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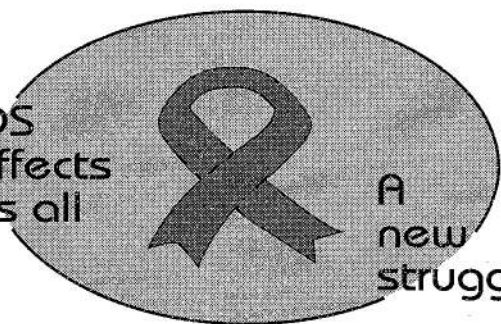
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DEPARTMENT OF HEALTH

GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 2132 OF 1999

DEPARTMENT OF EDUCATION

HIGHER EDUCATION ACT, 1997
(ACT No. 101 OF 1997)

I, Kader Asmal, Minister of Education, do hereby, in terms of section 47(2) of the Higher Education Act, 1997 (Act No. 101 of 1997), publish the report of Professor J J F Durand, the independent assessor (appointed under section 44 of the same Act) on the investigation conducted at the Mangosuthu Technikon, as set out in the Schedule.

Professor Kader Asmal
Minister of Education
September 1999

KENNISGEWING 2132 VAN 1999

DEPARTEMENT VAN ONDERWYS

WET OP HOËR ONDERWYS, 1997
(WET No. 101 VAN 1997)

Ek, Kader Asmal, Minister van Onderwys, publiseer hiermee, kragtens artikel 47(2) van die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997), die verslag van Professor J J F Durand, die onafhanklike assessor (kragtens artikel 44 van dieselfde Wet aangestel) oor die ondersoek ingestel by die Mangosuthu Technikon, soos in die Bylae uiteengesit.

Professor Kader Asmal
Minister van Onderwys
September 1999

SCHEDULE - BYLAE

REPORT OF INDEPENDENT ASSESSOR TO THE MINISTER OF EDUCATION ON MANGOSUTHU TECHNIKON, UMLAZI

1. BACKGROUND

A dispute between the management of the Technikon and members of the National Union of Technikon Employees of South Africa (NUTESA) at the institution has led to a protracted strike over the past four weeks. This has resulted in the disruption of normal academic activities, including classes. The parties concerned have not been able to agree on a process to resolve the issues which led to the strike. Relations between the management and the strikers have deteriorated and tensions reached a peak on Thursday, 12 August, when violence erupted on the campus, resulting in three students and a staff member being hospitalised and injuries sustained. It appears that there are broader tensions between the management and NUTESA. They seem to go beyond the issues that gave rise to the original dispute, and have apparently contributed to the inability of the parties concerned to arrive at a

settlement. The tensions have reached a stage where they seriously undermine the effective functioning of the institution.

2. TERMS OF REFERENCE: GENERAL

The general purpose of the investigation is to advise the Minister on:

- 2.1 The source and nature of the dispute at Mangosuthu Technikon
- 2.2 Steps required to restore effective academic and administrative functioning, including the promotion of reconciliation at the Technikon.

3. TERMS OF REFERENCE: SPECIFIC

The Independent Assessor must inquire into and report to the Minister on any issue which he may deem of importance, including the following:

- 3.1 The issues and events that led to the current dispute and the subsequent course of events.
- 3.2 The shootings that took place on Thursday, 12 August 1999, which led to the injury of students and staff, including the issue of responsibility for the shootings and any recommendations about future arrangements.
- 3.3 The general state of relationships between key stakeholders at Mangosuthu Technikon.
- 3.4 Reasons why the Technikon Council has been unable to resolve the current dispute between management and NUTESA.
- 3.5 Factors that contributed to the deepening of tensions on campus.
- 3.6 The management of the Technikon, with particular reference to policies and practices in relation to staff suspensions and other disciplinary matters.
- 3.7 The role played by the Council of Mangosuthu Technikon in governing the institution and promoting good management. This should include the position of the Vice-Chancellor in the management of the institution.
- 3.8 The role played by students and other staff members in the dispute.

4. TO MAKE RECOMMENDATIONS ON

- 4.1 the restoration of effective academic and administrative functioning at the Technikon;
- 4.2 appropriate steps for reconciliation among stakeholders on campus; and
- 4.3 what action, if any, ought to be taken.

5. PREAMBLE

I would like to emphasise that this report to you is the result of an investigation that I conducted at the Mangosuthu Technikon as stipulated by Chapter 6 of Act 101 of 1997 and not a hearing of any kind. This being an investigation, I was neither under the obligation to apply the principle of *audi alterem partem* when accusations were levelled against a person or persons nor to identify the accusers to the accused. Despite this nature of an investigation, I went

out of my way to apply the said principle of *audi alterem partem* as far as possible. However, in applying this principle I could only do so in general terms, because detail and specifics would have led to the possible identification of the accuser. Furthermore, the validity and veracity of a large number of accusations and inferences could not be established for the lack of a proper hearing and all that such a hearing entails.

Nevertheless, despite these limitations of an investigation I was able to establish certain patterns of perceptions and attitudes which, in my opinion, are germane to the task that you set me, namely to determine the source and nature of the dispute at Mangosuthu Technikon and to advise you on the steps required to restore effective academic and administrative functioning, including the promotion of reconciliation, at the said Technikon.

My report therefore contains 1) an analysis of perceptions and attitudes on the campus of the Technikon, 2) accusations, some in the form of affidavits, but as yet still unverified, 3) the responses of those against whom these accusations were directed, 4) my own efforts to establish a pattern in all this with a view to reinforcing my analysis of perceptions and attitudes, 5) simple and undisputed facts which, for example, were taken from minutes of meetings or established on the basis of video material and 6) my own observations and, in one incident, my own experience.

This has been my second investigation as an Independent Assessor. As in the previous investigation, I experienced that quite a number of people who wanted to have an interview with me expected me to attend to their personal problems which were not relevant to my investigation. Because of the limited time available to me I was forced at a later stage in the investigation to enquire telephonically of those who requested an interview about what they wanted to see me. Only then did I schedule further meetings. Apart from interviews with the Council of the Technikon, the Chairperson of the Council separately, the management (the Principal, the Vice-Principal Academic and the Transformation Officer), the lawyers of the Technikon (more than 3 times, twice together with the Principal), the Executive of the National Union of Technikon Employees (NUTESA) (3 times), the Staff Association, the Student Representative Council (twice), Deans and Heads of Departments (some in groups), Protection Services, including the private security firm Combat Force, the Public Order Police and the Chief Prosecutor of Durban, I interviewed 43 individuals and held 5 telephone interviews of which one was a half an hour interview with the Chancellor of the Technikon. In many instances I asked for written submissions and/or corroborative documents. I received extensive documentation.

6. THE PROBLEM

The Mangosuthu Technikon, established in 1979, had been until recently a relatively stable tertiary institution, seemingly not bedevilled by the problems that many other institutions of higher learning in South Africa experience today. The Technikon was and is financially sound, with little student debt. Serious disputes and disruptions occurred very seldom and most members of

staff testified that, in the past, they had been proud to be associated with this institution. Today, however, the campus is permeated by suspicion and fear of almost paranoid proportions. The immediate cause of these fears and suspicions was a four week long strike by staff members, academic as well as administrative, locked out of the campus and without pay, something unheard of in the history of tertiary education in South Africa. During the very difficult 80s, there were long drawn out boycotts by students, and strikes by some worker unions on South African campuses, but, as far as I am aware, it never happened that academic staff joined forces with the administrative staff and the workers for a strike that would detrimentally affect the students and keep it up for four long weeks without pay. It should also be stressed that in the case of Mangosuthu Technikon the strike was only reluctantly called off after the Minister of Education had intervened and had promised to send an Independent Assessor to investigate the problems.

What went wrong?

The obvious route in an effort to answer this question would be to investigate the various disputes declared by the Union, but it soon became clear to me that these declared disputes were but a smokescreen to cover the real intent of the strike, namely the removal of Prof A M Ndlovu as Principal and Vice-Chancellor. During the strike this was openly stated by spokespersons of the Union and admitted to me by NUTESA in the course of my investigation. In a direct question put to the Executive Committee of NUTESA, they agreed that the disputes were only the symptoms of a far deeper malaise, directly caused by the actions and management style of the Principal. At the same time they insisted that the whole term: management could be misinterpreted if it conveys the idea that it includes the two Vice-Principals. In their own minds, the management consists of one person and one person only, the Principal. In the course of my report this perception on the part of NUTESA will become more clear. I only mention it at this stage to clarify why the relations with the Principal become the focal point in my report on what went wrong at the Technikon.

7. THE FOUR WEEK STRIKE

The reasons given by NUTESA for their actions are of course not accepted by everybody on the campus. During the strike, a small group of staff members who actively opposed the strike formed the Mangosuthu Technikon Staff Association. They put forward their own views, views shared by the Vice-Chancellor and some of the members of the Council. They all fully agree that NUTESA's industrial action basically targeted the Vice-Chancellor, but argue that the reason for the opposition to the Principal differs from that given by NUTESA.

The reasons this group gives can be summarised under the following headings:

7.1. Discipline

The enforcement of a stricter disciplinary code is in their view one of the main reasons for the dissatisfaction of staff members and the eventual industrial action by NUTESA.

There is indeed evidence that before the arrival of the present Principal discipline was generally lax, especially among the students. There seems to have been a "happy hour" when students raided the food stores with impunity, while shebeens were openly allowed to operate in the residences. Theft of equipment, especially computers, was rife. More than one case of students trying to get rid of certain members of staff through demonstrations took place. Most of the more extreme examples of ill-discipline stopped when the Principal introduced stricter security (the searching of vehicles at the gate for instance) and discipline on the campus. There is even a letter of commendation from the Commanding Officer of the local police station about the improvement of discipline and the reduction of criminal activities on the campus. A member of the Council also pointed out to me that, before the arrival of Prof Ndlovu, many things were done in an ad hoc fashion. Prof Ndlovu introduced policies and expected staff to follow these policies and procedures. However, there is no indication that the staff resented these measures, apart from the minor irritation of having your car searched at the entrance gate, and, far more importantly, the open display of fire-arms by the security staff.

One matter, however, which concerns the working hours of the Technikon's staff needs our closer attention. From the Principal's perspective it is the enforcement of work discipline and greater productivity, while the Union views it as the unilateral changing of the conditions of employment.

There must be sympathy for the Principal as far as the issue of the working hours is concerned. Several years back, in 1989, the previous management of the Technikon made what was said to be "a gentleman's agreement" with the staff to work from 8:00 to 16:00 without any lunch break, making it possible for them to go home at 13:00 on Fridays. It is common cause that most of the staff in any case took time off for lunch. At a later stage when the incumbent Principal and the Union disagreed on the issue of union meetings inside or outside work hours, NUTESA insisted that they were entitled to hold meetings during the lunch break, seeing that the Labour Relations Act requires a break after 5 hours of work which would mean that the staff have a 35 hour work week. The original gentleman's agreement having now become a condition of service because of its implementation over a relatively long period, the Union objected strongly when the Principal asked the Council to change the working hours to a 40-hour week.

It should be noted, however, that the Principal's decision to take up the issue of short working hours and low productivity only took place towards the end of the first semester of 1999 when he and the Council were already in a serious and acrimonious dispute with NUTESA. The formal decision by the Council to change the working hours in fact only took place at a meeting of 15 June 1999.

To attribute the four week long strike to the enforcement of stricter discipline on the campus therefore seems to be, to say the least, far-fetched.

7.2. Racism

The second reason put forward by this small group and forcefully expressed by the Transformation Officer, is that the actions taken by NUTESA could, in the final analysis, be traced back to the prejudice of some of the white members of staff against the Principal as a black person and against the process of transformation and restructuring taking place at the Technikon.

Reference is made to the fact that the President of NUTESA is a white woman who in the past complained in the local press about plans to place a group of squatters close to the neighbourhood where she was living. It was furthermore stated that she joined NUTESA only in 1998 when she became dissatisfied, because the Principal restructured her job and took away some of the unnecessary privileges she had enjoyed. When she became President of NUTESA in 1999, she used NUTESA to get back at the Principal. In the minutes of the Council meeting of 10 March 1999, reference is made to the fact that the Principal "felt that the matter revolved around one individual who has a personal agenda". At a Council meeting of 15 June 1999, it was again minuted that the Principal "is of the view that the whole issue stems from a personal vendetta" of the President of NUTESA.

As the dominant member of the Executive Committee of NUTESA, it is said, she played a major role in persuading the less sophisticated members of NUTESA, the cleaners and the workers, to join the strike despite the fact that they did not really understand the issues involved and the consequences of a long strike without pay. It was furthermore stated that this group of less sophisticated staff was most probably under the impression that they would be able to achieve quickly what was achieved some years back when a previous vice-principal was physically removed from his office and from the campus. This idea was enforced by the distribution of a pamphlet at the early stages of the strike in which it was stated that the main purpose of the strike was the removal of Prof Ndlovu. The consequences of a "no work, no pay" policy was not clearly spelled out to them.

The Principal also introduced the issues of racism and personal vendettas in an interview with the Daily News which was published on 26 February 1999. According to the newspaper report he, likened NUTESA to a "white laager being supported by a sprinkling of farm hands".

Any accusation of this nature must be taken seriously. Racism, personal vendettas and the manipulation of people are not uncommon phenomena and institutions of higher learning are unfortunately no exceptions. But, apart from the fact that these accusations are vigorously denied by NUTESA, there is a number of factors that militate against a perception that racism and personal played any significant role in the confrontation between NUTESA and the management. Firstly: NUTESA is an overwhelmingly black organisation. Of its membership of 366 out of a total number of employees of 491, only 65 are

white. Secondly: the stand-off between NUTESA and the Principal had already started in 1998 when the Executive of NUTESA was totally black. Thirdly: over a period of four weeks, the consequences of the strike should have become clear, even to the "less sophisticated" members, especially when they saw that a quick removal of the Principal was no longer possible, but they nevertheless persevered despite great discomfort and even suffering to themselves and their families. Finally, it is ludicrous to think that a large group of black members of staff could be so ignorant as to be deceived by a so-called "racist white woman" into striking for such a long period to further the aims of her personal vendetta against the Principal. It is far easier to accept that she was elected as President of NUTESA because of her leadership qualities and because she had already shown her willingness, rightly or wrongly, to stand up to the management in matters relating to her own personal position at the Technikon. We must remember that in confrontations and in industrial actions of whatever kind there will always be personalities involved, even personal agendas. NUTESA's strike is no exception. But there are too many other, far more important, factors to take into account when considering the reasons for NUTESA's strike to give any credence to insinuations that someone who was a racist with a personal agenda had been able to mislead so many other members of the Union, both black and white.

In my opinion the only possible way to discover the reasons behind NUTESA's industrial action and eventual strike is to take a brief look at the history of the relationship between NUTESA and Prof Ndlovu. This history will also tell us how certain perceptions of Prof Ndlovu grew among the members of the Executive of NUTESA and NUTESA members in general, and how it came about that the strike was directed, in the final analysis, against the person of the Principal.

8. RELATIONS BETWEEN THE PRINCIPAL AND NUTESA

The greater part of the following account of the relationship or lack of it that developed between Prof Ndlovu and NUTESA between the end of 1997 and the beginning of the strike on 19 July 1999 was submitted to both the Principal and NUTESA for their comments. The Executive of NUTESA, having made a few minor corrections, declared themselves satisfied with the account. I received no comment from the Principal and therefore accept that he was by and large in agreement with it.

By all accounts Prof Ndlovu had a good relationship with the Executive Committee of NUTESA during 1997. Towards the end of 1997, after a new Executive was elected, a deterioration in the relationship set in. This deterioration presumably started with the suspension of the Director of Student Counseling, a suspension the new NUTESA Executive opposed, but later it became more and more the result of an inability to come to a proper recognition agreement between the Union and the Technikon management.

According to Prof Ndlovu, the management prepared a draft recognition agreement during 1997 which was submitted to the 1997 Executive of

NUTESA. The newly elected 1998 NUTESA Executive never received the draft agreement. They drew up their own draft, which they sent in February 1998 to the Vice-Principal Administration, who indicated that she considered it to be a good document, discussed the possibility of a consolidation of the two versions and promised that the management would attend to it. Apparently there was no feedback from the Principal's office and nothing was submitted to the Council. In May 1998, they requested a meeting with the Principal to negotiate their proposed recognition agreement, but there was no response. At the same time they sought clarification on their representation on the Council, stating that they had had representation in 1997, but that they had not received any invitation to a meeting of the Council in 1998. There was no response. The lack of response seems to have irked NUTESA to such a degree that they wrote to the National Secretary of NUTESA who, in his turn, wrote to the Principal in September 1998. I quote: "The local branch has addressed several matters to senior officials within your institution and does not receive the courtesy of a reply. Are you aware of the requirement to ensure that the rights of employees are upheld? NUTESA as the majority union on your campus enjoys a number of organisational rights which you are choosing to ignore".

In the same letter reference is made to a matter that, in my opinion, constitutes a watershed in the relationship between the Principal and NUTESA. In the beginning of September 1998, the Principal prevented NUTESA from holding a meeting during the lunch break on campus and instructed the Protection Services accordingly. NUTESA was initially ordered out of the hall, but before they could leave, the doors were locked and chained. One door was later opened for people to leave and the meeting was subsequently held in the open in the courtyard.

In his reply to the National Secretary of NUTESA, the Principal requested a meeting with the National Executive of NUTESA. The meeting took place on 9 November 1998. By now almost a year had passed since the submission of NUTESA's draft. The Principal first queried the National Executive's meeting with local branch members of NUTESA, but was informed by the National Executive that they had to reassure the local branch that they were there to address the concerns of their members. At the meeting the Technikon management claimed to have referred the February draft recognition agreement of NUTESA to the Technikon's attorneys in April 1998, being unhappy with certain clauses. The attorney's comments were received in May. According to the Principal he was not informed of this. He, however, did not make any enquiry in this regard. The parties agreed to meet and finalise the recognition agreement.

After the November meeting, negotiations started on the agreement between the Principal's office represented by the Senior Director of Human Resources, and NUTESA. By December 1998, they had reached agreement, excluding two minor issues. The December 1998 election of the new Executive of NUTESA saw another change of officials. Although the two outstanding issues were still to be negotiated, the representative of the Principal, the Senior Director of Human Resources, called upon NUTESA to come and sign

the recognition agreement. The document they received from the Senior Director differed from the one of December of the previous year. Apart from the two minuted points of disagreement, there were other changes to the original document, some of them of a subtle nature. NUTESA refused to sign and no further negotiations took place apart from a meeting on 3 March 1999 with a Facilitating Committee set up by the Academic Board with a view to bringing the two parties together. However, no progress was made as far as the recognition agreement was concerned. Only after a long time, well into the strike on 27 July 1999, an organisational rights document was signed by both parties.

The relationship between the Principal and NUTESA, already very strained since 1998, took a turn for the worse in 1999. There was confrontation right from the start. NUTESA's refusal to sign the draft agreement, the Principal's objections to NUTESA's holding meetings during the lunch break, the suspensions of the e-mail facilities of the President and the Vice-President of NUTESA so that they could not communicate with the members of NUTESA and the refusal of the Principal to respond to NUTESA's communications with his office verbally or in writing; all these things deepened the rift between NUTESA and the Principal. On 18 January 1999, the President wrote a formal letter to the Principal requesting a reply to their request of 4 December 1998 to hold a meeting stating that, although NUTESA did not need permission to hold a meeting, NUTESA would be courteous if they were treated with the same courtesy. In his response dated 26 January 1999, the Principal informed her that NUTESA's participation in structures and operations in the Technikon would cease with immediate effect. I fully quote the response from the Principal, because I believe it clearly depicts the levels to which the relationships had sunk: "I refer to your letter of 18 January 1999. I would like to express my disquiet at the level of your communication ie. the poor expression of your ideas and the confused state of your diction. I am amazed by the fact that you elect to invoke the informal nature of the relationship that exists between yourself and the office of the Chief Executive Officer. You must appreciate the consequences that flow from this act. The existing relationship has been based on mere concessions extended to you by this office as a manifestation of goodwill! In the light of the fact that you have decided to ignore the authority of this office these concessions are being withdrawn with immediate effect. Your participation in structures and operations in this institution as part of this goodwill will cease with immediate effect. From your various letters I have come to realise that you are ill-advised, grossly misdirected and downright rude. I cannot tolerate this gross discourtesy from you or anybody else. In future direct your communication to the Senior Director Human Resources and Development".

Towards the end of February 1999, NUTESA listed 13 disputes against the management of Mangosuthu Technikon and their lawyers presented it to a regular meeting of the Council which met on 10 March 1999. According to the minutes of this meeting, the Principal strongly urged the Council to consider proceeding to the CCMA. It was finally decided that the Technikon's attorneys were to be instructed to communicate with the lawyers of NUTESA that the Council was willing to submit to the adjudication of the CCMA. Eventually 9 of

the 13 disputes concerning inter alia, the prevention of the Union from exercising their rights and irregularities in staff appointments, were referred to a CCMA hearing which started on 13 April 1999. One dispute which accused the Principal of intimidation for telling the cleaning and maintenance staff to resign from NUTESA as a white trade union was withdrawn by NUTESA, because it was based on false information. Of the 9 disputes, 5 were identified as disputes of interest. The Commissioner indicated that he could not make an advisory award, but that NUTESA could go for industrial action. In that case the management had the right of lock-out. Eventually, on 22 June 1999, NUTESA members voted to strike or not to strike. The voting results were as follows: 248 voted (66% of the membership); 26 voted "no" (10.48%) and 222 voted "yes" (89.52%). The actual strike started on 19 July 1999. Clearly NUTESA waited for the students to return from the June-July break to make the strike as effective as possible. The strike lasted till 16 August 1999, when the Minister of Education intervened and promised to send an Independent Assessor to the Technikon.

In the meantime, several things had happened earlier to sour relationships further. Of these, three can be mentioned. One is the suspension of the secretary of the Vice-Principal Administration, to which I shall return in due course. On 11 March 1999, when the news of the suspension came, staff members initiated a staff meeting and called upon NUTESA to attend the meeting. A decision was made to "down tools" until the suspended person was reinstated. This illegal "down tools" was discontinued after an application by the Technikon to stop the action of the Union. The second instance concerns a court application on 9 April 1999 by the Mangosuthu Technikon as the first applicant and Prof Ndlovu as the second applicant against NUTESA as the first respondent for an order that the respondents be interdicted and restrained from publishing, in any manner whatsoever, any defamatory or injurious matter concerning the second applicant. Reference is made to extracts from the Sowetan and City Press. In his deposition Prof Ndlovu also refers to his strained relationship with NUTESA since 1998 after the suspension of a certain Mrs Thabete. NUTESA opposed the application, denying the urgency of the matter as well as the accusation that the newspaper reports were defamatory. The first High Court Hearing took place on 9 April 1999, was subsequently postponed and is still undecided. The third instance has to do with yet another case of the suspension of a female member of staff on 8 July 1999, a few days after the strike ballot, perceived by NUTESA members as a blatant example of victimisation by the Principal.

9. MANAGEMENT STYLE

9.1. Perception of Authoritarianism

The deterioration of the relationship between the Principal and NUTESA during 1998, and especially in the first few months of 1999, created the perception within NUTESA ranks that the Principal was not going to allow them to play a meaningful role in looking after the interest of its members and participating in some form of co-operative governance of the Technikon. Certain other characteristics of the Principal's style of management

strengthened the impression that they were dealing with somebody who was running the Technikon in a completely authoritarian way and who brooked no opposition.

Apart from statements by the Executive Committee of NUTESA concerning these characteristics, there were numerous corroborative statements from many other members of staff, some of them of the most senior staff at the Technikon, including deans and heads of departments. Some of them neither participated in the strike nor were members of NUTESA, but they nevertheless expressed their support for NUTESA. Also included were members of NUTESA who were not on strike for personal reasons but who still expressed their solidarity with the strikers.

Some of the relatively less serious charges against the Principal and his style of management are, inter alia, the following:

- Many members of staff, junior as well as senior, find him inaccessible. The system used is completely hierarchical, but even so some of the staff who are supposed to report to him directly find great difficulty in getting an appointment. On the other hand he always finds time for a small group of staff members who are his cronies and informants.
- There is no communication between him and his staff, even between him and his Vice-Principals who are supposed to form a management team together with him.
- He very seldom delegates. When the Vice-Principal Administration had gone on leave, he took over her portfolio himself, despite his claims of a heavy work load.
- He makes unilateral decisions without any consultation on matters that directly involve the responsibilities of staff, for instance blocking a process well on its way to establishing a safety committee on the campus as required by law. He also unilaterally withdrew a document that a member of staff had drawn up with a view to establishing a policy on gender issues. In both these instances nothing further was ever heard.

These unilateral decisions also extend to matters that affect staff members personally, like cancelling leave without any apparent reason. One extreme example was mentioned of his refusal to grant sick leave to a member of staff who was suffering from acute bronchitis.

These and other complaints - still to be dealt with separately and more extensively because of their more serious nature - make it clear that by far the greatest majority of the staff of the Technikon perceived the management style of the Principal as extremely autocratic.

However, an autocratic style of management, although it runs counter to the spirit that the Higher Education Act tries to engender at tertiary institutions, does not necessarily promote inefficiency in the running of such an institution. Unfortunately evidence has been submitted to me that suggests that the Principal, by centralising some of the main administrative functions in his own

office; indeed puts a lot of strain on the efficient administration of the Technikon. One of these instances concerns the long delay in making appointments. This has become a matter of great concern to heads of departments and lecturers, because it directly affects the proper teaching of the students.

9.2. Delay in Appointments

Documents in my possession make it clear that the concern about the delay in appointments is justified. In some instances it took nine months to a year before an appointment in a vacant position was made, despite the fact that proper arrangements had been made to fill the posts within three months. Heads of departments consider these unreasonable delays as counter-productive and in conflict with their professed mission of educating the students. The blame for these delays is attributed to a tardiness in executing the procedures by, inter alia, the Human Resources Department, but in the final analysis the Principal is blamed because he first approves the short list of candidates and then, after the Selection Committee has made its recommendation, he makes the final decision. The files, according to these heads of departments, keep on piling up on his desk. He usually signs them at the beginning of a recess when it is too late to arrange interviews.

The appointments procedures make provision for a selection committee, but the final decision on appointments up to the level of Peromnes (the grading system used by the Technikon) grade 4 - the level at which for instance the dean of a faculty is graded - is made by the Principal. In fact the decision-making powers of the Principal come into play twice. The shortlist prepared by the head of a department and signed by the relevant dean and the Vice-Principal Academic is submitted to the Principal for his scrutiny and approval. Interviews by a panel of the Selection Committee follow. The Selection Committee submits its final recommendation to the Principal, who can then either ratify the recommendation, overturn it in favour of some other applicant or make any other appointment that he wishes to make. This power has been given to him by what is called an Omnibus Resolution of the Council to which we shall return in due course.

The Principal takes these powers and responsibilities given to him by the Council seriously and, by his own admission, goes through the files relating to a specific appointment meticulously, always looking for possible fraudulent claims of qualifications. He allegedly went so far as to check on the qualifications of a professor and a lecturer from the University of Natal and a lecturer from the University of Durban Westville before allowing them to assist in the Department of Chemical Engineering, thereby wasting valuable teaching time (the names of the persons concerned are in my possession).

The Principal rejects the accusation that he delays matters because of his insistence on personally approving appointments. He points out that there is a composite of factors in making appointments and that it is unfair to apportion blame to his office. This is fair comment, up to a point. The question remains why he feels obliged to scrutinise personally all these documents, while there are other administrative officers who can do it for him

at an earlier stage. Surely, something of this nature is not expected of a principal of a tertiary institution.

Be it as it may, a very strong conviction has grown among the staff that the Principal is the major cause of the delays in appointments, because he wants to be in personal and sole control of all important decisions taken on the campus.

While the criticism of the Principal's role in the making of appointments relates to the efficient running of the institution, the remaining three categories of severe criticism have to do with matters that effect staff members and their morale directly and personally. **The pervading fear and suspicion on the campus that I have referred to in the second paragraph emanate from these factors and have led to an almost complete collapse lapse of morale and a deep resentment among what appears to be the vast majority of the staff.** A written statement seems to summarise the feeling of many of the groups as well as individuals that I interviewed. I quote: **"I have been in education for many years and have never encountered such a fearful situation in the past 18 months. Not only are the staff fearful of suspension but they also fear the possible court cases which have become part of the Mantec situation. In addition, many fear that once the Independent Assessor leaves these premises, the reprisals will begin"**

The three categories of criticism that I refer to concern the accusations 1) that the Principal often verbally abuses, makes scathing remarks about staff members in public and puts them down in a rude manner at meetings, 2) that he intimidates staff and students, especially in the way he handles security on the campus and, finally, 3) that he abuses the sole right given to him by the Council to suspend with or without pay members of staff by using where possible suspensions to victimise those that oppose him.

9.3. Verbal abuse

The accusation of verbal abuse of staff by the Principal is difficult to pinpoint or substantiate, because happenings of this nature are rarely recorded and the exact words and the manner in which a staff member was put down, in a meeting for instance, difficult to remember or articulate. One instance, however, that was recorded and given to me in the form of an affidavit, signed by four of the staff members of the Audio Visual Services, gives a rather dim picture of the way he deals with staff members.

On 25 November 1998, Audio Visual staff were summoned to an unofficial disciplinary meeting with the Principal. Those present at the meeting were the Principal, the Head and Investigator of Protection Services (security) and the staff members of Audio Visual Services. The meeting was to discuss a break-in and the theft of some audio visual equipment. A request to record the proceedings as there was no representation from either the Union or the Department of Human Resources was refused by the Principal. The request was made, according to the report, because the staff had been previously

threatened by Prof Ndlovu and Protection Services and attempts made to get them to alter their written statements about the theft. The staff were prevented from properly giving their side of the events. The Principal accused the staff members of stealing the equipment and stated that he regarded all staff as suspects. He finally stated that he would instruct Human Resources to deduct money from their salaries and that they could go to their lawyers and a court of law.

Prof Ndlovu's written response to these allegations reads as follows: "A projector valued at R40 000 was stolen from a venue that was not properly locked. The officials of this unit knew that the facility was not properly locked. This was at best a case of grave negligence and at worst a case of a deliberate act of an unlawful appropriation of an expensive technikon property. I was not, I hope, expected to pat them on the back and compliment them on a job well-done. If a proper investigation had been conducted by the investigating officer, *I have no doubt that the perpetrator of this act could have been discovered amongst those members of staff* (my emphasis). I spoke sternly at them as a reprimand for this gross negligence but I did not belittle anyone".

The merits or demerits of this case aside, what stands out is the appalling state of the relationship between the Principal and some of his staff. They see him at best as a rude "headmaster" that threatens, intimidates and belittles them and he sees them as potential if not actual thieves.

9.4. Strong-armed Protection Services

The Protection Services on the Technikon campus and the role they play have become a contentious issue. Understandably so, because security services on a campus of higher education often reflect the disciplinary philosophy of the management and are the first outward sign of management control one encounters when coming onto a campus.

The Mangosuthu Technikon does not differ from some of the other technikons and universities as far as gate control is concerned. The searching of vehicles for instance happens at many other campuses. The theft of computer and other electronic material seems to have necessitated these measures. However, when one arrives at the Mangosuthu Technikon, one is immediately struck by the fact that some of the security officers carry side-arms.

The psychological effect of gun carrying security officers within an institution that is supposed to be a peaceful place of learning became clear to me in a very unpleasant way. In the course of my investigations on the campus, it was arranged for one of the suspended staff who was not on campus to come and see me. First she was refused entry at the gate. This problem was sorted out after a phone-call to the Principal's office. When she entered the office set aside for my duties, she was accompanied by an armed security officer who sat down next to her. When I questioned his presence in the office, I was informed that he had orders to accompany her at all times while

she was on the campus. I immediately ordered him out of the office. When my interview with her was over, I discovered that he was still waiting outside the office to accompany her across the campus to the gate. I again ordered the armed guard to remove himself. I then contacted the office of the Principal (the Principal himself was at a meeting) and made it clear that such behaviour was completely unacceptable. I finally accompanied her out of the building. *The atmosphere of security intimidation was palpable and a great embarrassment to the person concerned.* She was treated as a convicted criminal although a disciplinary hearing had not even started. There was no possibility that she could have interfered with the process against her, seeing that the nature of the charges against her concerned: a false qualifications claim.

The presence of security officers wearing side-arms appears to be reluctantly accepted as a "normal" part of campus life. In fact, many testified that the Principal himself had acknowledged that he carries a fire-arm for his protection. The appearance, however, of a private security firm with the significant name of Combat Force during the strike led to a situation that, in my opinion, deepened the already existing breach between the Principal and the greater majority of his staff to such an extent that it has become irreparable.

Apart from the Technikon's Protection Services, there is a contracted security company on the campus, the Industrial & Commercial Security (ICS). According to the Principal, ICS subcontracted Combat Force to assist them during the strike. It must, however, be clear that ICS could not have subcontracted Combat Force without the knowledge and permission of the Principal.

The (legal) strike started on 19 July. According to the Principal, the loud singing and chanting of the strikers disrupted the administrative and academic functions of the Technikon, while reports of intimidation of non-strikers were coming in. He consequently invoked with immediate effect a lock-out with a view to removing the participants in the strike from the premises of the Technikon. To achieve this, he first called in the police to enforce the eviction. When the police refused to act, the already mentioned Combat Force was called in. In a letter to the Executive Committee of the Council on 20 July, NUTESA states the opposite about the behaviour of the staff, claiming that the police refused to act precisely because the staff were well behaved.

The purpose of highlighting the events that led up to the lock-out decision is, however, not to judge whose perception of the behaviour of the strikers is right or wrong. What is important is that no negotiations had taken place between the Principal and NUTESA before the Principal decided on a lock-out with immediate effect and that he appointed a security group that has built up a reputation for strong-armed tactics under the command of a person who - according to a newspaper report and during an interview with me - made it clear that he would not hesitate to shoot if he considers a situation merits it. Combat Force arrived on the campus in armoured cars with assault weapons, shot-guns, canisters with ammonia gas (more effective than

teargas), bullet-proof vests and military regalia. The Durban Public Order Police allowed me to watch a video playback showing Combat Force in action. I was appalled and could not believe that such a set of para-military people were used on the campus of a tertiary institution against *staff members* of that institution at a time when there was no indication of violence or that the institution's property was endangered. In fact the striking members of staff obeyed the orders of Combat Force without any resistance and left the campus rather than risk anyone being hurt unnecessarily.

Nobody considers the bringing of Combat Force onto the campus a mere error of judgement. It smacked of a deliberate act of victimisation and the staff members on strike (as well as many non-striking staff) perceived it as such.

This perception was justifiably strengthened by the way in which Combat Force behaved towards some of the staff who were not on strike, but who were suspected of being sympathetic towards the strikers. After the lock-out, a female member of staff was asked across the picket line by a member of the Executive Committee of NUTESA to organise some water and cold drinks for the strikers. According to a statement by this staff member - corroborated by another member of staff who had a similar experience - a senior member of the Technikon's Protection Services, a Protection Services guard and three fully armed members of Combat Force, brandishing assault rifles came into her office and told her to leave her office or else she would be forcibly removed. Only urgent calls to a senior member in the administration resulted in her being left alone.

Combat Force operated on the campus at a cost of R453 218.40 to the Technikon. Taking all factors in to consideration, I believe that this was a serious waste of public money which solved nothing and only led to a type of confrontation that damaged the image of the Technikon and the relationships on the campus for many years to come.

9.5 Suspensions

Suspensions have become a very contentious issue at the Mangosuthu Technikon. As we have seen in paragraph 8, the suspension of the Director of Student Counseling had been, to a large extent, the beginning of the bad relationship between the Principal and NUTESA and it would be hardly an exaggeration to say that the Union viewed each and every suspension with suspicion until they were convinced that such a suspension was justified. This suspicion grew when the Principal was given the sole right to suspend by an *omnibus resolution* of the Council (see par. 11). They perceived this sole right as a sort of a licence to victimise.

With the deterioration of the relations between the Principal and NUTESA, especially during the first half of 1999, the issue of suspensions became more and more controversial. The cases of suspension concerning the secretary of the Vice-Principal Administration and the staff member who allegedly made fraudulent qualifications claims, highlight the controversy and are directly

responsible for the accusation that the Principal victimises people that oppose him by looking for reasons to suspend them.

The suspension of the secretary of the Vice-Principal Administration who had been at the Technikon since 1992 and secretary in the office of the Principal from 1995 to 1998 happened on 11 March 1999 when the relations between the Principal and NUTESA had already become very tense. The suspension was based on the fact that the secretary handed over copies of documents to the President of NUTESA without the direct permission of the Vice-Principal herself. The documents in question originated from NUTESA and they required copies for their records, since their President had been denied access to her computer and was unable to print copies. On the copies handed to NUTESA there were hand-written notes by the Vice-Principal, but the secretary was aware of the fact that the hand-written notes had been discussed with the NUTESA Executive. She therefore felt that she acted in the utmost of good faith. She was nevertheless suspended on the charge of releasing confidential information to NUTESA. Eventually, on 28 July at a disciplinary hearing, she was found guilty on the lesser charge of negligence. The suspension infuriated not only NUTESA but other staff members as well and demonstrated their dissatisfaction by "downing tools" as we have seen. They saw in the suspension an act of victimisation of a member of NUTESA at a time when there was a stand-off between the Principal and NUTESA.

I am not allowed to give a full account of the second case of suspension because a criminal charge has been laid against the suspended person and the matter is still *sub iudicæ* in a court of law. However, I can relate the events that led to her suspension as far as the Technikon is concerned. The person concerned was charged with falsely claiming that she had obtained a diploma in 1997 and a degree in 1998 from the University of Zululand. For the first she received an award of R3000 in December 1998 from the Technikon and the second she used in 1999 in support of an application for a non-academic post at the Technikon. On 8 July 1999, she was suspended *without pay* by the Principal and the charges against her were delivered to her on 13 July 1999. On 27 July 1999, she went to the office of the Principal to deliver a letter of denial and her supporting documents, including a statement by the registrar of the University of Zululand that she had received the diploma in 1998 and that the University of Zululand had erroneously issued a statement to the effect that she had completed the degree. According to her, she was escorted by two guards and she felt like a criminal before the students and her colleagues. The same thing happened to her when she came to see me (see par. 9.4). *Ten days later*, on 6 August 1999, she was arrested at her home late at night, at approximately 22:30, by the Umlazi police and locked up without being charged. The next day, on the instructions of Prof Ndlovu, she was charged with fraud and the theft of R3000 from the Technikon. Prof Ndlovu admitted to me that he had instructed that charges be laid.

According to members of NUTESA, they were outraged by the actions taken against this member of staff. In their opinion this was an act of revenge, especially the suspension *without pay* and the criminal charges, because she

had openly supported the strike at a meeting held towards the end of June 1999. It confirmed their belief that they were striking for a just cause and strengthened their resolve to continue with the strike until they had reached the primary goal of the strike: the removal of Prof Ndlovu as principal. It is also significant that when the students joined the striking staff for a day on 12 August 1999, the case of this suspended staff member was one of the issues foremost in their minds. Finally, on 9 August 1999, 3 days after the arrest of the person concerned, a petition signed by 253 members of staff was faxed to the Chairperson of Council, declaring that they had lost confidence in the Principal and the way in which he was running the Technikon.

As an investigation into suspensions is specifically mentioned in my terms of reference, I called for a meeting with the Principal and the lawyers of the Technikon who normally prepare the charge sheets in matters of discipline for the Technikon. Having been presented with a summary of some of the disciplinary matters relating to staff members, I discovered a gross unevenness in the way suspensions were applied by the Principal. In October of 1998 another member of staff was charged with giving false statements to a third party regarding payment of a training course and, notably, making false qualifications claims. She was *not* suspended. Later found guilty in a disciplinary hearing on the second charge of false qualifications she was transferred from the post she held to another and the yearly increment in salary withheld. On very similar charges, the person in the second case of suspension discussed above was suspended without pay, let alone laying criminal charges which could delay the matters of her disciplinary hearing, and all the consequences for her personal life that it entails.

But worse is to come. In January 1999, a certain person applied for a post at the Technikon and was appointed. Before he took up his post, the Technikon learned that he was facing criminal charges of fraud in the region of R1 000 000 or more and, according to a newspaper report, released on bail of R50 000. The Human Resources Department advised the Principal to suspend the appointment. On legal advice the Principal decided rather to suspend him as a contracted employee. *But he suspended him with full pay!* In other words the Technikon is still paying him his full salary for nothing in return. The Principal argued that, in the last case, the transgression was allegedly perpetrated *outside* the Technikon and in the case of the staff member under discussion she allegedly did something *against* the Technikon. He therefore suspended with pay in the first case and without pay in the second case. To my mind the argument is ludicrous and completely unacceptable.

Without doubt some of the suspensions played a more significant role than many other things in creating an atmosphere of fear and suspicion amongst the staff of the Technikon. There is a distinct and openly expressed fear of retaliation.

10. 12 AUGUST 1999 - THE DAY OF THE SHOOTING

Seeing that the terms of reference include a specific reference to 12 August 1999 when 4 students and one member of staff were shot and wounded outside the entrance gate of the Technikon, a short overview of the happenings on that day and the events leading up to it is necessary.

It is common cause that the strike of NUTESA, after the lock-out on 20 July 1999, did not create any serious incidents and the strikers were well behaved. The students kept a neutral stance and attended lectures in the initial phases of the strike to the best of their ability in very abnormal circumstances. After all, there were more than 200 members of the staff outside the gate of whom 50 plus were personnel from the academic departments. Their residences were also getting dirtier by the day. On 30 July 1999 they held a meeting and in a subsequent memorandum to the Principal they demanded that the lecturers should be back in classes by 2 August 1999 and their residences cleaned with immediate effect. On 3 August, the first serious incident occurred when Combat Force sprayed the toytoting strikers with ammonia gas from canisters as well as the students who were toytoting inside and throwing rubbish all over the campus entrance. Apparently a shot with a shotgun was fired over the heads of the strikers as well as a shot in the direction of the students by Combat Force. The Public Order Police arrived shortly after this and acted as a buffer between picketing staff, students and Combat Force. Their presence immediately calmed the people. The students held regular meetings at the so-called "fountain" but, according to them were told to return to their classes or face closure of the Technikon. A promise was made by the Principal to hire contract staff. The students refused the use of "scab labour" and marched to the Magistrate's Court where they presented the magistrate with a memorandum marked for the attention of the Minister of Education. This was shown to me on a video recorded by the Public Order Police.

On 12 August 1999, the students again held a mass meeting. During an interview with me, the Student Representative Council (SRC) stated that they held the meeting to counter public statements by the Principal that everything was normal at the Technikon. They decided to join the striking staff outside the gates to demonstrate to the community at large that everything was in fact *not* normal.

According to an affidavit by the Head of Protection Services, he had 12 members under his direct control. Six were issued with 9 mm pistols and a few rounds of ammunition (in most cases 12 rounds). Furthermore there were the ICS guards (their weapon status unknown) and 20 Combat Force armed with shotguns, various other weapons and canisters for spraying ammonia gas. On the police video I spotted at least one armoured car. This show of force against a group of people who, up to this moment, for a period of 23 days, had given no indication whatsoever of being violent, is almost comical if it was not so serious with such serious consequences.

After the mass meeting, the students moved through the gate and poured onto the Mangosuthu Highway, blocking the traffic and overturning the heavy dustbins outside the gate. An ongoing barrage of taunts between Combat

Force and the students finally led to the students throwing cans and bottles from across the highway towards the campus gate. Suddenly the gates were pulled back and the Combat Force guards stepped out and opened fire on the staff and students. According to the Head of Protection Services the Combat Force guards returned fire to defend themselves, because gunshots were coming from the crowd marching towards them. He, however, could not say what type of ammunition was used by Combat Force. This I find rather strange because, by his own admission, he was close to the Combat Force guards and about 30 metres from the students. In his account of what happened Mr Norman Reeves, owner of Combat Force, tells about shots coming from the embankment across the road and from the direction of a fig tree outside the campus. According to him, his guards fired back with rubber bullets. After a thorough questioning of the Head of Protection Services I still had great difficulty in reconciling his account of the shots supposedly coming from the side of the staff and the students with the account of Mr Reeves. Nobody else heard or saw shots coming from that direction, including a policeman, Mr Bongani Sibiya, from the Public Order Police who, in the course of his duties but in civilian clothes, was close to the gates where the action took place. Mr Reeves also informed me that Combat Force saw either a student or a staff member carrying a pistol and that a staff member confirmed that someone indeed had a gun. This member of staff, in an affidavit, denied that she ever said such a thing to Mr Reeves. Mr Shamase, the Head of Protection Services, also said during his interview with me that he saw someone with a gun. Again I find it very strange that he did not mention such an obviously important fact in his affidavit.

A piece of a rubber bullet penetrated the leg of an executive member of NUTESA and a number of students were shot and wounded, in some instances by shotgun pellets. In Mr Shamase's affidavit mention is also made of injuries to some of the security guards without giving any details about the type of injuries they sustained.

In the aftermath of the shooting something happened that disturbs me and gives some insight into the hostility between the crowd outside and the security people inside the campus. A shop steward ran towards the gate and the campus ambulance parked inside the gate with the NUTESA executive in his arms, the leg of the injured man pouring blood. The guards saturated him with gas. The same happened to the President of the SRC who ran forward to ask assistance for the wounded students. In his statement Mr Sibiya said that he went straight to the Head of the Protection Services, whom he identified as Mr Shamase, to ask for the ambulance to be despatched for the wounded people, but Mr Shamase refused, telling him that "the ambulance is responsible for anything happening inside the Technikon not outside".

After the shooting, the uniformed Public Order Police (POP) arrived. On the video it is clear how the students welcomed them and begged them to remove Combat Force from the campus which they obviously would not do. Presumably encouraged by the presence of POP the students again started to throw bottles and also stones towards the gates and the security guards. On the video Mr Reeves is seen retaliating by shooting with a shotgun.

Questioned by me he said that he shot a student with a rubber bullet in the chest. POP members, looking with me at the video, expressed their doubts whether the sound of the shot coming from Mr Reeves had been that of the firing of a rubber bullet. Captain Reddy, the Communications Officer of POP, and Captain Munsamy, the acting Company Commander, eventually succeeded in restoring order and bringing things back as close to normal as possible under the circumstances. For this both were commended by their Commanding Officer. I quote: "Although the protestors were angry, they adhered to the police request to remain calm and allow the crisis situation to be handled professionally. Captain S Reddy kept the lines of communications open. Capt Munsamy and his personnel stabilised the unrest situation by deploying members at strategic positions *and attending to injured persons* (my italics)." We have come a long way in South Africa with the police playing the role of mediators between warring factions.

In my opinion the unfortunate and traumatic day of 12 August 1999 was the final nail in the coffin of any hope that reconciliation could take place at Mangosuthu Technikon for the foreseeable future.

11. THE COUNCIL

There are no easy answers to questions concerning the role played by the Council in governing the institution and promoting good management as well as the role it played in trying to resolve the dispute between the management and NUTESA.

It has been, and still is, very difficult to distinguish between the governance and the management of a tertiary institution like the Technikon. The Statute of the Technikon prior to the new one that came into operation on 1 July 1999, reflected the Technikons Act of 1993, section 16 whereof contemplated that the affairs of a technikon would be managed by its council. There were instances in that old Statute where the Council was vested with the power to perform certain acts which by their managerial and administrative nature should more properly be exercised by the Principal.

With a view to promoting good management at the Technikon, the Council at a meeting held on 10 June 1998, ratified a so-called Omnibus Resolution taken by the Executive of Council whereby "the functions of a management and administration nature which are ascribed to the Council in terms of the Technikon Statute be exercised by the Principal and Vice-Chancellor" Section 30 of the Higher Education Act of 1997 was used as a justification for accepting this resolution.

On the basis of this resolution the Principal exercised his sole right of appointment and suspension of staff, precisely those instances that became a great bone of contention between the Principal and NUTESA. It might not have been, and it should not have been, the intention of the Council to abdicate as it were, giving up its rights as the employer of the Technikon. But, in effect, this is what happened. In the Omnibus Resolution there is a further sentence that states: "The Principal and Vice-Chancellor was to keep

members of the Council informed of events that may occur on campus". This wording is a far cry from requiring the Principal to report back to the Council on those matters delegated to him, if delegation was indeed the intention. In his answer to a direct question from me, the Principal said that he never reported his suspensions as such to the Council, but that he might have included something of that nature in his Vice-Chancellor's report.

It is a moot point whether the Council could have foreseen the consequences of its resolution. The fact remains that, in a matter as important as, for instance, suspensions, the Council ceased to govern in the sense of being a watchdog to see that evenness and fairness prevail.

The powers of appointment and suspension by the Principal are carried over into the new Statute of the Technikon which has already come into operation. The Statute should be carefully examined to see whether it is clear enough that these powers are indeed *delegated* by the Council, the Council being the employer in accordance with the Higher Education Act of 1997.

In my terms of reference the reason is asked for the inability of the Council to resolve the dispute between the management and NUTESA. At the meeting where I met the Council, some of the members took strong exception to the implied criticism in this specific term of reference, but it soon became clear that the Council was indeed unable to resolve the dispute, comparing their position with that of the government vis-à-vis the crime situation. This comparison is valid up to a point. The real question is not why they did not succeed, but to what extent they tried to bring the conflict to an end.

In this regard the following can be noted:

On 10 March 1999 at an ordinary meeting of the Council, the areas of dispute declared by NUTESA were read and referred to the CCMA on the advice of the Principal who "stated that he had been taken to the CCMA on three previous occasions by staff and had won the cases at all appearances". This happened despite the fact that, according to the minutes, members expressed caution as to how the matter was handled, pointing out that in order to be fair, representation would be required by NUTESA in order to avoid hearing one side. At the same time it was resolved that the management should write to NUTESA and the Technikon community that they should cease sending communication directly to members of Council and the Executive Committee of the Council. Correct channels had to be followed.

On 15 June 1999, at the following ordinary meeting of the Council, a brief report by the Vice-Principal Administration on the CCMA hearing was submitted as part of "matters arising". In this report it was stated, incorrectly in my opinion, that the management had been vindicated on all matters of dispute. What the Commissioner in fact had said was that the 5 disputes of interest remained unresolved and that the Union could take the route of a legal strike if by renegotiations a common ground between the Union and the management could not be developed. According to the minutes of the meeting, the Principal indicated that this was only possible on the basis of a

collective agreement which, of course, did not exist (see par. 8) I could not find any evidence of a proper discussion on the possibility of a strike on the part of NUTESA and possible measures to be taken in such an event. The Principal further stated that he would call a meeting of all staff and explain the channels of communication, substantive labour issues, and the need to establish a collective agreement. If personal issues (the personal "vendetta" of the President of NUTESA - see par. 7.2) could be removed, he foresaw no further problems. Clearly, the Council had no inkling of the depth of the feeling of despair and resentment on the part of NUTESA. Either the Council was kept in ignorance of the seriousness of the situation, or it believed it could leave matters completely in the hands of the Principal, despite the fact that, since the beginning of 1999, no meetings had been held between NUTESA and the management where their grievances had been discussed. Surely, by now it must have dawned upon the Council that any possibility of further negotiations between the Principal and NUTESA was completely out of the question and that NUTESA was clamouring to be heard by Council itself.

This desire on NUTESA's part becomes evident on the second day of the strike (20 July 1999) when they requested a meeting with the external members of the Executive Committee of the Council, the internal members being made up of the management with whom they were in dispute. They felt they should have the same opportunity as the management to put their case before members of the Council who were not part of the dispute. In a letter faxed to the members of the Executive of Council (a copy is in my possession) they promised to consider calling off the strike if their request was granted. At the meeting between myself and members of the Council, two external members acknowledged receipt of the letter, contrary to the internal members who vehemently denied any knowledge of it.

Nine days later, on 29 July 1999, a meeting of the Executive Committee of the Council was held at the Royal Hotel in Durban and NUTESA was asked to attend. NUTESA attended the meeting, reiterating their request to meet with the external members, a request which was again refused. The Executive Committee of the Council raised the possibility of an independent mediator. The President of NUTESA agreed to forward this suggestion to NUTESA's membership, but stood by its original request: to meet with the external members of the Council's Executive.

By then it was already very clear that the original disputes were but a smokescreen for the real purpose of the strike: the suspension of the Principal. This was, without doubt, also the issue they wanted to discuss with the external members of the Council Executive. In a letter written to the Minister of Education on 29 July 1999, they called for the immediate suspension of the Principal and the appointment of an independent Commission of Enquiry, giving as the reason for their request "the current culture of staff suspensions".

On 6 August 1999 a special meeting of the Council was convened. The decision of the meeting of 29 July of the Executive of the Council concerning an independent mediator was ratified. All the disputes raised by NUTESA

were to be referred to this mediator and the recommendations of the mediator to be referred to a special meeting of the Council on the condition that the strike be suspended with immediate effect pending the outcome of the mediation. In my opinion the Council meeting was to a large extent an exercise in futility. The Union members were no longer interested in the disputes, if they ever had been. They wanted to get rid of the Principal and that was the issue they wanted to discuss with the external members of the Council, not trusting the internal members because of their closeness to the Principal. It should be noted that *by now the Council was fully aware of the real issue at stake*. A copy of their letter to the Minister of Education was made available by NUTESA to the Chairperson of the Council. Yet, according to the minutes "the question of suspension was not an issue for consideration as the letter was referred to the Minister of Education". In the event that "the Union insisted on the suspension of the Principal and Vice-Chancellor the Council agreed that the Principal and Vice-Chancellor could approach the Labour Court for an interdict to declare the strike illegal". One gets the impression that the Council chose to play the game strictly according to formal rules of procedure, not addressing the real issue at stake. For the same reason they refused any meeting of the Union with the external members of the Council. At my meeting with the members of the Council I directly asked them why they refused the request of NUTESA, while such a meeting could have ended the strike. In times of crisis one explores all avenues to find a solution. After all, the students were the group that suffered the most, and the Council's first consideration should have been the interest of the students. Again I received a formalistic answer: the Executive Committee, representing the one body of the Council, could not be divided. I got the distinct impression that by now everybody, the Council and the Union, were only interested in the showdown between themselves, sidelining the interest of the students. But for the Council as the *governing* body of the Technikon the interest of the students should have been of paramount importance, not allowing technicalities to stand in the way of a possible resolution of the problems.

I must admit that not all the members of the Council, specifically some of the external members, seemed unwilling to walk this "second mile" with the Union. In fact, during my interview with members of the Council, the division within the Council was quite evident, the bigger group supporting the "procedural and formal" way of dealing with the problem.

Eventually an interdict against NUTESA was sought in the Labour Court and withdrawn only after a visit by the Minister of Education to the campus on 16 August 1999 where he met the parties involved in the dispute.

12. CONCLUSIONS

- 12.1 A detailed judgement on each and every incident recorded in this report seems to be uncalled for when one considers the general terms of reference of the investigation. Where necessary and when in accordance with the more specific terms of reference, I have made the appropriate comments in the text itself. The following conclusions are

therefore of a more general nature, but, I believe, they reflect the crux of the matter:

- 12.1.1 Through the Omnibus Resolution the Council attempted to delegate its functions to the Principal and created the impression that all the functions of the Council were thereby delegated. In reality the Omnibus Resolution is not a delegation at all, as Section 30 of the Higher Education Act prescribes that the Principal must manage and administer a higher education institution as an original and not a delegated function. By contrast the functions of the Council as is reflected in Section 34 of the Higher Education Act with reference to the appointment of employees, conditions of service, disciplinary provisions and privileges and functions of employees remain the responsibility of the Council and can only be executed by the Principal if properly delegated to him. I could not find any such delegation.
- 12.1.2 The principle of delegation is that the original authority remains responsible for any decision taken by the delegated authority. A decision made by the delegated authority will be binding and have legal effect. If the delegating authority is not in agreement with such a decision, it must revoke the delegation.
- 12.1.3 Based on the information in my possession, the actions of the Principal as far as labour relations are concerned (including the suspensions) were executed by the incorrect authority and therefore invalid (*ultra vires*)
- 12.1.4 The Council failed in proper governance by not taking the responsibility for the decisions of the Principal in this regard and the consequences thereof.
- 12.2 NUTESA and a significant number of the members of staff who are not members of the Union perceive the management style of the Principal as autocratic and centrist in the extreme.
- 12.3 This perception was strengthened by the reluctance of the Principal to negotiate with NUTESA over a long period of time. He effectively sidelined them as well as quite a number of other Technikon officials in the running of the Technikon contrary to the spirit of the Higher Education Act of 1997, which was promulgated inter alia with the view to "establish a ...higher education system which promotes co-operative governance".
- 12.4 The way in which he handled certain matters, especially suspensions and security on the campus, gave the lasting impression of victimisation, intimidation and strong-handedness. This eventually led to an atmosphere of fear and suspicion which is totally detrimental to the educational purposes for which the Technikon established.
- 12.5 The methods NUTESA used to vent their grievances and fears were flawed. In the first place they should have signed the recognition agreement at the end of December 1998 when there were but two minor points of difference. These points of difference could have been sorted out in the course of time. The antagonism that developed between them and the Principal during the course of the year should not have prevented them from seeing the advantages of a recognition agreement that could have regulated relations more effectively. Secondly, the way in which, in the beginning, they cloaked the real

intention of their industrial action, did not help to bring matters to a swifter conclusion. At the time of the meeting of the Council on 10 March 1999 the, real issue should already have been on the table, spelled out in unequivocal terms, giving the Council at least the opportunity to deal with the matter decisively instead of referring the matter to the CCMA. Whether the Council would have decided to do so is beside the point. Thirdly, their decision to wait until 19 July 1999 to start the strike is highly questionable. The students became the victims of NUTESA's desire to exert the maximum pressure.

- 12.6 Despite 12.4 above, the Council should have realised by 10 March 1999 what the real problem was. After all, the disputes raised had directly to do with the management style at the Technikon with the Principal as the Chief Executive Officer. By choosing the CCMA route they went the way of least resistance, not exercising their powers of governance and dealing with the problem as a Council. They could have dealt with it in many ways. Matters could have turned out differently if the Union at least could feel that they were being listened to. I am of the opinion that NUTESA's later request to meet with the external members of the Executive of Council and adamantly sticking to it resulted from this feeling of not being heard by the Council.
- 12.7 In my opinion the events escalated to such a degree and were so poorly handled by inter alia the introduction of Combat Force onto the campus during the strike that any semblance of a relationship between the Principal and a majority of his staff broke down completely. *I believe this breakdown is irreparable. I do not see the possibility of restoring effective academic and administrative functioning while the present Principal remains in office.*

13. RECOMMENDATIONS

On the basis of my conclusions in the previous paragraph I recommend that:

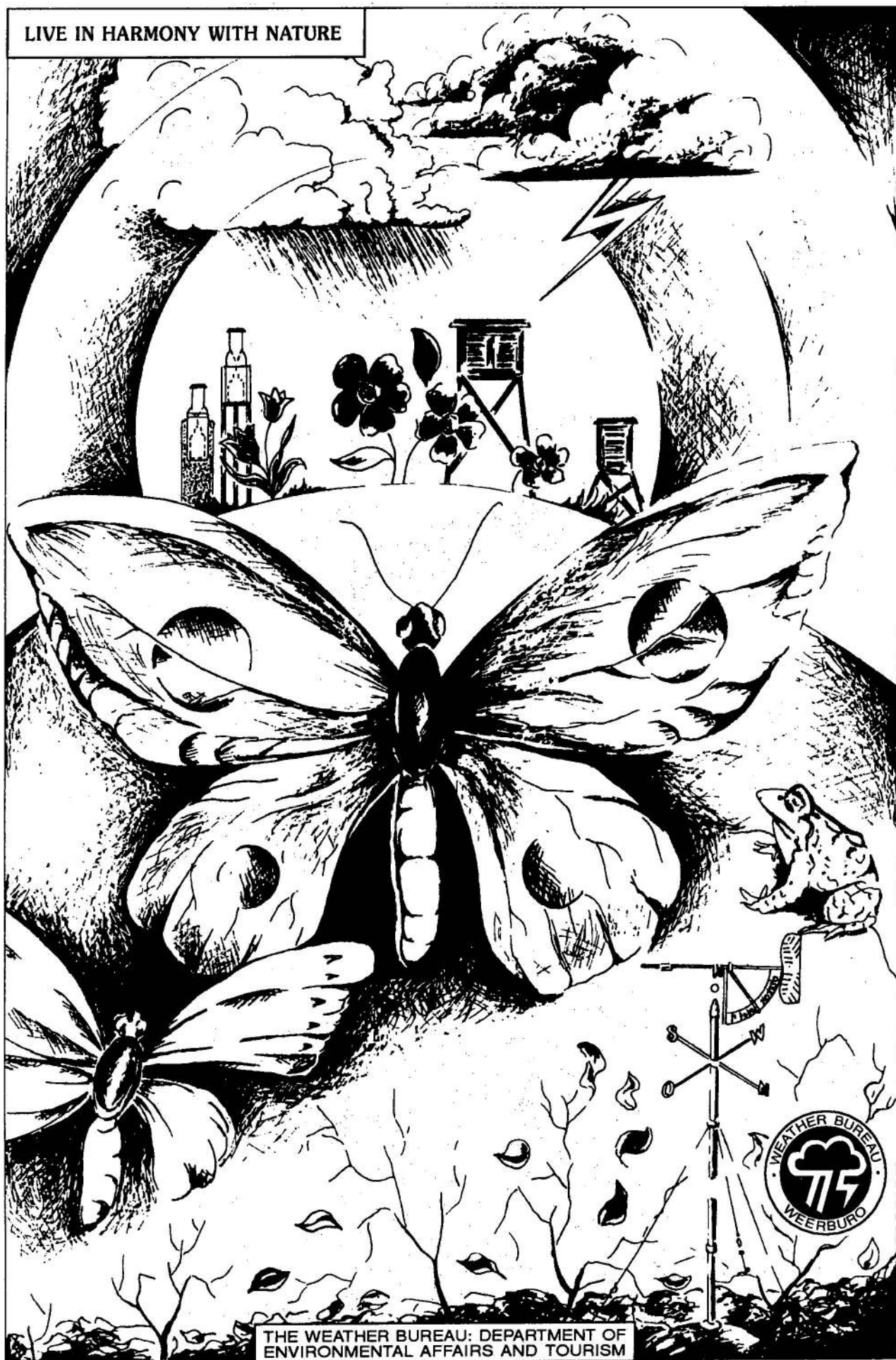
- 13.1 the Council of the Technikon terminate the services of Prof A M Ndlovu as Principal and Vice-Chancellor;
- 13.2 if, by the end of 1999 the Council has not yet succeeded in fulfilling recommendation 13.1, the Minister of Education reassess the situation in terms of clause 6 of the Higher Education Amendment Bill, 1999 which inserts Section 41A which reads as follows: "If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, notwithstanding any other provision of this Act or any private University Act, appoint a person as administrator to perform the functions relating to governance or management on behalf of the institution for a period not exceeding six months";
- 13.3 all the suspensions that are still in effect be declared *ultra vires* by the Council and that, as a matter of urgency, all the cases in question be reopened by the Council;

- 13.4 the security measures on the campus be drastically changed to ensure that the open display of arms by the security guards is stopped immediately and that, under no circumstance private security companies that operate in the manner of Combat Force be allowed on the campus in the future; and
 - 13.5 the Department of Education, consider the possibility of a process of capacity building for councils of tertiary institutions with a view to improving the functioning of councils in matters of the governance of tertiary institutions.
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