

## PROVISIONAL TERMS OF REFERENCE FOR THE IRTC

### Without limiting the Terms of Reference, the IRTC/Shackville TRC will:

1. Look into what is referred to as the 'Shackville protests' of February 2016, including any related and subsequent protest actions.
2. Invite submissions from all constituencies on the clemencies granted and make recommendations on converting clemencies into amnesty (or the continuation of clemency) and what the nature of these amnesties will be.
3. Make recommendations on how to deal with the outstanding cases in the spirit of restorative justice.
4. Inform itself on all recent and ongoing initiatives to address the issues that fall within the broad scope of the IRTC.
5. Invite all constituencies, and be able to request relevant individuals and structures including task teams, to make submissions on institutional culture and practices, including decolonization and any that entail unjust discrimination, domination or violence including sexual violence.
6. Make recommendations on institutional culture, transformation, decolonization, discrimination, identity, disability, labour relations and any other matters that the university community has raised over the years or may wish to raise.

The above Terms of Reference are provisional and may be further refined by the Commissioners once they have been appointed.

### Criteria for selecting Commissioners:

- Commissioners must be persons with integrity and a commitment to social justice.
- Commissioners must ideally have support from the wider campus constituencies.
- Commissioners should have no formal association with UCT, but may include alumni. Thus, *inter alia* no current staff, students or members of Councils are eligible.
- Commissioners should preferably have experience in restorative justice processes, e.g. have been part of the Truth and Reconciliation Commission.
- Ideally, the commission should include at least one person with legal expertise e.g. a judge with an appreciation for social justice and transformative constitutionalism
- At least one of the Commissioners must have understanding of, and experience in, dealing with conflict, trauma, institutional and systemic violence.
- At least one Commissioner must have experience in civil society activism and/or advocacy.
- Commissioners should be from diverse backgrounds and must possess demonstrated sensitivity to issues of race, gender, ability and LGBTQIA+ identities.
- Commissioners must be able to be flexible with regards to time commitments and available to participate fully in the IRTC process.

## A. PRINCIPLES

The IRTC process should be guided by the following Principles:

1. Violence must be recognised as more than physical. It is inappropriate to look only at the actions of students who embarked on protest action that led to criminal charges against them, without also examining recurring invisible violence and racism perpetrated by individuals within the institution.
2. Linked cultural, structural and psychological violence have historical roots. In exploring restorative justice, this needs to be taken into account. This requires investigating acts and processes of invisible and visible violence perpetrated at UCT since 1829.
3. This means that the process requires a trans-disciplinary, intersectional lens to understand built-in triggers of institutional racism that caused students to protest.
4. Peace researchers have found that violence flows in a cultural-structural-direct manner. We offer the following clarification of term based on the literature on violence:
  - **CULTURAL/SYMBOLIC VIOLENCE** – e.g. multiple and simultaneous 'othering' of black, LGBTQIA, poor students, and staff marked by -
    - (a) ascribed and internalised superiority and inferiority;
    - (b) epistemic violence by marginalising black scholars and scholarship, amongst other exclusionary practices.<sup>1</sup>

Veteran peace researcher Johan Galtung argues that cultural violence justifies and legitimises other forms of violence.

- **STRUCTURAL/INSTITUTIONAL VIOLENCE** – e.g. inequality is structural violence. Institutional racism is marked by intersecting and interacting forms of inequality as outlined by students and staff.
- **EMOTIONAL/PSYCHOLOGICAL VIOLENCE** - many of us are personally aware of black people who left UCT and current staff who experience denial of institutional racism. For example lived experiences are written off as 'anecdotes that cannot inform policy;' and/or that are not worthy of paying 'real' attention to. This has an emotional, and over time, a psychological impact (e.g. depression which some of us argue is due to 'unresolved social grief' (due to the continued presence of denied aspects of the past). These manifestations have a cumulative effect and results in black people being pathologised or criminalised for expressing justified anger and or protests.
- It therefore follows, that the university cannot on the one hand admit that institutional racism remains a problem, and on the other hand neglect to name and deal with manifestations of racism that precede student violence. If that is its intention, it will make itself guilty of absolving white perpetrators from blame, and criminalising mainly black students.
- Many researchers have argued that present/unrelenting (but denied) experiences rooted in the past, are overlaid onto 'historical trauma' which is passed down trans- and intergenerationally. This is processed and/or dealt with differently by different people; and is many times masked (constellation of historical trauma responses).
- It has been suggested that people who mainly 'externalise' generally become high achievers,

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<sup>1</sup> Some signatories provided well known examples. We refrain from mentioning names here, but focus on the manifestations and patterns.

activists, advocates and/or fighters. People who '*internalise*' generally self-medicate (slow suicide); commit suicide and/or present with different socially patterned conditions from mild to severe. No research currently exists to show the range of responses that are not fixed within the two extremes reflected in the literature.

- **PHYSICAL/SOMATIC VIOLENCE** – apart from the fact that the above interacting aspects of violence lead to visible physical manifestations of violence/counter-violence, it can instead also have a (hidden) somatic impact on some individuals.
- Oppression related physical illnesses are well recorded in research, but the link is seldom made to the full 'invisible/visible structure of violence', as those who mainly define these symptoms and causality, are usually not oppressed people (and/or people who have not yet integrated a view from the standpoint of the oppressed as counterpoint to their disciplinary knowledge which has not yet been subjected to decolonisation).

## B. TERMS OF REFERENCE

In order for these principles to be met, we propose the following terms of reference for the IRTC:

1. Commissioners should be required to take the full picture of invisible and visible violence into account by recognising the university's symbolic, institutional and psychological violence as a precursor to student counter violence. By this we mean that the IRTC needs to recognise that even though there are no formal 'criminal' charges against the university as yet, it *is* a party to the conflict. The university's tardiness and benign view of tardiness on the part of university staff who did not implement its 'transformation policies' for 23 years, caused untold harm which is routinely denied, but persist to this day. This contributed to slow but invisibilised escalation amongst black students and staff over time, until it erupted and spiralled from 2015 onwards.
  - a. It therefore follows that students with charges and/or other possible punitive actions considered against them, should not be regarded as 'offenders' with the institution as their 'victim' (according to Criminal Law definitions).
  - b. Students' view of why they engaged in 'rule breaking' behaviour must be seen in the context of ongoing invisible violence (institutional racism and secondary victimisation via delayed and non-existent processes) by the institution.
  - c. Commissioners need to play a facilitative role i.e. they should ideally actively and empathetically '*listen for*' clues in narratives about how MANIFESTATIONS of violence fit with PATTERNS of invisibilised and institutional *racism as violence*; how these patterns fit within the institutional culture that isolates and alienates othered groups; and how the institutional culture is a microcosm of the societal culture of invisible/visible but denied societal violence.
  - d. In sum, commissioners should not treat anyone before them as either a victim or an offender, as defined by Criminal Law, but as a stakeholder, (whether council, senate, executive, staff, student or alumni) who will help to render manifestations-patterns-cultures visible. This will help the entire university community make sense of the intersection and interaction of cultural/symbolic; structural/institutional, psychological/emotional, and physical/somatic aspects and forms of violence.
2. This 'structurally/institutionally aware' framework suggested above, will -
  - a. Serve as an analytical framework that is aligned with an expansive view of Restorative Justice that takes transhistorical violence into account
  - b. Be refined as more narratives emerge to sort these narratives or parts thereof under different key themes that emerge from the data, and ideas that emanate from these themes. This allows for cross cutting themes to emerge and will mitigate the polarising effect of competing narratives

- c. Be used as a template to write up their report/recommendations based on a comprehensive model of findings that go beyond preconceived key and sub-concepts. This should leave a clear trail of evidence that shows how the recommendations are grounded in the data collected from multiple sources, and within a generative framework designed to take South Africa's unequal, transitional context into account.

### C. CRITERIA FOR SELECTION OF COMMISSIONERS

1. Commissioners should submit a transparent portfolio of service that shows their work, thoughts, and context and that they understand the nature of violence from the standpoint of the oppressed as a counterpoint to understandings by institutional beneficiaries.
2. Commissioners in this portfolio should submit their understanding of the structural issues around interactions, agency, and impact of the various roleplayers in the process (students, academic staff, PASS, SRC, BAC etc)
3. Commissioners should declare their allegiances as it is accepted that everyone comes with ideological positions and filters. We believe that it is useful to be transparent diverse group rather than a 'one size fits all' commissioner.
4. At least one of the commissioners should have an understanding of indigenous Restorative Justice and another should have an understanding of religious Restorative Justice practices.

## LIST OF IRTC COMMISSIONER NOMINEES

	Title	Name	Surname
1	Dr	Yvette	Abrahams
2	Prof.	Janet	Cherry
3	Ms	Tasneem	Essop
4	Mr	Angelo	Fick
5	Advocate	Vasu	Gounden
6	Dr	Robert	Kruger
7	A/Prof.	Malose	Langa
8	Mr	Ashraf	Mahomed
9	Former Minister	Mosibudi	Mangena
10	Director	Nomfundo	Mogapi
11	Prof.	Itumeleng	Mosala
12	Ms	Bernadette	Muthien
13	Advocate	Dumisa	Ntsebeza
14	Dr	Wendy	Orr
15	Justice	Kathleen	Satchwell
16	Ms	Yasmin	Sooka
17	Ms	Nomfundo	Walaza
18	Justice	Zac	Yacoob

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