

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION  
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH  
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT  
NO 23 OF 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO 8 OF 2018/2019**

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*“Alleged maladministration and corruption relating to implementation of the MBCHB at University of Limpopo”*

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION  
AND CORRUPTION RELATING TO IMPLEMENTATION OF THE BACHELOR OF  
MEDICINE, BACHELOR OF SURGERY (MBCHB) PROGRAMME AT THE  
UNIVERSITY OF LIMPOPO**

## INDEX

<b>Executive Summary .....</b>	<b>3</b>
<b>1. INTRODUCTION .....</b>	<b>18</b>
<b>2. THE COMPLAINT .....</b>	<b>19</b>
<b>3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR .....</b>	<b>23</b>
<b>4. THE INVESTIGATION .....</b>	<b>28</b>
<b>5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS .....</b>	<b>35</b>
<b>6. FINDINGS .....</b>	<b>60</b>
<b>7. REMEDIAL ACTION .....</b>	<b>66</b>
<b>8. MONITORING .....</b>	<b>67</b>

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## **Executive Summary**

- (i)** This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa (the Constitution), 1996, and section 8(1) of the Public Protector Act No. 23 of 1994 (the Public Protector Act).
- (ii)** The report communicates my findings and the appropriate remedial action taken following an investigation into a complaint of alleged maladministration and corruption relating to implementation of the Bachelor of Medicine, Bachelor of Surgery (the MBChB) Programme at the University of Limpopo (the University) in 2016.
- (iii)** On 30 June 2016, I received a complaint from Professor AJ Mbokazi (the Complainant) who was the Director of the School of Medicine at the University with a request that I must intervene and investigate what he perceived as maladministration and corruption relating to tender processes by the University management.
- (iv) The Complainant alleged that:**
  - (a) The University admitted its first cohort of medical students at its Turfloop campus in 2016 and the administration of the MBChB programme was horrifying;
  - (b) The University got its accreditation from the Health Profession Council of South Africa (HPCSA) in April 2014, to offer MBChB programme and that the HPCSA indicated that the University would be ready to admit students in January 2015;
  - (c) About four weeks after the visit of the HPCSA to the University, he received a call from the University Quality Assurance Officer, Dr MA Ngoepe, stating that there was a meeting which he had to attend at Dr Ngoepe's office. The Complainant

further alleged that when he got into Dr Ngoepe's office, there was a lady called Ms Helen Linky Molatoli of Dinamik Institute, who had displayed on the wall a programme which he was told was the one that the University wanted to implement for the School of Medicine. Dr Ngoepe indicated that the University engaged Ms Molatoli in order to align the curriculum in a way that will comply with the Council for Higher Education's (the CHE) requirements;

- (d) The curriculum displayed by Ms Molatoli was not the same as the one accredited by the HPCSA. He immediately informed the University that he was not in agreement with the tampering of the HPCSA's approved curriculum. He informed the University that any attempt to change the curriculum must be discussed with a team which initially compiled it in order to re-align it with the CHE requirements;
- (e) He learnt that the CHE was surprised when the University submitted a new changed curriculum. The Complainant further alleged that when the University submitted the amended curriculum to the CHE, Dr Ngoepe and Prof Mbambo-Kekana misrepresented to the CHE by attaching an approval letter from the HPCSA which was initially for an original approved curriculum;
- (f) Upon her appointment as the Executive Dean for Health Sciences, Prof Mbambo-Kekana took over the supervision and responsibility of the School of Medicine. Around June 2015, Prof Mbambo-Kekana instructed the Complainant to invite all academic staff of the School of Health to a workshop that was to be presented by Ms Molatoli. He responded to Prof Mbambo-Kekana through an email in which he copied Dr Ngoepe and informed them that it was not necessary to alter the curriculum, except for dates on timetables and study guides as it was already approved by the HPCSA. He was never engaged again on the issue of the curriculum. Dr Ngoepe and Prof Mbambo-Kekana proceeded to invite Ms Molatoli to facilitate despite his objection;

- (g) There was a lot of bewilderment among his colleagues as Ms Molatoli was neither qualified in Medicine nor an academic and only relied on information from the internet and other books. She did not display a sound knowledge of her presentation;
- (h) Dr Ngoepe and Prof Mbambo-Kekana did not provide the School of Health Sciences' academic staff with an opportunity to question Ms Molatoli's substandard curriculum. She was paid approximately R3 million in 2015 for unnecessary work;
- (i) On 15 December 2015 the Complainant convened a meeting for module coordinators relating to the HPCSA approved curriculum in order to change dates and timetables, since the previous one submitted to the HPCSA for 2015 had different dates for activities and venues. On 18 December 2015 he was called by Prof Mbambo-Kekana to the Vice Chancellor's office, Professor Mokgalong (VC). The Complainant said that in addition to the VC, the Dean, Deputy Vice Chancellor, Professor Sibara (the DVC), and Registrar, Mr Naidoo, were present. The meeting was a one way conversation where the VC told him that he had no right to call a meeting of module coordinators to look at the HPCSA approved curriculum. The VC went on to say that the curriculum that the management of University wanted to implement was supported by better academics in the country than the Complainant". The VC informed him that he was nothing in the institution and that if he did not want Ms Molatoli's curriculum he must pack his bags and leave the institution. He remained in the institution despite the VC's utterances because he was not served with a letter of dismissal at that time;
- (j) In January 2016, the University implemented the unapproved curriculum and the Complainant was not provided with a copy and its modules. The University taught medical students nursing, social work and pharmacy and this resulted in the Complainant writing many letters to the HPCSA Chairperson of the Undergraduate Training Committee (UTC) to assist and salvage the situation. The Chairperson

informed him that he was unable to assist since Prof Mbambo-Kekana was also a member of the UTC. The Complainant also questioned Prof Mbambo-Kekana's role as a member of the Medical and Dental Board as she had no medical qualification;

(k) He reported that upon lodging the complaint with my office, he was subjected to victimization by the University. The University advertised a position of a Director of the School of Medicine, despite the fact that he was employed in that position and he still had 18 months remaining in the contract. He was subsequently suspended by the University for allegedly raising objections against what he believed was an unaccredited curriculum. The Complainant indicated that he was suspended for being consistent and insisting on the following facts:

- (i) For refusing to follow what he believed was an unaccredited curriculum;
- (ii) For refusing to follow a curriculum developed by a person with no identifiable proficiency in Medicine and was not an academic in the field;
- (iii) For highlighting that it was not necessary for the University to acquire the services of Ms Molatoli to guide it to teach Medicine since she had no qualification in Medicine;
- (iv) For advising the University that it acted irrationally when it appointed Ms Molatoli since no proper procurement procedures were followed;
- (v) For reporting that Ms Molatoli's company, Dinamik Institute, was not registered as an academic institution; and
- (vi) For pointing out that there was a strong possibility of a corrupt relationship between the University and Dinamik Institute.

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- (l) The Complainant further underlined the fact that this was a huge project as this was the first Medical School in the democratic dispensation of the country and that it could not be left under the current University management. He therefore turned to my office for urgent help because he and the students were being severely prejudiced by the alleged maladministration at the University.
- (v) The investigation was conducted in terms of section 182(1) of the Constitution which gives the Public Protector the power to investigate any conduct in state affairs, or in the public administration in any sphere of government that is alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act which regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.
- (vi) This complaint was initially classified as an early resolution matter capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of the Public Protector Act. Following an Alternative Dispute Resolution (ADR) meeting, a settlement agreement between the Complainant, HPCSA and University, facilitated by the Deputy Public Protector, was concluded and signed on 06 December 2016.
- (vii) All the issues agreed to by the parties to the aforesaid settlement agreement were fully honoured by all the parties. However, not all the alleged or suspected improper or prejudicial conduct could be resolved through ADR, hence the matter was escalated to a full scale formal investigation in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

**(viii) On analysis of the complaints not resolved through the aforesaid ADR process, the following conducts were identified/considered and investigated:**

- (a) Whether the University failed to follow proper procurement processes when it appointed Dinamik Institute to formulate or draw up the medical programme;
- (b) Whether there existed a conflict of interest on the part of Prof Mbambo-Kekana during the appointment of Ms Molatoli;
- (c) Whether the University improperly introduced and implemented an altered curriculum at the University School of Medicine which was not accredited by the HPCSA and CHE;
- (d) Whether the Vice Chancellor allowed the MBChB programme to be managed by the Executive Dean of the Faculty who did not have an MBChB degree;
- (e) Whether the HPCSA failed to exercise its regulatory and oversight role in this matter; and
- (f) Whether the Complainant and affected students suffered any improper prejudice as a result of the alleged maladministration by the University

**(ix)** Although part of the investigation process was conducted and some alleged or suspected improper conducts were resolved through ADR process, in accordance with section 6(4)(b) of the Public Protector Act, the full investigation was conducted through correspondences, meetings and interviews with the Complainant and relevant University officials, the HPCSA, CHE, Department of Higher Education and Training (DHET), Service Provider (Dinamik Institute) and Limpopo Provincial



Department of Health (Department) as well as scrutiny of all relevant documents, laws, policies and related prescripts.

- (x) Key laws and policies taken into account to determine if there had been maladministration by the organs of state and prejudice to the Complainant and affected students were principally those imposing administrative standards that should have been complied with by the University or its officials when processing the implementation of the medical curriculum at its School of Medicine. Those are the following:
- (a) The Constitution;
  - (b) The Public Protector Act;
  - (c) The Health Professions Act 56 of 1974 and Rules thereto;
  - (d) The Procurement Policy of the University;
  - (e) The University Disciplinary Code and Procedures;
  - (f) Settlement Agreement between the University, HPCSA and the Complainant; and
  - (g) Principles of Batho Pele.
- (xi) Having considered the evidence uncovered during the investigation against the applicable law and related prescripts, I make the following findings:
- (a) **Regarding whether the University failed to follow proper procurement processes when it appointed Dinamik Institute to formulate or draw up the medical programme:**
    - (aa) The allegation that the University failed to follow proper procurement processes when it appointed Dinamik Institute to formulate or draw up the medical programme is substantiated.

- (bb) The University appointed Dinamik Institute for the formulation of the MBChB curriculum in February 2015. The University did not follow an open tender process when it appointed Dinamik Institute or obtained three quotations from other service providers as per its own procurement policy requirements. The University could not provide my office with copies of contracts or service level agreements entered into between the University and Dinamik Institute. The University paid Dinamik Institute a total of R 2 398 541.78 for services rendered in relation to the formulation of the medical programme.
- (cc) Both Dr Ngoepe and Prof Mbambo-Kekana played a major role in the appointment processes of Dinamik Institute. In the case of Dr Ngoepe, Dinamik Institute deposited an amount of R25 000.00 (twenty five thousand rand) into Dr Ngoepe's banking account on 18 March 2015. Since Dr Ngoepe could not explain the reasons for the deposit, I did not investigate or make a finding in the matter. However, given the fact that this matter was already the subject of an investigation by the DPCI, I deemed it prudent to refer it to them.
- (dd) By failing to follow proper procurement processes when it appointed Dinamik Institute, the University contravened the provisions of section 217 and section 195 of the Constitution and sections 3 and 8 of its Procurement Policy.
- (ee) The payment of an amount of R2 398 541.78 constitute an irregular and fruitless expenditure, as no proper procurement process were followed for the appointment of the Services Provider and no value for money was received from the alleged services rendered.
- (ff) Accordingly, the conduct of Dr Ngoepe and Prof Mbambo-Kekana in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.

**(b) Whether there existed a conflict of interest on the part of Prof Mbambo-Kekana during the appointment of Ms Molatoli:**

(aa) The allegation whether there existed a conflict of interest on the part of Prof Mbambo-Kekana during the appointment of Ms Molatoli is substantiated.

(bb) Professor Mbambo-Kekana was the co-founder and director of Dinamik Institute between 2001 and 2002 until her resignation. She did not disclose this conflict of interest to the University management. The University, however, does not have a policy that regulates declaration of conflict of interest by the University management.

(cc) The conduct of Professor Mbambo-Kekana in failing to disclose her past relationship with Dinamik Institute and/or with Ms Molatoli was in conflict with section 195(1)(a) of the Constitution.

(dd) Accordingly, Professor Mbambo-Kekana's conduct amounts to improper conduct in terms 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.

**(c) Whether the University improperly introduced and implemented an altered curriculum at the University School of Medicine which was not accredited by the HPCSA and CHE:**

(aa) The allegation that the Professor Mokgalong (the Vice Chancellor), Dr Ngoepe and Prof Mbambo-Kekana improperly introduced and implemented an altered curriculum at its School of Medicine which was not accredited by HPCSA and CHE is substantiated.

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- (bb) The University improperly deviated and implemented an MBChB curriculum at its School of Medicine in 2016 which was not the same as the one approved by the HPCSA in 2014. The University management was not supposed, on its own and without approval of the HPCSA as a statutory and regulatory body, to have deviated from an HPCSA-approved medical academic programme and to have submitted the same to the CHE for accreditation.
- (dd) Accordingly, the conduct of the VC, Dr Ngoepe and Professor Mbambo Kekana amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act;
- (d) Regarding whether the Vice Chancellor allowed the MBChB programme to be managed by the Executive Dean of the Faculty who did not have an MBChB degree:**
- (aa) The allegation that the VC allowed the programme to be managed by the Executive Dean of the Faculty who did not possess a qualification in Medicine is not substantiated.
- 5.4.1 (bb) According to the job advertisement, a qualification in Medicine was not a material requirement for the incumbent to be appointed as an Executive Dean of the Faculty of Health Sciences. However, the advertisement required somebody with a PhD in a relevant discipline, a minimum of 10 years work experience in a senior supervisory/leadership role amongst others. Professor Mbambo-Kekana is an Academic and a Physiotherapist who has been in the higher education sector for over 20 years, obtained her junior degree, Bachelor of Science (BSc) in Physiotherapy at MEDUNSA in 1986. She further obtained her Master's degree in Physiotherapy Education from the University of Pretoria in 1996 and PhD from the University of Witwatersrand in 2009.

(cc) Accordingly, the conduct of the VC in the circumstances does not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act

**(e) Whether the HPCSA failed to exercise its regulatory and oversight role in this matter:**

(aa) The allegation that the HPCSA failed to intervene and exercise its regulatory and oversight role in this matter is not substantiated.

(bb) The HPCSA was alerted to this incident by the discovery in an annual report submitted by the University to the UTC in October of 2015 of an apparent significant difference between the undergraduate medical (MBChB) curriculum accredited by the HPCSA in 2014 and the one implemented by the University in 2016.

(cc) A sequence of events by HPCSA eventually led to a site visit by the HPCSA panel to the University, accompanied by various stakeholder groups in order to gain a good understanding of the number of different versions of the MBChB curriculum and the extent of the differences between them.

(dd) Accordingly, the conduct of the HPCSA in the circumstances does not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.

**(ee) Regarding whether the Complainant and affected students suffered any improper prejudice as a result of the alleged maladministration by the University:**

- (aa) The allegation that the Complainant and students suffered improper prejudice as a result of the maladministration by the University is substantiated.
- (bb) The Complainant incurred legal, travelling and accommodation costs totalling R49 640.19 (forty nine thousand six hundred and forty rand and nineteen cents) relating to his labour dispute (suspension) against the University and travelling from Polokwane to Pretoria to attend the ADR sessions facilitated by my office. The University lifted the suspension on 05 April 2017 without ever bringing any formal charges against him within 6 (six) months. The Complainant further indicated that the costs excluded South African National Roads Agency Limited e-toll fees for which he was still waiting for a consolidated account.
- (cc) The Complainant indicated that he suffered general damages (for which he demands monetary reparation from the University) such as emotional pain, cruelty, open discrimination, isolation, oppression, abuse, violation of his human rights and that he was subsequently diagnosed with major depression due the University's improper conduct and prejudice of unfairly suspending him and capriciously advertising his position.
- (dd) However, my office will not be an appropriate forum to quantify damages of such nature due to its exclusive investigative function ( and not adjudicative function), complexity and the special expertise required to prove and quantify them. The Complainant also did not provide any supporting expert documentation in substantiation thereof. Litigation through a court of law or any forum with jurisdiction or agreed upon by the parties may be the most viable and appropriate route for the Complainant to enforce a claim based on general damages.

- (ee) The students on a non-HPCSA-approved programme were subjected to the risk of not only being able to register or practice as medical doctors, but also of losing financial aid, bursaries and loss of academic year. This also meant that no new students were admitted at the University in 2017.
- (ee) The CHE formally withdrew the accreditation of the University MBChB curriculum on 09 December 2016 and my office also had to intervene which resulted in the affected students being migrated from the de-accredited curriculum of the University and being registered temporarily under the University of Pretoria MBChB curriculum whilst the University continued to address its own MBChB accreditation.
- (ff) The conduct of the University in suspending the Complainant for more than 6 (six) months without charging him is in contravention of paragraph 7.9 the University Disciplinary Policy.
- (hh) Accordingly, the conduct of the University in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.
- (xii) **The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:**

**The Chairperson of the University Council must take appropriate steps to ensure that:**

- (a) The University Council, within 30 working days from the date of the report, takes disciplinary steps against all its officials, namely the Professor Mokgalong, Prof Mbambo-Kekana and Dr Ngoepe, who were responsible for



exposing the University to de-accreditation of its MBChB programme and financial risks when they violated the Procurement Policy.

- (b) Any irregular and/or fruitless expenditure incurred by the University, from any person who is liable in law, is recovered in accordance with the process prescribed in the National Treasury updated guideline on irregular expenditure.

**The University Vice Chancellor must take effective and appropriate steps to ensure that:**

- (c) An MBChB Programme Committee is formally constituted, within 60 working days from the date of the report, as part of the University academic decision-making structure with a mandate to carry out the primary strategic, academic and quality assurance responsibility for the programme.
- (d) All University officials who are involved in the Supply Chain Management process, including all the senior management, attend a workshop on the Procurement Policy and related legal prescripts within 30 working days of the issue of the report.
- (e) The University must, within 60 working days from the date of the report, develop a policy relating to the declaration on conflict of interest amongst all of its staff members for each financial year. The policy should, amongst others, address the manner in which the declaration must be processed and consequences for failure to disclose conflict of interest.
- (f) The University must, within 30 working days from the date of the report, reimburse the Complainant all the determinable financial expenses he incurred through legal, travelling, accommodation, and other costs whilst he was pursuing this complaint. The University must further issue and publish, on its



website, an apology to the Complainant for subjecting him to an unjustifiable suspension from his position as the Director of the School of Medicine.

**The Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks) must in terms of section 6(4)(c)(ii) of the Public Protector Act:**

- (g) Commence an investigation, within 30 working days from the date of the report, into the link between the payment of R25 000.00 into Dr Ngoepe's account at a time when there was a procurement process in which Dinamik Institute were involved, and ultimately were the successful service provider.

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND CORRUPTION RELATING TO IMPLEMENTATION OF THE BACHELOR OF MEDICINE, BACHELOR OF SURGERY (MBChB) PROGRAMME AT THE UNIVERSITY OF LIMPOPO**

**1. INTRODUCTION**

1.1 This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa Act, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted to:

1.2.1 The Minister of Higher Education and Training, Honourable GNM Pandor;

1.2.2 The MEC for Health in Limpopo Province, Dr PC Ramathuba;

1.2.3 The Director-General of the Department of Higher Education and Training, Dr D Parker;

1.2.4 The Chief Executive Officer of the Council on Higher Education, Prof N Baijnath;

1.2.5 The Acting Chief Executive Officer/Registrar of the Health Professions Council of South Africa, Adv P Khumalo;

1.2.6 The Chairperson of the Council of the University of Limpopo, Mr P Nefolovhodwe;

1.2.7 The Vice Chancellor of the University of Pretoria, Prof C De la Rey;

1.2.8 The Vice Chancellor of the University of Limpopo; Prof MN Mokgalong; and

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- 1.2.9 The Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks), Adv G Lebeya; and
- 1.3 A copy of the report is also provided to Prof AJ Mbokazi (the Complainant) to inform him of the outcome of the investigation.
- 1.4 The report relates to an investigation into allegations of maladministration and corruption relating to implementation of the Bachelor of Medicine, Bachelor of Surgery (MBChB) Programme at the University of Limpopo (the University) in 2016.

## **2. THE COMPLAINT**

- 2.1 On 30 June 2016, I received a complaint from Prof AJ Mbokazi (the Complainant) who was the Director of the School of Medicine at the University with a request that I must intervene and investigate what he perceived as maladministration and corruption relating to tender processes by the University management. He alleged the following:
- 2.1.1 The University admitted a first cohort of medical students at its Turfloop campus in 2016 and the administration of the MBChB programme was horrifying;
- 2.1.2 The University got its accreditation from the Health Profession Council of South Africa (the HPCSA) in April 2014 to offer MBChB programme and that the HPCSA indicated that the University would be ready to admit students in January 2015;
- 2.1.3 About four weeks after the visit of the HPCSA to the University, he received a call from the University Quality Assurance Officer, Dr MA Ngoepe, stating that there was a meeting which he had to attend at Dr Ngoepe's office. When he arrived at Dr Ngoepe's office, he met a lady called Ms Helen Linky Molatoli of Dinamik

Institute, who had displayed on the wall a programme which he was told was the one that the University wanted to implement for the School of Medicine. Dr Ngoepe indicated that the University engaged Ms Molatoli in order to align the curriculum in a way that would comply with the Council for Higher Education's (CHE) requirements;

- 2.1.4 The curriculum displayed by Ms Molatoli was not the same as the one accredited by the HPCSA. He immediately informed the University that he was not in agreement with the tampering of the HPCSA's approved curriculum. He informed the University that any attempt to change the curriculum must be discussed with a team which initially compiled it in order to re-align it with the CHE requirements;
- 2.1.5 He learnt that the CHE was surprised when the University submitted a new changed curriculum. When the University submitted the amended curriculum to the CHE, Dr Ngoepe and Prof Mbambo-Kekana misrepresented to the CHE by attaching an approval letter from the HPCSA which was initially for an original approved curriculum;
- 2.1.6 Upon her appointment as the Executive Dean for Health Sciences, Prof Mbambo-Kekana took over the supervision and responsibility of the School of Medicine. Around June 2015, Prof Mbambo-Kekana instructed the Complainant to invite all academic staff of the School of Health to a workshop that was to be presented by Ms Molatoli. He responded to Prof Mbambo-Kekana through an email in which he copied Dr Ngoepe and informed them that it was not necessary to alter the curriculum, except for dates on timetables and study guides as it was already approved by the HPCSA. He was never engaged again on the issue of the curriculum. Dr Ngoepe and Prof Mbambo-Kekana proceeded to invite Ms Molatoli to facilitate despite his objection;
- 2.1.7 There was a lot of bewilderment among his colleagues as Ms Molatoli was neither

qualified in Medicine nor an academic and only relied on information from the internet and other books. She did not display a sound knowledge of her presentation;

2.1.8 Dr Ngoepe and Prof Mbambo-Kekana did not provide the School of Health Sciences academic staff with an opportunity to question Ms Molatoli's substandard curriculum. She was paid approximately R3 million in 2015 for unnecessary work;

2.1.9 On 15 December 2015 the Complainant convened a meeting for module coordinators of the HPCSA approved curriculum in order to change dates and timetables since the previous one submitted to the HPCSA for 2015 had different dates for activities and venues. On 18 December 2015 he was called by Prof Mbambo-Kekana to the Vice Chancellor's office, Professor Mokgalong (the VC). The Complainant said that in addition to the VC, the Dean, Deputy Vice Chancellor, Professor Sibara (the DVC), and Registrar, Mr Naidoo, were present. The meeting was a one way conversation where the VC told him that he had no right to call a meeting of module coordinators to look at the HPCSA approved curriculum. He further stated that the VC told him that the curriculum that the management of University wanted to implement was supported by better academics in the country than the Complainant. The VC informed him that he was nothing in his institution and that if he did not want Ms Molatoli's curriculum he must pack his bags and leave his institution. He remained in the institution despite the VC's utterances because he was not served with a letter of dismissal at that time;

2.1.10 In January 2016, the University implemented the unapproved curriculum and the Complainant was not provided with a copy and its modules. The University taught medical students nursing, social work and pharmacy and this resulted in the Complainant writing many letters to the HPCSA Chairperson of the Undergraduate Training Committee (UTC) to assist and salvage the situation. The Chairperson informed him that he was unable to assist since Prof Mbambo-Kekana was also a

member of the UTC. The Complainant also questioned Prof Mbambo-Kekana's role as a member of the Medical and Dental Board as she had no qualification in Medicine;

2.1.11 Upon lodging a complaint with my office, he was subjected to victimization by the University. The University advertised a position of a Director of the School of Medicine, despite the fact that he was employed in that position and he still had 18 months remaining in the contract. He was subsequently suspended by the University for allegedly raising objections against what he believed was an unaccredited curriculum. The Complainant submitted that he was suspended for being consistent and insisting on the following facts:

- a) For refusing to follow what he believed was an unaccredited curriculum;
- b) For refusing to follow a curriculum developed by a person with no identifiable proficiency in medicine and was not an academic in the field;
- c) For highlighting that it was not necessary of the University to acquire the services of Ms Molatoli to guide it to teach medicine since she had no medical qualification;
- d) For advising the University that it acted irrationally when it appointed Ms Molatoli since no proper procurement procedures were followed;
- e) For reporting that Ms Molatoli's company, Dinamik Institute, was not registered as an academic institution; and
- f) For pointing out that there was a strong possibility of a corrupt relationship between the University and Dinamik Institute.

2.1.12 He further underlined the fact that this was a huge project as this was the first

Medical School in the democratic dispensation of the country and that it cannot be left under the current University management. He therefore turned to my office for urgent help because he and the students were being severely prejudiced by the alleged maladministration going on at the University.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

#### **3.1 Mandate of the Public Protector**

3.1.1 The Public Protector is an independent constitutional institution established in terms of section 18(1)(a) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.1.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has the power, as regulated by national legislation,-*

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

*(b) to report on that conduct; and*

*(c) to take appropriate remedial action.”*

3.1.3 Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

3.1.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct

of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purpose of an investigation.

- 3.1.5 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.<sup>1</sup> The Constitutional Court further held that: *"When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."*<sup>2</sup>
- 3.1.6 The complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65).
- 3.1.7 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (paragraph 67).
- 3.1.8 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68).

<sup>1</sup> [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

<sup>2</sup> *Supra* at para [73].



- 3.1.9 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69).
- 3.1.10 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70).
- 3.1.11 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71).
- 3.1.12 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (paragraph 71(a)).
- 3.1.13 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)).
- 3.1.14 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.1.15 In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others*, Case no 91139/2016 (13 December 2017), the Court held as follows:

- 3.1.15.1 The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective. (paragraphs 85 and 152);
- 3.1.15.2 There is nothing in the Public Protector Act that prohibits the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4) (c) (ii) of the Public Protector Act (paragraphs 91 and 92);
- 3.1.15.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers( paragraphs 100 and 101):
- (a) Conduct an investigation;
  - (b) Report on that conduct; and
  - (c) To take remedial action.
- 3.1.15.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings. (paragraph 104);
- 3.1.15.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105).

3.1.16 To this end, I would like to emphasise that adjudicative functions and pure litigation which relates to a claim for special or general damages are lawsuits which are judicial in nature<sup>3</sup>. A court of law is best suited to hear and adjudicate on such matters. Accordingly, the Public Protector is not inclined to recommend remedial action ordering payment of civil damages or sorry money given its adjudicative and judicial nature. The office of the Public Protector is an office modelled on an institution of an ombudsman whose function is to ensure that government officials carry out their tasks effectively, fairly and without corruption, maladministration and prejudice<sup>4</sup>. It is therefore trite that the decisions of the Public Protector are administrative actions<sup>5</sup>.

3.1.17 The fact that there is no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct (paragraphs 107 and 108);

3.1.18 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112);

3.1.19 The University is an organ of state and its conduct amounts to conduct in state affairs. This matter, therefore, falls squarely within the ambit of the Public Protector's mandate.

3.1.20 The jurisdiction of the Public Protector was not disputed by any of the parties in this matter.

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<sup>3</sup> Sudumo et al vs Rustenburg Platinum Mines Limited et al, 2008(2) SA 24 (CC) at 235.

<sup>4</sup> Ex Parte Chairperson of the Constitutional Assembly; In re: Certification of the Constitution of the Republic of South Africa 1996(4) SA 744 (CC) at 161.

<sup>5</sup> Minister of Home Affairs et al vs Public Protector et al 2017(2) SA 597 (GP).

## **4. THE INVESTIGATION**

### **4.1 Methodology**

- 4.1.1 My investigation of the complaint was conducted in terms of section 182(1) of the Constitution which gives me the power to investigate any conduct that is alleged or suspected that is alleged or suspected to be improper or to result in any impropriety or prejudice in state affairs, or in the public administration in any sphere of government, to report on that conduct and to take appropriate remedial action; and in terms of section 6(5) of the Public Protector Act, regulating the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of public entities.
- 4.1.2 The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives me the authority to resolve a matter without conducting an investigation and resolve a complaint through Appropriate Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.
- 4.1.3 This complaint was initially classified as an Early Resolution matter capable of resolution by way of a conciliation process, negotiation or mediation in line with section 6(4)(b) of the Public Protector Act, 1994. As the result, a settlement agreement between the University, HPCSA, Complainant, facilitated by the Deputy Public Protector, was concluded and signed on 06 December 2016. All the parties agreed that, in the interim, the following shall take place and be observed whilst the main issues were being pursued:

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***“SETTLEMENT AGREEMENT***

***Parties agreed to the following clauses as contained in a signed version of this agreement:***

*“Regarding the allegation that the management of the University of Limpopo introduced and implemented a curriculum to the school of medicine which is not accredited by HPCSA, the University agrees to implement the HPCSA recommendation to revert back to the MBChB curriculum that was formally accredited by the HPCSA in 2014 and in accordance with the recommendations made in the applicable accreditation report;*

*The University will issue a formal communication confirming that as from 2017 it is offering the MBChB curriculum that was formally accredited by the HPCSA;*

*The Public Protector will request the Council of Higher Education (CHE) to urgently finalise and issue their report on the review of the MBChB programme offered by the University.*

*The Public Protector will further arrange a meeting between the University of Limpopo, the HPCSA and the Council of Higher Education with a view to reaching a final conclusion on the implementation of the report issued by HPCSA and the CHE. The meeting will be held by no later than 20 January 2017.*

*As regards the appointment of the service provider, Dinamik Institute, the parties agree that the Public Protector will investigate the allegations that due process was not followed in the appointment of the service provider. The University undertakes to submit the following documents relating to the service provider by not later than 15 December 2016:*

- a) *Copy of the University Supply Chain Management/ Procurement Policy;*
- b) *Copy of the tender/request for proposal/terms of reference inviting prospective service providers*
- c) *List of all service providers who submitted bids/proposals including copies of bids/proposals received*
- d) *Documentation relating to the process followed to adjudicate bids/ proposals received from all service providers*
- e) *Schedule of all payments made to Dinamik Consultants including work performed by the Service provider.*

*As regards the suspension of Prof Mbokazi, the Public Protector will arrange a further meeting between the University of Limpopo and the Provincial Department of Health with a view to further discuss the complaint relating to the employment of Prof Mbokazi."*

4.1.4 All the clauses of the settlement agreement were fully honoured by all the parties. However, not all the issues could be resolved through an ADR mechanism, hence those matters not forming part of the settlement agreement were escalated to a full scale formal investigation in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

## **4.2 Approach to the investigation**

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?

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- 4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?
- 4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. The Supreme Court of Appeal<sup>6</sup> (SCA) made it clear that it is the Public Protector's duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.
- 4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met or complied with by the University to prevent maladministration and prejudice.
- 4.2.4 My office's own institutional touchstones, being principles from previous reports, were also taken into account.
- 4.2.5 The enquiry regarding remedial or corrective action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a complainant has suffered prejudice, the idea is to place him or her as close as possible to where they would have been had a state organ complied with the regulatory framework setting the applicable standards for good administration.
- 4.2.6 In the case of conduct failure as was the case in the complaint investigated, remedial action seeks to right or correct identified wrongs while addressing any systemic administrative deficiencies that may be enabling or exacerbating identified maladministration or improper conduct.

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<sup>6</sup> *Public Protector versus Mail and Guardian, 2011(4) SA 420 (SCA)*,

4.2.7 The substantive scope of the investigation focused on compliance with the law and prescripts regarding the complaint and allegations.

**4.3 On analysis of the matter, the following issues were considered and investigated:**

- 4.3.1 Whether the University failed to follow proper procurement processes when it appointed Dinamik Institute to formulate or draw up the medical programme;
- 4.3.2 Whether there existed a conflict of interest on the part of Prof Mbambo-Kekana during the appointment of Ms Molatoli;
- 4.3.3 Whether the University improperly introduced and implemented an altered curriculum at the University School of Medicine which was not accredited by the HPCSA and CHE;
- 4.3.4 Whether the Vice Chancellor allowed the MBChB programme to be managed by the Executive Dean of the Faculty who did not have an MBChB degree;
- 4.3.5 Whether the HPCSA failed to exercise its regulatory and oversight role in this matter; and
- 4.3.6 Whether the Complainant and affected students suffered any improper prejudice as a result of the alleged maladministration by the University.





#### **4.4 The key sources of information**

##### **4.4.1 Correspondences and interviews**

- 4.4.1.1 Documentation and the information provided by the Complainant since June 2016;
- 4.4.1.2 Correspondence with the University and HPCSA officials since August 2016;
- 4.4.1.3 Alternative Dispute Resolution minutes and correspondence with the University management, HPCSA, Dinamik Institute and Complainant on 06 December 2016;
- 4.4.1.4 Correspondence with the official (CEO) of CHE in January 2017;
- 4.4.1.5 Consultative meeting and interviews with the University, DHET, CHE, HPCSA officials on 07 February 2017;
- 4.4.1.6 Correspondence with the Hawks and with Companies Intellectual Property Commission (CIPC) in February 2017;
- 4.4.1.7 Interviews and meeting with the MEC for Health in Limpopo Province, University VC and the Executive Dean of Health Sciences and the Complainant on 24 April 2017; and
- 4.4.1.8 Interviews and meeting with the University officials, Director of Quality Assurance, Registrar and the Acting Chief Financial Officer on 15 May 2017.

##### **4.4.2 Legislation and other prescripts**

- 4.4.2.1 The Constitution
- 4.4.2.2 The Public Protector Act
- 4.4.2.3 The Procurement Policy of the University of Limpopo;
- 4.4.2.4 Labour Relations Act No 63 of 1995; and
- 4.4.2.5 Settlement agreement between the University, HPCSA and Complainant.

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#### **4.4.3 Case Law**

- 4.4.3.1 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC);
- 4.4.3.2 *Sudumo et al vs Rustenburg Platinum Mines Limited et al* 2008(2) SA 24 (CC) at 235;
- 4.4.3.3 *Ex Parte Chairperson of the Constitutional Assembly; In re: Certification of the Constitution of the Republic of South Africa* 1996(4) SA744 (CC) at 161;
- 4.4.3.4 *Minister of Home Affairs et al vs Public Protector et al* 2017(2) SA 597 (GP);
- 4.4.3.5 *President of the Republic of South Africa v Office of the Public Protector and Others* Case no 91139/2016 [2017] ZAGPPHC 747; and
- 4.4.3.6 *Public Protector v Mail and Guardian* 2011(4) SA 420 (SCA).

**5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**

**5.1 Regarding whether the University failed to follow proper procurement processes when it appointed Dinamik Institute to formulate or draw up the medical programme:**

**Common cause**

- 5.1.1. The University appointed Dinamik Institute for the formulation of the MBChB curriculum in February 2015. Dinamik Institute is a private company registered in terms of the Companies Act of 71 of 2008. It was registered in 2001 by Ms Molatoli and Professor Mbambo-Kekana as co-directors with its core business being a Disability Management Institute, which was to focus on management of victims of road accidents and those injured at work.
- 5.1.2. The University did not follow an open tender process when it appointed Dinamik Institute or neither did it obtain three quotations from other service providers as per its own procurement policy requirements.
- 5.1.3. A motivation to deviate from the normal procurement policy procedure of going on an open tender or from obtaining three minimum quotations was drafted, signed and submitted to the University's Chief Financial Officer, Mr H Du Toit (CFO), by Dr MA Ngoepe.
- 5.1.4. The historical record of all payments made to Dinamik Institute by the University can be illustrated in the following table:

5.1.5 The University could not provide my office with copies of contracts or service level agreements entered into between the University and Dinamik Institute.

Date	Invoice number	Description	Amount
01-Feb-12	Pharmacy1/2012	Facilitating workshop to review, structuring and formatting of the Curriculum documents in the Department of Pharmacy	R49 633.78
30-Jul-13	Pharmacy3/2013	Integrated pharmacy curriculum development workshop as required by the SACP accreditation requirements.	R 53 288.00
16-Sep-14	Research day-CPD/14	School of Health Science Research Day	R 2 300.00
19-Sep-14	Limp/Med/2014	Review and Design the medical programme for CHE submission	R 981 120.00
30-Mar-15	Limp/BSW/T/2015	Develop and facilitate improvement plan of social work programme	R 427 200.00
01-Nov-15	Limp/Med2-4/2015	University of Limpopo Integrated medical curriculum	R 885 000.00
<b>Total</b>			<b>R 2 398 541.78</b>

- 5.1.6 The CFO indicated that there were no such contracts concluded between the University and Dinamik Institute.

*Issues in dispute*

- 5.1.7 While Dr Ngoepe and Professor Mbambo-Kekana disputed their involvement in the appointment of Dinamik Institute, the Complainant maintained that they were both involved in the appointment process.
- 5.1.8 However, in a motivation letter dated 24 February 2015 addressed to the CFO by Dr Ngoepe, the latter motivated for the appointment of Dinamik Institute indicating that the relevant University staff did not have the requisite knowledge and skills around curriculum and material development. A copy of the letter was presented to my investigation team by the CFO during an interview in Pretoria on 15 May 2017.
- 5.1.9 The involvement of Dr Ngoepe was further corroborated by an email dated 07 April 2014 from Ms Molatoli, given to my team by Prof Mbambo-Kekana addressed to Dr Ngoepe providing the scope of work and deliverable dates of the work that Dinamik Institute had to do for the University. The email showed that Dinamik Institute also included total service costs of the whole programme and suggested workshops with the curriculum team in order to make implementation easy.
- 5.1.10 During an interview with my investigation team in Polokwane on 21 March 2017, Professor Mbambo-Kekana indicated that Dinamik Institute was approached by Dr Ngoepe to assist with the review of the MBChB curriculum in line with the recommendations that were made by the HPCSA in order to submit to CHE for accreditation.

- 5.1.11 She also indicated in the same interview that in 2014 Dinamik Institute submitted a proposal for Development of the Medical Programme to Dr Ngoepe which had two phases viz. Phase 1: Curriculum Planning and Phase 2: Post Accreditation. Subsequently an agreement was reached to appoint Dinamik to assist the University. She submitted that she was never involved in the appointment of Dinamik Institute, but only became involved after its appointment.
- 5.1.12 During another interview with my team in Pretoria on 15 May 2017, Dr Ngoepe disputed that he was responsible for the appointment of Dinamik Institute. He submitted that procurement was the responsibility of the University management. However, the CFO confirmed that the motivation, purchase request and actual selection documents for the appointment of Dinamik Institute came from Dr Ngoepe and the DVC.
- 5.1.13 I issued a notice in terms of section 7(9) (a) of the Public Protector Act to Prof Mbambo-Kekana. In response to the notice, she maintained in a letter dated 05 June 2018 that she was not involved in the appointment of Dinamik Institute. She indicated that she started as the Executive Dean of Health Sciences in June 2015, which was way after Dinamik Institute had been appointed by the University.

*Evidence obtained independently*

- 5.1.14 Through the inquisitorial and investigatory role, my office discovered that on 18 March 2015 an amount of R25 000.00 (twenty five thousand rand) was deposited into Dr Ngoepe's banking account by Dinamik Institute. The records were obtained from the South African Police Service which had conducted an enquiry into the matter following a complaint by the Complainant.

5.1.15 I issued a notice to Dr Ngoepe in terms of section 7(9)(a) of the Public Protector Act for him to respond to this information. Replying to the notice in a letter emailed to my team on 01 June 2018, Dr Ngoepe did not address the deposit made into his banking account by Dinamik Institute. Instead, he disputed his involvement in the procurement process of Dinamik Institute.

*Application of the relevant legal prescripts*

5.1.16 Section 217 of the Constitution regulates procurement in the Public Service and it provides that *"when an organ of state in the national, provincial or local sphere of government or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with the system that is fair, equitable, transparent, competitive and cost effective."*

5.1.17 The University is one such institution established by national legislation, in terms of section 20 of Higher Education Act 101 of 1997. It was expected to contract for services in a fair, equitable, transparent, competitive and cost effective manner.

5.1.18 Section 195(1) of the Constitution provides amongst, other things, that *"Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*

- (a) A high standard of professional ethics must be promoted and maintained;*
- (b) ...;*
- (c) Services must be provided impartially, fairly, equitably and without bias;*
- (d) ...;*
- (e) Public administration must be accountable; and*
- (f) Transparency must be fostered."*

5.1.19 It was expected of the University management to maintain a high standard of professional ethics and be accountable and impartial when procuring the services of Dinamik Institute. It was also expected to be seen to be transparent when dealing with the matter.

5.1.20 The University's Procurement Policy and Procedure Manual (Procurement Policy) regulates the University procurement processes and procedures. Section 3 and sub-section 3.2 of the Procurement Policy state, amongst others, that the University must ensure that:

*"Goods and services are procured at a correct price, time, quality, and quantity from the correct sources. The University procures from suppliers with sufficient resources and expertise to carry out the services or deliver the goods to the best advantage of the University."*

5.1.21 In the case of Dinamik Institute's appointment, there was no evidence that the Procurement Manager was notified of the proposed expenditure or appointment. The only evidence available was a motivation for appointment from Dr Ngoepe.

5.1.22 Part A of section 8.6 .1 of the Procurement Policy states that *"the application to use a sole supplier should be accompanied by supporting proof of completed market research, feasibility study regarding product selection, scope of work and project plan."*

5.1.23 Part A of section 8.6 2 of the Procurement Policy further provides that a written quotation must be obtained from the specific supplier before entering into any suppliers contracts.

5.1.24 No evidence was produced by the University indicating that it conducted market research or a feasibility study regarding the product selection required in terms



of its own Procurement Policy before settling for a sole supplier and no written quotation was obtained from Dinamik Institute.

- 5.1.25 There was also no evidence provided by the University showing that the work undertaken by Dinamik Institute for the University was done through a competitive tender, obtaining a minimum of three quotations as required by the Procurement Policy.
- 5.1.26 In the seminal case of *Public Protector v Mail and Guardian Ltd (422/10) (2011) ZASCA 108 (1 June 2011)*, the court held that the Public Protector is not a passive adjudicator between the citizens and the state, relying only upon evidence which is placed before her by the parties. The Supreme Court of Appeal (SCA) held further that the Public Protector should not be bound or be limited to the issues raised for consideration and determination by the parties but should, investigate further and discover the truth and also inspire confidence that the truth has been discovered.
- 5.1.27 As indicated above my office discovered from the banking records that on 18 March 2015 an amount of R25,000 (twenty five thousand rand) was deposited into a banking account of Dr MA Ngoepe from Dinamik Institute, but he failed to respond to my section 7(9)(a) notice.

### *Conclusion*

- 5.1.28 Based on the evidence gathered and legal prescripts considered it can be concluded that the version of the Complainant is more probable than the University management regarding the procurement of the services of Dinamik Institute.

5.1.29 Dr Ngoepe could also not explain the deposit of money into his bank account by Dinamik Institute when a section 7(9)(a) notice was issued to him.

**5.2 Regarding whether there existed a conflict of interest on the part of Prof Mbambo-Kekana during the appointment of Ms Molatoli:**

**Common cause issues**

5.2.1 Prof Mbambo-Kekana who is the University Executive Dean of the Faculty of Health Sciences was once a co-director of Dinamik Institute before she resigned in 2002. In an interview by the Deputy Public Protector on 24 April 2017, she admitted this fact. My investigation team also confirmed this information with the Company and Intellectual Property Commission (CIPC).

5.2.2 There is no evidence that Professor Mbambo-Kekana declared to the University that she was a Director and co- founder of Dinamik between 2001 and 2002 until the Public Protector questioned her about it.

**Issues in dispute**

5.2.3 Prof Mbambo-Kekana denied having any influence or involvement in the appointment of Dinamik Institute by the University.

5.2.4 However, she confirmed during the interview of 24 April 2017 that there was regular contact between her and Ms Molatoli as they studied together and were colleagues at the Medical University of Southern Africa (MEDUNSA).

5.2.5 Upon being asked by the Public Protector during the interview of 24 April 2017 about the University policy on declaration of interests, Prof Mbambo-Kekana indicated that the University had no Declaration of Interests Policy and as a result

did not declare the long standing professional relationship between herself and Ms Molatoli and her directorship of Dinamik between 2001 and 2002.

- 5.2.6 Prof Mbambo-Kekana further conceded that she did recommend Dinamik to the University in 2012 to do some work for Optometry and Pharmacy, but not for the MBChB curriculum project in 2014.
- 5.2.7 Upon accreditation by the CHE, the University appointed Dinamik Institute and thereafter it arranged workshops for curriculum mapping with the University's clinical staff/lecturers to be taken through by Ms Molatoli. This was arranged through Prof Mbambo-Kekana as the Executive Dean of the Faculty of Health Sciences. On 01 November 2015 Prof Mbambo-Kekana further signed invoices for workshops to the value of R885, 000.

*Application of the relevant legal prescripts*

- 5.2.8 Paragraph 9.1 of the Procurement Policy regulates ethical conduct of the procurement management unit staff. It requires that purchasing division employees should disclose all actual or potential conflicts of interest to senior management on an annual basis.
- 5.2.9 The VC indicated during the interview by my team on 06 December 2016 that the University did not have a policy that regulates declaration of conflict of interest by the University senior management.
- 5.2.10 However, good governance principles in terms of the King Code IV dictate under Principle 2 that *"the Governing Body should govern the ethics of the organization in a way that supports the establishment of an ethical culture*. It further states that *the governing body should ensure that codes of conduct and ethics policies encompass the organization's interaction with both internal and external*

*stakeholders and the broader society and address the key ethical risks of the organisation.”*

- 5.2.11 In my investigation report titled “*Unsolicited Donation Report 22 of 2013/2014*”, it was highlighted that “*a conflict of interest arises when a decision maker is placed in a position of protecting the opposing interests of two masters or persons that she or he is attached to or where her personal interests and those of her organization are at odds.*”
- 5.2.12 According to Dr MJ Mafunisa, Senior Lecturer at the School of Public Management and Administration at the University of Pretoria in his work, “*Conflict of Interest: Ethical Dilemma in politics and administration, South African Journal of Labour Relations*”: 2003, conflict of interests includes:
- “All those influences, emotions and loyalties that could influence a public functionary and compromise the exercise of his or her competent judgment. Conflict of interests of involves a clash between influences of this nature and the interests of the public that the functionaries serve”.*
- 5.2.13 From the above, it is evident that the common theme present in all definitions relates to a clash between the business duties of an official and his or her personal interests.
- 5.2.14 As indicated above Prof Mbambo-Kekana admitted to the Deputy Public Protector during an interview that she has a long standing professional relationship and association with Ms Molatoli and that they regularly call each other.
- 5.2.15 The VC indicated in his response dated 19 March 2018 to my section 7(9)(a) notice that there was no way he could have known that Prof Mbambo-Kekana

had any association with Ms Molatoli and Dinamik Institute. The VC further highlighted that he played no part in the day-to-day administration of various departments including, but not limited to the School of Medicine.

### *Conclusion*

- 5.2.16 Based on the evidence obtained and legislation considered, it can be concluded that there existed a personal relationship between Prof Mbambo-Kekana and Ms Molatoli and Dinamik Institute. Furthermore, the University had no Declaration of Interests policy at the time of the appointment of Dinamik Institute.
- 5.2.17 Accordingly, due to the close relationship between Prof Mbambo-Kekana, Ms Molatoli and Dinamik Institute and having considered the position Prof Mbambo-Kekana held at the time of the procurement of the services of Dinamik Institute, the appointment of Dinamik Institute was in contravention to section 195(1) of the constitution which provides that public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- 5.2.17.1 A high standard of professional ethics must be promoted and maintained;
  - 5.2.17.2 Efficient, economic and effective use of resources must be promoted; and
  - 5.2.17.3 Services must be provided impartially, fairly, equitably and without bias.

**5.2 Regarding whether the University improperly introduced and implemented an altered curriculum at the University School of Medicine which was not accredited by the HPCSA and CHE:**

**Common cause issues**

**5.3.1** In terms of the HPCSA's Panel Visit Report to the University submitted to my office by Advocate P Khumalo of the HPCSA, the following factual and sequential information in relation to this matter was highlighted:

- a) The School of Medicine at the University is the latest medical school in the country and was established in 2015 after the finalisation of the demerger between the University and Medical University of South Africa (**MEDUNSA**). The MBChB was offered at the Sefako Makgatho Health Sciences University (SMHSU) campus prior to the demerger and establishment now newly Sefako Makgatho Health Sciences University;
- b) The University started planning for a new medical programme as early as 2008 and it was originally hoped that a separate undergraduate medical training programme could be offered at Turfloop campus near Polokwane and in parallel with the MBChB programme offered at MEDUNSA;
- c) It soon became clear, however, that the CHE would not allow two similar programmes to be offered at the same university. As the possibility of a demerger became evident, the University continued its planning for a new MBChB programme. This involved substantial interaction with the appropriate structures within the HPCSA which was focused on assisting the University to follow the correct regulatory processes in this developmental process;

- d) The University accreditation report was finally approved by the HPCSA in 2014 after panel visits to Turfloop campus by the HPCSA which was based on a fact finding mission to gain a clearer understanding of the MBChB programme being developed. The HPCSA's final recommendations in its report was that the first two years of the programme (MBChB I and II) be provisionally accredited for a period of three years and for implementation in January 2015, provided that the unbundling between the University and SMHSU be finalised and programme accreditation by the CHE was obtained;
- e) The MBChB third year was also provisionally accredited and the provision was that a detailed documentation on the planning of all modules of the third to sixth years, including study guides, be provided to the UTC by no later than April 2015;
- f) It was further recommended by the HPCSA that a follow-up accreditation visit would be scheduled for the year in which the first cohort of students would be entering the third year of the programme. It was further decided that the initial intake of students should be limited to sixty (60) students. As was the case with all accreditation visits, an annual report was requested to be submitted to the UTC by April 2015;
- g) The unbundling process as well as the CHE accreditation took longer than anticipated and only got to be finalised in 2015. The implementation of the programme was only planned for January 2016. The UTC nonetheless decided that an annual report on the University MBChB programme should still be submitted by the University in 2015. In October 2015, a comprehensive report was submitted to the UTC;
- h) Upon the screening of the annual report of the University MBChB programme by the UTC chairperson, it became clear that the curriculum that was accredited by the HPCSA in 2014 and the curriculum that was detailed in the report differed.



The UTC chairperson wrote a letter to the Complainant in an effort to obtain clarity about these differences;

- i) This was followed by a phone call from Dr Ngoepe to the UTC chairperson, requesting him to avail himself for a meeting with members of the University management. The UTC chairperson subsequently travelled to the University campus on 21 October 2015 where he met with the DVC, Prof Mbambo-Kekana, the Complainant, Educational advisor for the Faculty of Health Sciences, Professor D Maleka; and Dr MA Ngoepe;
- j) During this meeting, the UTC chairperson was given an explanation that the differences between the accredited and implemented curricula were due to the HPCSA's recommendations (contained in the 2014 accreditation) being applied to the accredited programme. At that point in time and without having the opportunity to have studied the annual report in great detail or depth, the UTC chairperson had no reason to doubt the explanation. The first meeting of the UTC after receipt of the annual report took place on 20 November 2015 and the annual report of the University MBChB programme served at that meeting and the chairperson also conveyed the outcome of his visit to the University in October 2015;
- k) The UTC felt that, given the short time span between the meeting and the anticipated start of the programme in January 2016 and the fact that the first cohort of students had already been selected, it did not have enough reasons to delay the implementation of the new programme and that it would rather advise the University to continue with implementation pending a detailed scrutiny of the annual report and comparison of the two versions of the curriculum and the possibility of the site visit in 2016 to formally accredit the implemented curriculum. Given the clear communication to the University that the subcommittee required more time to further scrutinise the annual report, it was not possible at that stage to provide the University with a more detailed response on the report;



- l) At the next meeting of the UTC held in February 2016, it was resolved that a formal face to face meeting of the 2014 accreditation panel should be convened to scrutinise the annual report of the University MBChB programme and compare it with the HPCSA's 2014 accreditation report and also discuss its findings and make recommendations about the way forward. This decision was endorsed by the Education and Registration Committee (ERC) at its meeting in March 2016. The 2014 accreditation panel reconvened and met on 21 April 2016 for this purpose. The report of the panel served at the subsequent meeting of the UTC on 30 May 2016; and
- m) The UTC noted the findings of the panel which highlighted that the implemented curriculum differed substantially from the version that was accredited and that while some changes can be related to the recommendations made in the 2014 accreditation report not all of the changes have been adequately justified in the annual report.

*Issues in dispute*

- 5.3.2 The Complainant on the other hand submitted that when he tried to correct the situation around the curriculum, the VC allegedly told him that he had no right to call a meeting of module coordinators to look at the HPCSA approved curriculum. The Complainant indicated that the VC went on to say that the curriculum that the management of University wanted to implement was supported by better academics in the country than the Complainant. The Complainant alleged that the VC further told him that he was nothing in his institution and that if he did not want Ms Molatoli's curriculum he must pack his bags and leave his institution.
- 5.3.3 The Complainant maintained that the University management insisted on using a service provider who was not medically qualified. He submitted that the insistence by the University management in using an unqualified service provider

and the deliberate exclusion of the medically qualified clinical staff from designing and developing the University's MBChB programme were the main causes of the flawed changes and the deviation from the HPCSA accredited curriculum.

- 5.3.4 It was argued by the Complainant that the main perpetrators behind this deviation from the HPCSA accredited curriculum were the Prof Mokgalong (VC), Prof Mbambo-Kekana and Dr Ngoepe.
- 5.3.5 The Complainant indicated that the above mentioned officials never allowed anyone to question the substandard curriculum and that the VC at one stage told him to pack his bags and leave the institution. He reported that Dr Ngoepe was the main figure behind the appointment of Dinamik as he motivated for its appointment by stating that the relevant University staff did not have the requisite knowledge around curriculum and material development.
- 5.3.6 The Complainant indicated that he advised the University management against the decision to use Dinamik Institute and Ms Molatoli. He further advised that the HPCSA curriculum only needed the change of dates, timetable and study guides, however, he was ignored by the management and eventually excluded and was never involved in the preparation for programme implementation despite being the Director of the School of Medicine at the University.
- 5.3.7 He said that he raised concerns and disputed the following issues with the University management which he also believed led to his suspension:
- (a) For refusing to follow what he believed was an unaccredited curriculum;
  - (b) For refusing to follow a curriculum developed by a person with no identifiable proficiency in medicine and was not an academic in the field;

- (c) For highlighting that it was not necessary for the University to procure the services of Ms Molatoli's to guide them to teach medicine since she had no medical qualification;
- (d) For advising the University that it acted irrationally when it irregularly appointed Ms Molatoli;
- (e) For mentioning that Ms Molatoli's company, Dinamik Institute, was not registered as an academic institution; and
- (f) For pointing out that there was a strong possibility of a corrupt relationship between the University and Dinamik Institute.

5.3.8 In response to the section 7(9) notice, the VC vehemently refuted any involvement in the amendment of the curriculum. He further indicated that he was reliant on the Dr Mbambo-Kekana and the DVC to bring to his attention any conduct which would imperil any accreditation.

*Application of the relevant legal prescripts*

- 5.3.9 Section 29(1)(b) of the Constitution provides that everyone has the right to further education, which the state, through reasonable measures, must make progressively available and accessible.
- 5.3.10 The University is a public higher education institution established in terms of section 20 of the Higher Education Act 101 of 1997. The principal of a public higher education institution is responsible for the management and administration of the institution and in this case, the current Prof Mokgalong, the Vice Chancellor, is responsible for its management and administration.

- 5.3.11 It is not expressly disputed by the University that the curriculum that was initially approved by the HPCSA in 2014 was changed or altered, however the University indicated that it merely made an exculpatory statement (explanation) to the UTC that the difference between two curricula was occasioned as the result of the recommendations of the HPCSA in its 2014 accreditation report while the University was trying to develop the curriculum in line with those recommendations.
- 5.3.12 This explanation by the University management to the UTC chairperson was given at the meeting held at Turfloop campus on 21 October 2015. During this meeting the UTC chairperson was given the explanation that the differences between the accredited and implemented curricula was due to the HPCSA's recommendations (contained in the 2014 accreditation) being applied to the accredited programme.

### *Conclusion*

- 5.3.13 Based on the above, there is no gainsaying that indeed the University management had improperly effected changes to the HPCSA's approved curriculum which resulted in the differences between the accredited and the implemented MBChB programme. The subcommittee has also indicated that while some changes can be related to the recommendations made in the 2014 accreditation report, not all of the changes have been adequately justified by the University.
- 5.3.14 It follows therefore that the version of the Complainant in stating that the management of the University improperly introduced and implemented an altered curriculum at its School of Medicine that was not accredited by the HPCSA is probable.

**5.4 Regarding whether the Vice Chancellor allowed the MBChB programme to be managed by the Executive Dean of the Faculty who did not have an MBChB degree:**

**Common cause issues**

- 5.4.1 Professor Mbambo-Kekana was appointed as the Executive Dean of the Faculty of Human Health Sciences of the University in February 2015 and her educational profile revealed that she is not qualified in Medicine, but she is an Academic and a Physiotherapist who has been in the higher education sector for over 20 years, obtained her junior degree, Bachelor of Science (BSc) in Physiotherapy at MEDUNSA in 1986. She further obtained her Master's degree in Physiotherapy Education from the University of Pretoria in 1996 and PhD from the University of Witwatersrand in 2009.
- 5.4.2 According to the Performance Agreement relating to the duties of the Executive Dean: Faculty of Health Sciences, the Executive Dean is the head and executive manager of the entire different schools in the Faculty who works regularly both with the Deputy Vice Chancellor: Academic and Research.
- 5.4.3 The Executive Dean is, amongst others, responsible for the Faculty strategic plan which is based on the Portfolio: Academic and Research strategic plan. Major functions include formulating and implementing administrative and educational policies affecting the faculty, assist in establishing and overseeing the organizational structure, developing and allocating resources, supervising Directors of different schools in the faculty and representing the faculty in relevant matters.
- 5.4.4 The Complainant who was the Director of the School of Medicine at the University is qualified in Medicine and a Medical Doctor by training. He was also responsible

for the School of Medicine and reported directly to Prof Mbambo-Kekana who was the Executive Dean of the Faculty of Health Sciences.

*Issues in dispute*

- 5.4.5 The Complainant submitted that Professor Mbambo-Kekana was not qualified in Medicine to manage the Faculty of Health Sciences where the MBChB programme was being offered. He submitted that upon her appointment, she took over the administration of the School of Medicine and implementation of the MBChB curriculum.
- 5.4.6 The University submitted during a meeting with the Deputy Public Protector on 06 December 2017 that Professor Mbambo-Kekana was qualified to be the Head of Health Sciences as the advert did not specify that the potential incumbent should have an MBChB qualification.
- 5.4.7 According to the advert the requirements for the position of Executive Dean of the Faculty of Health Sciences were, *inter alia*:
- (a) A PhD in a relevant discipline;
  - (b) A minimum of 10 years work experience in a senior supervisory/leadership role;
  - (c) A record of distinguished academic achievement including teaching research, service and relevant administrative experience in Health Sciences;
  - (d) Demonstrable understanding of issues in academic healthcare within broader healthcare landscape; or
  - (e) Good knowledge of South African Higher Education system in terms of policy, planning and development.

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**Conclusion**

5.4.8 Based on the evidence gathered above it can be concluded that Professor Mbambo-Kekana satisfied and fully met the requirements for the position of Executive Dean: Faculty of Health Sciences as per the advertisement for the position.

**5.5 Regarding whether the HPCSA failed to exercise its regulatory and oversight role in this matter:**

**Common cause issues**

5.5.1 The HPCSA was alerted to the unauthorised change of the University accredited curriculum by the discovery in the annual report submitted by the University to the UTC in October of 2015 of an apparent significant difference between the undergraduate medical (MBChB) curriculum accredited by the HPCSA in 2014 and the one implemented by the University in 2016.

5.5.2 Upon this discovery, various steps were taken by the HPCSA and its structures to gain a better understanding of the reasons for the differences between the curricula.

5.5.3 The series of events by the HPCSA eventually led to a site visit by an HPCSA panel to the University, accompanied by various stakeholder groups in order to gain a good understanding of the number of different versions of the MBChB curriculum and the extent of the differences between them.

5.5.4 It is also worth indicating herein that all the parties namely the HPCSA, CHE, DHET and University following an intervention by my office, collaborated very well and delivered in their respective obligations in order to ensure that University



MBChB Programme was accredited again on the 08 June 2017. My office is in possession of an accreditation letter from the CHE dated 23 June 2017. In this letter, the CHE confirmed that the University's MBChB Programme was accredited subject to short term and long term conditions which should be fulfilled by the University within a period of three to twelve months.

*Issues in dispute*

- 5.5.5 The Complainant argued that since 2015, he has written many letters to various officials at the HPCSA, asking for intervention by the HPCSA, as a regulatory body, but could not get any assistance. He reported that the UTC chairperson told him that it was difficult to deal with this matter because Prof Mbambo-Kekana who is implicated, was part of the committee of the Medical and Dental Board of the HPCSA.
- 5.5.6 He alleged that the HPCSA failed to exercise its regulatory and oversight role in addressing the unauthorised change of the University's MBChB accredited curriculum.
- 5.5.7 In response to the section 7(9)(a) notice as per a letter dated 22 March 2018 by Adv P Khumalo, the Acting HPCSA Chief Executive Officer, the HPCSA vehemently refuted the Complainant's claim that he wrote many letters to the UTC chairperson and other officials. The HPCSA highlighted that the chairperson was only asked by the Complainant during a tea break of the workshop of the SUCCEED Group held in Cape Town on 08 October 2015, whether he was aware that the University was implementing an unapproved curriculum. The HPCSA submitted that the only time that the Committee received something formal was when it received the annual report from the University later in 2015. The HPCSA also denied allegations that the Complainant was informed by the Chairperson that he was unable to assist since Prof Mbambo-Kekana was also a UTC member.



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**Conclusion**

5.5.8 It is clear from the evidence traversed above that the HPCSA did not fail from exercising its legislative control and oversight in this matter.

**5.6 Regarding whether the Complainant and affected students suffered any improper prejudice as a result of the alleged maladministration by the University:**

**Common cause issues**

- 5.6.1 In a meeting arranged and chaired by the Deputy Public Protector held on 24 April 2017 with the MEC for Health in Limpopo, Dr PC Ramathuba, the MEC confirmed the joint appointment of the Complainant by the Provincial Department of Health and the University and further pointed out the need to finalise and sign the Memorandum of Understanding (MoU) between the University and the Department in order to deal with joint appointments. The MEC further confirmed that the Complainant was still employed by the Department of Health in the Province until such time that he turned 65 years old at the end of July 2017 and that she never sanctioned his suspension by the University.
- 5.6.2 The CHE formally withdrew the accreditation of the University MBChB curriculum on 09 December 2016. I had to convene an urgent meeting with all role players, namely, the CHE, HPCSA, DHET and the University in order to come up with urgent and extraordinary measures to assist the affected pipeline medical students. The meeting took place on 07 February 2017 and resulted in the affected students being migrated from the de-accredited curriculum of the University and being registered temporarily under the University of Pretoria MBChB curriculum whilst the University continued to address its own MBChB accreditation.

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***Issues in dispute***

- 5.6.3 The Complainant alleged that he was marginalised and subjected to improper conduct by the University as the result of his challenging of the unaccredited curriculum. He was subsequently served with a letter of suspension with full pay on 29 July 2016 by the University and his post of the Director of School of Medicine was advertised. He indicated that his suspension was recommended by Prof Mbambo-Kekana on her capacity as the Executive Dean of the Faculty of Health Sciences.
- 5.6.4 The Complainant indicated that he incurred legal, travelling and accommodation costs whilst instructing attorneys to handle his labour dispute against the University and travelling from Polokwane to Pretoria to attend the ADR sessions facilitated by my office.
- 5.6.5 The Complainant submitted vouchers totalling R49 640.19 (forty nine thousand six hundred and forty rand and nineteen cents) to my investigation team on 17 August 2017. According to the Complainant these were legal, travelling and accommodation costs alone. The Complainant further indicated that such excludes e-toll SANRAL fees for which he was still waiting for a consolidated account.
- 5.6.6 The Complainant said that his academic and professional standing has been dented and negatively affected by this case as fellow professionals in his medical specialisation field kept on asking why was he on suspension and his post advertised on a national newspaper while his contract was still running. The University lifted the suspension on 05 April 2017 without ever bringing any formal charges against him.

- 5.6.7 The Complainant also raised an argument that he suffered general damages (for which he demands monetary reparation from the University) such as emotional pain, cruelty, open discrimination, isolation, oppression, abuse, violation of his human rights and that he was subsequently diagnosed with major depression due the University's improper conduct and prejudice of unfairly suspending him and capriciously advertising his position.
- 5.6.8 The students on a non-HPCSA-approved programme were subjected to the risk of not only being able to register or practice as medical doctors, but also of losing financial aid, bursaries and loss of academic year. This also meant that no new students were admitted at the University in 2017.
- 5.6.9 The VC argued and contended that the reason for advertising the position of the Director of the School of Medicine was that the programme of its School of Medicine requires the monitoring of day to day activities and that the Complainant was unable to do so given his dual appointment by the University and the Limpopo Provincial Department of Health.

*Application of the relevant legal prescripts*

- 5.6.10 Section 23(1) of the Constitution provides that everyone has the right to a fair labour practices and the common law states that a person must be afforded an opportunity to state his side of the story (the *audi alteram partem* rule) in any dispute.
- 5.6.11 In terms of paragraph 7.9 the University Disciplinary Policy, a suspension should not exceed 6 months. After this period, the suspension and charges must be reviewed. In this case, the University placed the Complainant on suspension for (9) nine months without instituting any disciplinary hearing against him.

- 5.6.12 The University lifted the suspension on 05 April 2017 without ever bringing any formal charges against him.
- 5.6.13 Section 29(1)(b) of the Constitution provides that *“everyone has the right to further education, which the state...must make progressively available and accessible.”* An attempt by the University to alter or amend the approved curriculum or programme could result in students not being able to register.

### Conclusion

- 5.6.13 Based on evidence gathered it can be concluded that the Complainant incurred financial expenses as a result of his suspension by the University. The students nearly suffered prejudice, but my office had to intervene to address the matter.

## **6 FINDINGS**

### **6.1 Regarding whether the University failed to follow proper procurement processes when it appointed Dinamik Institute to formulate or draw up the medical programme:**

- 6.1.1 The allegation that the University failed to follow proper procurement processes when it appointed Dinamik Institute to formulate or draw up the medical programme is substantiated.
- 6.1.2 The University appointed Dinamik Institute for the formulation of the MBChB curriculum in February 2015. The University did not follow an open tender process when it appointed Dinamik Institute or obtained three quotations from other service providers as per its own procurement policy requirements. The University could not provide my office with copies of contracts or service level

agreements entered into between the University and Dinamik Institute. The University paid Dinamik Institute a total of R 2 398 541.78 for services rendered.

- 6.1.3 Both Both Dr Ngoepe and Prof Mbambo-Kekana played a major role in the appointment processes of Dinamik Institute. In the case of Dr Ngoepe, Dinamik Institute deposited an amount of R25 000.00 (twenty five thousand rand) into Dr Ngoepe's banking account on 18 March 2015. Since Dr Ngoepe could not explain the reasons for the deposit, I did not investigate or make a finding in the matter. However, given the fact that this matter was already the subject of an investigation by the DPCI, I deemed it prudent to refer it to them.
- 6.1.4 By failing to follow proper procurement processes when it appointed Dinamik Institute, the University contravened the provisions of section 195 of the Constitution and sections 3 and 8 of its Procurement Policy.
- 6.1.5 Accordingly, the conduct of Dr Ngoepe and Prof Mbambo-Kekana in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.
- 6.2 Regarding whether there existed a conflict of interest on the part of Prof Mbambo-Kekana during the appointment of Ms Molatoli:**
- 6.2.1 The allegation whether there existed a conflict of interest on the part of Prof Mbambo-Kekana during the appointment of Ms Molatoli is substantiated.
- 6.2.2 Professor Mbambo-Kekana was the co-founder and director of Dinamik Institute between 2001 and 2002 until her resignation. She did not disclose this conflict of interest to the University management. The University, however, does not have

a policy that regulates declaration of conflict of interest by the University management.

6.2.3 The conduct of Professor Mbambo-Kekana in failing to disclose her relationship with Ms Molatoli was in conflict with section 195(1)(a) of the Constitution.

6.2.4 Accordingly, Professor Mbambo-Kekana's conduct amounts to improper conduct in terms 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.

**6.3 Regarding whether the University improperly introduced and implemented an altered curriculum at the University School of Medicine which was not accredited by the HPCSA and CHE:**

6.3.1 The allegation that the VC, Dr Ngoepe and Prof Mbambo-Kekana improperly introduced and implemented an altered curriculum at its School of Medicine which was not accredited by HPCSA and CHE is substantiated.

6.3.2 The University improperly deviated and implemented an MBChB curriculum at its School of Medicine in 2016 which was not the same as the one approved by the HPCSA in 2014. The University management was not supposed, on its own and without approval of the HPCSA as a statutory and regulatory body, to have deviated from an HPCSA-approved medical academic programme and to have submitted the same to the CHE for accreditation.

6.3.3 Accordingly, the conduct of the VC, Dr Ngoepe and Professor Mbambo Kekana amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.

**6.4 Regarding whether the Vice Chancellor allowed the MBChB programme to be managed by the Executive Dean of the Faculty who did not have an MBChB degree:**

- 6.4.1 The allegation that the VC allowed the programme to be managed by the Executive Dean of the faculty who did not have a qualification in Medicine is not substantiated.
- 6.4.2 According to the job advertisement, a qualification in Medicine was not a material requirement for the incumbent to be appointed as an Executive Dean of the Faculty of Health Sciences. However, the advertisement required somebody with a PhD in a relevant discipline, a minimum of 10 years work experience in a senior supervisory/leadership role amongst others.
- 6.4.3 Accordingly, the conduct of the VC in the circumstances does not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.

**6.5 Regarding whether the HPCSA failed to exercise its regulatory and oversight role in this matter:**

- 6.5.1 The allegation that the HPCSA failed to intervene and exercise its regulatory and oversight role in this matter is not substantiated.
- 6.5.2 The HPCSA was alerted to this incident by the discovery in an annual report submitted by the University to the UTC in October of 2015 of an apparent significant difference between the undergraduate medical (MBChB) curriculum accredited by the HPCSA in 2014 and the one implemented by the University in 2016.



- 6.5.3 A sequence of events by HPCSA eventually led to a site visit by the HPCSA panel to the University, accompanied by various stakeholder groups in order to gain a good understanding of the number of different versions of the MBChB curriculum and the extent of the differences between them.
- 6.5.4 Accordingly, the conduct of the HPCSA in the circumstances does not amount to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.
- 6.6 Regarding whether the Complainant and affected students suffered any improper prejudice as a result of the alleged maladministration by the University:**
- 6.6.1 The allegation that the Complainant and students suffered improper prejudice as a result of the maladministration by the University is substantiated.
- 6.6.2 The Complainant incurred legal, travelling and accommodation costs totalling R49 640.19 (forty nine thousand six hundred and forty rand and nineteen cents) relating to his labour dispute (suspension) against the University and travelling from Polokwane to Pretoria to attend the ADR sessions facilitated by my office. The University lifted the suspension on 05 April 2017 without ever bringing any formal charges against him within 6 (six) months. The Complainant further indicated that the costs excluded SANRAL e-toll fees for which he was still waiting for a consolidated account.
- 6.6.3 The Complainant indicated that he suffered general damages (for which he demands monetary reparation from the University) such as emotional pain, cruelty, open discrimination, isolation, oppression, abuse, violation of his human rights and that he was subsequently diagnosed with major depression due the



University's improper conduct and prejudice of unfairly suspending him and capriciously advertising his position.

- 6.6.4 However, my office will not be an appropriate forum to quantify damages of such nature due to its exclusive investigation function, complexity and the special expertise required to prove and quantify them. The Complainant also did not provide any supporting expert documentation in substantiation thereof. Litigation through a court of law shall be the most viable and appropriate route for the Complainant to enforce a claim based on general damages.
- 6.6.5 The students on a non-HPCSA-approved programme were subjected to the risk of not only being able to register or practice as medical doctors, but also of losing financial aid, bursaries and loss of academic year. This also meant that no new students were admitted at the University in 2017.
- 6.6.6 The CHE formally withdrew the accreditation of the University MBChB curriculum on 09 December 2016 and my office also had to intervene which resulted in the affected students being migrated from the de-accredited curriculum of the University and being registered temporarily under the University of Pretoria MBChB curriculum whilst the University continued to address its own MBChB accreditation.
- 6.6.7 The conduct of the University in suspending the Complainant for more than 6 (six) months without charging him is in contravention of paragraph 7.9 the University Disciplinary Policy.
- 6.6.8 Accordingly, the conduct of the University in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(ii) and section 6(4)(a)(v) of the Public Protector Act.

## **7. REMEDIAL ACTION**

7.1 The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

**The University VC must take effective and appropriate steps to ensure that:**

- 7.1.1 An MBChB programme committee is formally constituted, within 60 working days from the date of the report, as part of the University academic decision-making structure with a mandate to carry out the primary strategic, academic and quality assurance responsibility for the programme;
- 7.1.2 All University officials must, Senior Managers included, who are involved in Supply Chain Management, within 30 working days of the issue of the report, attend a workshop on the Procurement Policy and related legal prescripts;
- 7.1.3 The University must, within 60 working days from the date of the report, develop a policy relating to the declaration on conflict of interest amongst all of its staff members for each financial year. The policy should, amongst others, address the consequences of failure to disclose a conflict of interest; and
- 7.1.4 The University must, within 30 working days from the date of the report, reimburse the Complainant all the determinable financial expenses he incurred through legal, travelling, accommodation, and other costs whilst he was pursuing this complaint. The University must further issue and publish, on its website, an apology to the Complainant for subjecting him to an unjustifiable suspension from his position as the Director of the School of Medicine.

**The Chairperson of the University Council must take appropriate steps to ensure that:**

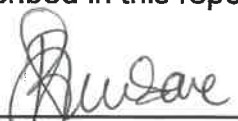
- 7.1.5 The University Council, within 30 working days from the date of the report, takes disciplinary steps against all its officials, namely the VC, Prof Mbambo-Kekana and Dr Ngoepe, who were responsible for the University to de-accreditation of its MBChB programme and financial risks when they violated the Procurement Policy.

**The Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks) must in terms of section 6(4)(c)(ii) of the Public Protector Act:**

- 7.1.6 Commence an investigation, within 30 working days from the date of the report, into the link between the payment of R25 000.00 into Dr Ngoepe's account at a time when there was a procurement process in which Dinamik Institute were involved, and ultimately were the successful service provider.

## **8 MONITORING**

- 8.1 The Vice Chancellor, Chairperson of the University Council and Head of DPCI must submit their respective Implementation Plans to my office within 15 (fifteen) working days from the date of receipt of the report indicating how the remedial actions referred to in paragraph 7 above will be implemented.
- 8.2 The submission of the implementation plan and the implementation of my remedial actions shall, in the absence of the court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE: 19/06/2018**

Assisted by Mr V Dlamini, Gauteng Provincial Office: GGI