explained that the fact that one has a free-speech-right to say something does not mean that it is good to say it. If he wants to be a leader to all South Africans and all students on campus, to win the understanding of those who might be open to understand his cause, he must reconsider the effect of his words on all.

Positives

371 A number of positive aspects emerged from the evidence. These include the ongoing willingness of the workers to negotiate; the repeated calls for non-violence during protests; the attempted cooperation between students like Mr Luwaca, Mr Mazula and Ms Du Preez to

stop or prevent violence; the prevalence of reason in the decision not to torch any building; and the self-reflection and remorse shown by some.

“Dad, why do you still work at that place?” and “There is a hole in my heart”: human costs and sensitivity

372 The events during the week of 22 to 26 February 2016 were traumatic and left deep scars on some individuals.

373 A worker of about 40 years old pulled a newspaper clipping from the pocket of his overall and displayed a colour photograph of himself being carried off the rugby field by burly white spectators. He was unconscious, kicked into that state. In reply to a question about how the events affected him, he said that he was ashamed. He was asked why, as he did nothing wrong. His reply was: “When I went home, my 10-year old son, who saw the picture, asked: ‘Dad, why do you still work at that place?’” The answer was obvious: he needed the salary for his family.

374 The first team rugby player described how they were ordered off the field by the referee. The players did not observe the violence on the field, as they were in the dressing rooms. The coach also did not inform them, in order not to distract them – they had to concentrate on the game.

375 When the players went back onto the field, after the protesters had been beaten up, the atmosphere was amazing, according to the player. UFS won the match by far. Yet, they played badly the rest of the season. The events might have affected them.

376 In response to a question how he felt afterwards, he said that he could not sleep for a week. “There was a hole in my heart”, the big rugby player said.

377 A white student who witnessed the events gave evidence off campus and wished to stay anonymous. When describing the violence and ongoing threats and racial insults, he cried and became hysterical.

378 The 21 year old prime of Tswelopele, who had to face the police on Thursday evening, 25 February, suffered serious psychological damage. On video material he can be seen crying in the arms of the student dean. He stepped down as prime, left the residence and terminated most of his courses. UFS has given counselling and other assistance. He had gone home to recover, but his condition did not improve. His mental and physical health was

bad. He was unsure as to whether to leave UFS altogether or keep on taking one or two courses to stay on campus.

379 Before the Panel he appeared to be close to a total breakdown. When asked if he would mind if the Panel chair brings his situation to the attention of the Vice-Chancellor, he said that he would welcome it. He did tell the Panel how UFS had assisted him.

380 In a letter to the Chair of Council and the Vice-Chancellor in August, the Panel chair reported on the Panel's progress. The situation of the young man was raised and UFS was requested to reach out to him, even though it had already assisted him. The fear was expressed that something tragic may happen. The Vice-Chancellor responded that it was surprising that the student's situation had come up through the Panel, as UFS had already assisted him. The message seemed to be that the Panel should not interfere in matters that are not its business.

Artefacts and other property

381 The Constitution recognises the right to demonstrate peacefully and without arms. Violence is unacceptable. Arguably, conduct that constitutes a criminal offence, could not be peaceful protest. Murder, rape, assault and theft are clear examples.

382 When it comes to the offence of intentional damage to property, the issue is less simple. The destruction of a building, or vehicles, is not peaceful protest. Some kind of damage to buildings, for example graffiti or the hanging of a poster on a wall, may be regarded by a court as *de minimus* (of too little significance to bother).

383 What about statues and other public artefacts though? Pulling down the statue of apartheid President Swart and dumping it into a pond was technically criminal damage to property. Yet, witnesses stated that it brought huge relief in the tense atmosphere at the time. The protesters felt that they had achieved a symbolic victory. That brought some degree of calmness over them.

384 The question is raised whether it would have been better for transformation, whether it would have prevented the violent destruction of property, if UFS removed the statue and renamed the law building before the protests. Or was the fall of Swart necessary within the context of the struggle playing itself out on campus?

385 Be that as it may, it is clear that the toppling of the statue of an apartheid politician, the first president of a republic in which the vast majority of South Africans did not have the vote, is not simply and only damage to property, like the burning of a library or bus. Did anyone bother with criminal charges when the Berlin wall or the statue of Saddam Hussain was brought down?

Disciplinary proceedings

386 Any inquiry into the individual liability falls outside the terms of reference of this investigation. Thus no findings are made.

387 However, concerns about disciplinary proceedings were expressed to the Panel by student leaders when the investigation started, at the “meet and greet” meeting on 17 May 2016 and repeatedly during the hearings. As part of its mandate to assist UFS with the way forward, the Panel is duty bound to relay some of the concerns brought to its attention. With the limited information at its disposal, the Panel is unable to reach conclusions.

388 The main objection seems to be the selection of students to be subjected to disciplinary hearings. The impression was created with students and staff members that a small and almost equal number of black and white students were targeted to use as tokens and be made examples of. The objection seems to include that many more white spectators participated in the assaults on the rugby field than those subjected to disciplinary hearings and that some of these can easily be identified from available visual and other evidence.

389 During the investigation the Panel was informed that disciplinary hearings had been suspended in June or July, pending this report. The suspension created expectations regarding the relationship between the report and the hearings.

Power; poverty; neglect: a point of no return?

390 One inescapable impression of the vents on the UFS campus is that poverty is rife and at the heart of many of the problems. Some students are from desperately poor backgrounds, like rural areas or townships (“locations” as some of students refer to them). They depend on small bursaries. They arrive on campus with little knowledge of what to expect. Some are overwhelmed. Some receive counselling for hunger.

391 If one adds to this the very conspicuous inequality between wealthy and poor on a smallish enclosed campus, frustration and resentment are understandable. More than one witness

mentioned the phenomenon of white students driving their 4X4 bakkies and other vehicles in a reckless way past poorer black students who use their feet to move around.

392 The implications of this divide are deep. A socio-economic background of deprivation and below standard school education influences every sphere of student life. It could lead to frustration, anger and an irrational desire to destroy. Even apparently humorous things may have hidden implications. Chief whip Moafrika testified that during the tense stand-off at the tiekie a black female student angrily asked him why black male students do not go to the gymnasium, so that they can build big strong muscles like their white counterparts, to protect their women. The small audience laughed. At the end of his evidence the Panel chair asked him if he now went to the gym. His answer was that he does not have money. The chair wisely decided not to ask him why he does not jog or do push-ups.

393 Jokes aside, it appears as if much of the Marxist analysis that philosophy, ideas, ideals and conflict are part of a super structure on economic base still holds true.

394 The two members of PASMA who gave evidence were impressive witnesses who displayed understanding and depth. One of them explained that he saw white people from the farming community as bosses who want to bully black people and only regard them as workers on the farm. He sees the boots on their feet as fit to kick black people, he said.

395 The Panel was also told that “a narrow black nationalism” was growing and replacing ideals of a diverse nation based on non-discrimination. If white people do not do much more to understand, the Panel was told, a “point of no return” in race relations will soon be reached.

396 It is of course not only the poor and previously oppressed who may experience a sense of disempowerment, neglect and marginalisation. It could be the fate of the previously advantaged as well. Ongoing punishment for or guilt about the “sins of the fathers” may well disable a generation. One of the explanations offered for Donald Trump’s victory over reason and human rights is that working class white men had for long been humiliated or at least ignored for the sake of political correctness. Thus they did not disclose their choice of a candidate in opinion polls, but they ignored Trump’s obvious flaws, to show a middle finger at political correctness and to the establishment, regardless of the consequences.

397 Marginalisation breeds resentment, anger and ultimately irrational aggressive conduct. This obviously applies to poor black students. It may also apply to white students who feel that they are not allowed to play a part in this country’s future; and are thus only interested to

complete their studies as well and quickly as possible, so that they could find jobs elsewhere in the world.

398 Legitimate feelings of neglect and marginalisation must be distinguished though from, for example, the urge to humiliate others and affirm delusions of racial supremacy by throwing urine, in protest against the integration of a residence.

The virtue of openness

399 The glimmer of light in the rather gloomy picture of racial conflict on the UFS campus is the fact that so many witnesses – especially students – came forward to tell their stories to the Panel fully in an open hearing. Of course there were exaggerations and improvisation here and there. Naturally some detail might have been left out, at least until asked. But, as far as the Panel members could determine, the protesters generally played open cards and took the Panel into their confidence. For this, they deserve appreciation.

400 Very disappointingly, not a single one of the spectators who went onto the field on 22 February, who assaulted workers and protesters, came forward to give any insight into what they did and why they did it. Similarly, apart from Ms Du Preez and Ms Pretorius, who were invited and encouraged to present their evidence, and who came together, no member of Afriforum, no white student who tried to keep protesters out of Shimla Park, or participated in the stand-off at Vishuis came forward.

401 Yet every white student at UFS is not a racist. Many would perhaps like to contribute to their university and country. One testified openly about the violent conduct of others in spite of his fear for reprisal. Another exposed his pain and agony about the racial strife to the Panel. Others continued with their business on campus, and when asked by Panel members where certain events took place, simply said that they did not know because they were minding their own business.

L RECOMMENDATIONS

402 The following is recommended:

- (a) This report to Council should be made available to students, staff and all those with a legitimate interest in UFS.

- (b) As stated above, individual liability falls outside the Panel's mandate. Thus no recommendations are made with regard to any individual's liability. With one or two exceptions, the Panel does not know who the accused in disciplinary proceedings are and what they are accused of. The exact present state of the proceedings is unknown to the Panel. However, the strongly held view of the Panel is that (i) there is a very relevant difference between alleged perpetrators who came forward and fully disclosed their conduct and motivation to the Panel and those who ignored and avoided this investigation and elected to rely solely on their procedural rights in disciplinary or criminal proceedings; and (ii) serious offences like assault with the intent to do grievous bodily harm should be clearly distinguished from, for example, damage to property in the form of breaking through a fence or pulling down a symbolic statue. It would not seem fair and just to use over-arching concepts like "public disorder" or "bringing the name and reputation of the university into disrepute" to blur differences.
- (c) Investigations and disciplinary processes in regard to, for example, the remark by a staff member that accounting is not for black people; the alleged shouting of the "k-word", from Karee residence; and the throwing of urine or other fluid by white students at a black female security guard must be completed without delay, if these have not yet been finalised.
- (d) Overt or covert racism, intentional or otherwise, must be addressed without delay. Strong disciplinary steps must be taken, because the time for excessive tolerance is up. Measures like training in sensitivity and awareness of the values and rights in the Constitution might be useful. In view of previous recommendations and the creation of the Institute for Reconciliation and Social Justice, as well as the Centre for Human Rights, new institutions are probably not necessary. Cosmetic steps could be harmful. The focus must be on concrete progressive steps with the active support of the UFS leadership.
- (e) An ongoing discourse on transformation and understanding between students and staff of different races and from different backgrounds is urgently necessary, inter alia, to avoid the earlier mentioned "point of no return" and to promote social cohesion. In this existing student and other structures must play a role. Role models like first team rugby players and other sports heroes could play a leading role.
- (f) While the ongoing discussion of transformation should continue with maximum inclusivity, active transformative steps could be taken by the UFS leadership without delay. Whereas transformation entails more than renaming buildings and other spaces, changing the

names of, for example, residences from the apparently innocent or neutral but still Afrikaans names of trees to other languages could contribute to creating an environment in which black students would feel more at home. The name of former Chief Justice Ismail Mahomed, who had to sleep outside the Free State when he appeared as an advocate before the Supreme Court of Appeal in Bloemfontein, for the law building came up during evidence. Some of the students present welcomed the suggestion. Proper consultation and the need for “buying into the process” should be respected, but not used as an excuse for procrastination.

- (g) The perception or suspicion amongst “revolutionary” students about secrecy and aloofness on the side of management and Council, of decisions in boardrooms and behind closed doors, must be recognised as a fact, whether it is justified or not. Efficient communication should address this.
- (h) In situations of disappointment, upheaval and protest, the temptation to get rid of recognised leaders should be resisted. Their removal often results in a vacuum, to be filled by less responsible, reasonable, or respected replacements.
- (i) The use of “hate speech”, or inflammatory and hurtful language bordering on it, should be avoided.
- (j) All at UFS must actively strive to create greater understanding, for example, by white students of the frustration and anger of black students and by black students of the fear of white students, by all of the plight of workers, and so on.
- (k) All efforts must be made to prevent anyone on the UFS campus to feel marginalised, ignored, or humiliated. Not only does such a situation violate human dignity, but it results in apathy, narrow self-interest and a massive loss of talent for a country. Those who lost interest, or are about to do so, must listen, speak up and participate.
- (l) Protest leaders must do their utmost best to stay within the limits of the constitutionally guaranteed right to demonstrate peacefully. Even if the legitimacy of the Constitution on issues like land distribution is questioned in some circles, peaceful and unarmed protest is internationally recognised and logically indispensable.
- (m) Campus security need to be looked at and, if necessary, overhauled, especially for emergency situations.

- (n) Great care is required to be taken when a decision is made whether to deploy private security on campus, and whom to contract with. Private security should be a backup, a preventative presence, not foreign nationals with little understanding of South African circumstances who happily go to war and celebrate “victories”.
- (o) Forces and individuals of ill-repute, with possibly racist agendas, like “neighbourhood watch” groups, should not be allowed onto campus.
- (p) Great care must be taken to ensure that academic exclusions, dismissals and disciplinary proceedings are conducted in a procedurally and substantively fair and transparent way, on the basis of equality before the law.
- (q) UFS must strongly consider to refer the conduct of SAPS officers at Tswelopele on Thursday, 25 February 2016, to IPID for investigation.

M END NOTE: Roelfie and the Hammerman

403 For this end note, apologies are extended to the head of the Geology Department, Dr Roelofse, as well as to a student of the Department, Mr Ntshalong. It is hoped that the head of department in particular does not object to this report’s reliance on “evidence” obtained outside the formal oral hearings. The experience of the Panel with some witnesses made a positive and touching impression and is worth mentioning, also because it may hold a valuable lesson for the future.

404 As summarised above, Mr Ntshalong, a geology student, was one of the activists involved in the protest during the week of 22 to 26 February 2016. He used his geology hammer to break down the statue of the first State President CR Swart of the apartheid Republic of South Africa, who was also one of the first LLB students of UFS, outside the law faculty building.

405 A white man in short pants from outside campus emerged on campus the day after Swart had “fallen”. He wanted to restore the Swart statue to its rightful place. This angered students, like Mr Ntshalong. Campus security removed the man. As he was leaving, Mr Ntshalong gave him a kick on the buttocks.

406 These events were captured on camera and seen by staff members of the Geology Department, including its head. When the student went to the building to register, the head of

the department told him to wait somewhere and called security to remove him from the building.

407 The following day Mr Ntshalong went to ask the head of the department why he had been removed from the building. Dr Roelofse's response was without his knowledge recorded by the student. In summary, he explained to the student that he had seen him using his geology hammer for criminal conduct, namely the destruction of property. He also saw him committing the criminal offence of assault. As he feared for the safety of property and people, he would not allow an emotionally unstable person with a hammer into the building under his management. Dr Roelofse told the student that he would resign, if Mr Ntshalong is not charged and expelled from UFS.

408 The Panel regarded it as necessary to hear Dr Roelofse's version and invited him to present it, which he did. He insisted that his responsibility as departmental head included the safety of staff members, the building and material like valuable stones. With conviction he explained that he indeed feared that the student might attack him with the hammer, for example, by hitting him on the head from behind. He admitted to having referred to the protesters as "thugs" who had "invaded the campus". According to him, people who break the law are thugs. He persisted that there was nothing wrong with his conduct.

409 One Panel member thanked the head of department for his open and honest explanation. Another was more sceptical.

410 When Dr Roelofse's version that he had felt physically threatened by the man with the hammer was put to a senior staff member of UFS, her expressive response was: "Have you seen Teboho?" He is fairly small and thin. She immediately added: "And have you seen Roelfie?" The head of department is not small and thin.

411 A few days earlier, the Panel asked one of the protesting students who brought down the Swart statue if he knew who CR Swart was. The student replied: "Wasn't he a prime minister who pushed through apartheid laws?" Of course Swart was never a prime minister. He was integrally part of the apartheid system, but is not generally known for "pushing through" apartheid laws, or, for that matter, anything else. The main culprit in this regard was prime minister HF Verwoerd. It turned out that the student had not heard of Verwoerd.

412 Immediately after the formal hearing of the head of Geology's evidence, a brief conversation between him and the Panel chair took place on the stairs outside the hearing venue. When the Panel chair told Dr Roelofse that students did not know exactly who Swart

was, he responded: “Ek weet ook nie. Was hy nie n eerste minister wat apartheid wette deurgevoer het nie?” (“I also do not know. Wasn’t he the prime minister who pushed through apartheid laws?”)

413 Then the head of the department asked the Panel chair how the latter – as an older man perhaps experienced in these matters – would have handled the situation. It was explained to Dr Roelofse that, rather than to have the student removed from the building by security, at the first meeting he could have called him into his office. If he felt afraid or threatened, he could have asked a colleague or security officer to be present. Then he could have made it clear to the student that staff were seriously concerned about what they had seen; that he had to behave responsibly; and that if any violent tendencies were shown in class or in the building, he would be dealt with decisively. The student would probably have agreed, seeing that the purpose of his appearance in the building in the first place was to register and complete his studies.

414 The head of department said: “Thank you”. As he made his way, presumably back to the Department of Geology, he turned around and said: “As you know, we work with stones, not people.”

415 In addition to what was stated in the **Introduction** above, namely that we should not destroy what we do not understand, we could remember that we are working **with people, not stones**. This should be kept in mind by all: students; workers; staff; management; Council; alumni; and neighbourhood watchers and advisers from outside UFS.