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South Africa

South African student activists scapegoated

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The University of Cape Town, under pressure from unnamed stakeholders, is undertaking completely over-the-top disciplinary processes against our children.

On 16 February / early morning of 17 February, five students were suspended by the Vice Chancellor without any charges being brought against them. These suspensions followed protests that involved the destruction of university property, namely paintings, a Jammie bus, a bakkie belonging to the Department of Biological Sciences and damage to the office of the Vice Chancellor as a result of a petrol bombing.

The five students suspended were: Lindiwe Dlamini Alex Hotz Chumani Maxwele Masixole Mlandu Zola Shokane

In addition, 16 students (and a 17th respondent – namely, any student that associates with them) were interdicted from setting foot on university property, participating in illegal protests or inciting people to participate in protests. Nine of the 16 students who were interdicted were among those arrested on the night of 16 February for participating in what the police allege was an illegal gathering and public violence. The arbitrary selection of the 16 students named in the interdict was borne out by the fact that the university withdrew the interdict against 11 of the students. A final Interdict was obtained on 11 May 2016 against five students.

UCT is targeting “ringleaders”

The University has substantial video and other evidence of hundreds of students who participated in the protests. In some cases this included the destruction of university property in the form of removal and burning of paintings. But no evidence exists against most of the interdicted students. Also none of the students who were suspended, interdicted or charged before a university tribunal have been linked to the destruction of the Jammie Shuttle, the bakkie or the damage to the office of the Vice Chancellor, even though the granting of a final interdict against the students assumes a connection between these students and these acts.

This fuels speculation that the University is reacting against those that they see as ringleaders of Rhodes Must Fall and Fees Must Fall – even though the students themselves have insisted in organising in non-hierarchical forms.

Furthermore, on 17 March the University started a process of charging students before an Internal Disciplinary Tribunal. So far 12 students have been charged in two separate tribunals. The way in which many of the students were charged is another issue to be addressed with university management. Many students were approached by the University’s “head” investigator Steven Ganger, at odd hours of the early morning and late at night. His method was to intimidate and coerce students into identifying other students

As mentioned above, initially six students, later reduced to five, were suspended by the Vice Chancellor on the night of the 16 February. These suspensions did not follow due process. No charges were brought against the students and the suspensions did not follow any hearing where the students could respond to charges.

The Vice Chancellor acted on the basis that: “it has been reported to me that your continued presence or participation in the activities of the University is likely to pose a threat to the maintenance of good order within the University, as contemplated by the provisions of rule DJP3.1 of the Disciplinary Jurisdiction and Procedure.”

The suspended students are prohibited from:

1. Attending lectures and classes;
2. Entering any premises, building or physical precinct of the University on any one of its campuses, including any residence; and
3. Residing in a student residence or other student housing unit.

No fair process

Following their suspension the students were offered an opportunity to attend a “hearing” where they could argue why they should not be suspended. However, without being charged with any wrongful act this was an extremely difficult process for the suspended students to engage with. Participating in the “hearing” held out the active threat of self-incrimination. Most of the students regarded the “hearing” as a fishing expedition by the University, as it proceeded to gather evidence against students.

Over and above the suspension notice, on 17 February the university obtained an urgent interim interdict against 16 students (including the five suspended students). According to the Interim interdict, the interdicted students were prohibited from, among other things, entering or remaining on UCT premises, erecting any unauthorised structures on UCT premises and participating in or inciting others to participate in any unlawful conduct and/or protest action.

The interim interdict was obtained without any written affidavits made by the University. Nor were the interdicted students given a chance to respond as to why they should not be interdicted. The University was allowed to submit its founding affidavit on 22 February in its application for the urgent interdict, after already having obtained the urgent interim interdict on 17 February based on oral evidence provided by the registrar and a security official employed by the University.

On 15 March the interdicted students were able to present argument why a final interdict should not be awarded against them. The students were compelled to oppose the university obtaining a final interdict in spite of the huge legal costs involved and in spite of the fact that the university sought an award of costs against the students if they did oppose. They had to oppose because otherwise they still would not be able to enter the university and attend lectures even if the suspensions were lifted.

The process of opposing the granting of the final interdict was conducted in an utterly unfair manner. The students were granted the right to have legal representation. But the university had employed Bowman Gilfillan, one of the biggest law firms in the country, in leading the charges against them. And even though the student handbook requires that the university assist the students in obtaining legal representation no, assistance was provided.

The university, represented by advocate Anton Katz, was allowed most of the time allocated by Judge Allie to argue their case. The interdicted students, through their legal representatives, were given just one third of the time the university had used to make their arguments. Evidence was not led, nor were witnesses interrogated on the evidence gathered by the university in support of the interdict. The students made affidavits in which they could refute the evidence presented against them. No evidence or witnesses were called to refute what was contained in these affidavits.

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Punishment includes hundreds of thousands of rands in legal costs

Almost two months after hearing the application for the granting of a final interdict, on 11 May Judge Allie, a UCT alumnus, granted the university a final interdict. As a result, the students are prevented from entering or remaining on the university premises without prior written consent. There is no time limit to this order, so it applies “for ever and a day.”

What is even worse, the judge awarded costs against the five students “jointly, and severally, including the costs of two counsel.” This could be anywhere between R250,000 and R600,000. The implications of applying the costs order “jointly and severally” is that if any of the students are not in a position to pay their share, the other students must pay it. If the university pursues the costs order, it is likely that the students will be sequestered and declared insolvent. This will have huge consequences for the students themselves. So this threat of sequestration and insolvency gives the university huge power and leverage over the interdicted students.

As parents we have been told consistently by the University Authorities that they are under pressure from “conservatives” not to let the students off lightly. There cannot be a “light slap on the wrist.” It would seem they have targeted those students who are seen as ring leaders, and who are least politically connected, for the worst sanctions so they can be seen to be satisfying the views of the conservative stakeholders at UCT without taking any risk. In the process both fair process and justice are sacrificed.

These students are young people whose “crime” was to feel strongly that money should not be a barrier to education and that universities are long overdue for transformation. They have inherited the mantle of the students of the 1970s. It seems that they are also inheriting the repression of the state and the educational institutions.