

**MINUTES OF THE 10<sup>TH</sup> BOAR MEETING**  
**18<sup>TH</sup> OF FEBRUARY 2015 AT SAFARY PARK HOTEL**  
**NAIROBI, KENYA**

**1. PRESENT**

- CHAIRPERSON : Adv. Thulisile Madonsela, (Public Protector – South Africa)
- MEMBERS : Mme Fozia Amin (Ombudsman – Ethiopia)  
Dr Paulo Tjipilica (Provedor de Justica – Angola)  
Mme Alima Traoré (Mediator du Faso)  
Prof John Mubangizi (DVC – UKZN)  
Mr Momelezi Kula (Acting CEO – PPSA – South Africa)  
Prof Managay Reddi (Dean, School of Law-UKZN)
- OBSERVERS : Mr Pierre Ndagirwa (Office of Provedor de Justica, Angola)  
Mr Manuel Da Costa (Office of Provedor de Justica, Angola)  
Mme Sylvie Oedraogo (Mediator Du Faso)  
Mr Franky Lwelela (AORC)  
Mr Thando Mkhabela (PPSA)  
Mr Myolisi Zweni (PPSA)
- APOLOGIES : Mr Themba Mthethwa  
Judge Edmond Cowan  
Mr Lesala Mofokeng

## **1. Opening by the AORC Chair**

After welcoming and thanking all Board Members (BM) for their presence at the 10<sup>th</sup> AORC Board Meeting, the Chairperson reminded them of the issues pertaining to the appointment of the Director at the AORC. She indicated that the process of recruitment was been initiated by the PPSA but the University of KwaZulu Natal put a hold on it pending the finalisation of the Memorandum of Agreement/Understanding (MoU) that is supposed to sub-contract oversight of the running of the Centre to the University of KwaZulu-Natal (UKZN). She also clarified that in the process, there were two secondment, one of Mr Themba Mthethwa, the then CEO of PPSA as the acting director of AORC, then, upon request from the UKZN, he was replaced by Dr Forere from the UKZN. She further indicated that three senior and well established professionals were interested in working at the Centre, but there was the danger of the delays in the processes on AORC side. She advised BM that the board meeting would finalize the strategic plan and the MOU so that the sub-contracting to UKZN can be finalised signed. She also announced the resignation of Mr Themba Mthethwa as the CEO of PPSA, and that on her own initiatives she had requested Mr Mthethwa to resign from the AORC Board because he was an ex-officio Member, but unfortunately it was not a proper resignation, therefore his resignation is not valid.

## **2. Apologies, Additions to and Adoption of the Agenda, Confirmation of Quorum**

The Quorum was confirmed, however, an issue of the composition of the Board as per constitution was raised by the new president of AOMA which became an addition to the agenda. Apologies were acknowledged from Judge Cowan who was still on the way from the airport, Mr Lesala whose schedule had not allowed him to travel, and Mr Mthethwa who was supposed to resign from the Board but had resigned from a wrong institution.

The Chairperson then proposed that the board retains Mr Mthetwa as a member of the board whiles appointing the CEO of the Public Protector South Africa as an additional board member in recognition of the fact that Mr Mthethwa is now an Ombudsman of a public sector institution in South Africa and had expressed interest to join AOMA as a member. She also pointed out that he had been the visionary behind the establishment of the AORC. Further, his skills, experience and contribution are still needed for the centre.

### **3. Remarks by the Dean and Head of School of Law, UKZN**

Professor Reddi started her remarks by expressing her greetings to all present while congratulating the new President of AOMA on behalf of the University. She then expressed that the biggest concern for the University was the ability to get AORC to operate as fully functional Centre pending on the appointment of a Director, Deputy Director and Administrators. She further clarified that, initially, her understanding was that the MOU should be signed between the UKZN and the PPSA on behalf of AOMA, and that did not necessarily depend on the strategic plan first and foremost. She added that the University was not aware that a strategic plan should have been in place before the MOU can be considered. She concluded her remarks by expressing her wish to get a very clear direction from the board on a way forward for the Centre considering all hurdles present.

As a supplement to the remarks by Professor Reddi, Professor Mubangizi outlined the fact that the current status of the Centre was cause for concern and it was up to the BM to get the Centre fully functional. His suggestion was that the relationship between the parties needed to be clarified in terms of the funders, the shareholders and the partners and the various roles expected from these various parties for the functionality of the Centre. He stated that the MOU would clarify such relationship issues, making the finalisation of the MOU urgent to allow for the transfer of the oversight role of the Centre to the University. That will also give the University the power to proceed with staffing within the policy framework of the UKZN. According to Prof Mubangizi, the different perceptions and expectations of the Centre will obviously be cleared by having a strategic plan which he felt required that the staff that would implement were supposed to be involved implying that staffing the Centre should precede the formulation of the strategic plan.

### **4. Adoption of Minutes of the Board Meeting held in Durban, South Africa, 15 July 2014**

The Chairperson invited the Board Members to indicate any changes that would need to be made to the minutes on a page by page basis. There was no change made and the minutes were adopted without any modification.

## **5. Matters Arising from the Minutes**

The first issue was raised by the new president of AOMA Madame Fozia Amin about the composition of the AORC Board who expressed her displeasure at having not been formally informed, invited and welcomed as a new member of the Board because according to the constitution, the new President of AOMA is automatically a member of the AORC Board. She requested that this should be corrected in future.

The former President of AOMA, Dr Tjipilica took the floor and after expressing his gratitude for the Portuguese training done by AORC and for sponsoring his trip also indicating that there is a need for a stable management structure at the Centre because it is very good initiative which is very important to Africans that cannot be let down. He then advised that the university needs to take responsibility not only as the host but also partners in AORC without which the prestige, not only of the Centre but also of the university will be jeopardised if the Centre is failing to deliver its mission and objectives as expected by its sponsors.

Madame Traoré subsequently, after expressing her gratitude for the work done in relation to the activities of AORC and the support of both the PPSA and the UKZN, underlined the fact that the main objective of the meeting was to deal with the functioning of the Centre. She also reiterated the need for the relationship between the university and the Centre to be clarified for members to know what is expected from the university and what initiatives must the university take in terms on their partnership and for a good functioning of the Centre that will respond to its objectives. On the strategic planning issue, her suggestion was that members should listen to the University because the Centre is located within the University.

Prof Mubangizi acknowledged the position of Madame Traoré about the role of the University, saying that the University has hundreds of Centres that it is running and has relationships with external partners and they are governed through MOUs, MOAs and other policies. He added that the university is far from just being a provider of a facility to AORC but plays a role in the process of knowledge production so far as the Centre is concerned and this will be technically clear through the MOU that is still under revision and yet to be approved. He further indicated that, as the University, they have a name to protect and a mandate to deliver, and that it was their concern that the centre succeed and they wanted to play a role within the dictates of the approved MOA, with a strategic plan in place, the staff

in place – the basis for a fully functional research Centre with the ability to deliver by the next Board meeting.

The Chairperson then spoke, indicating that the main reason of having this Board meeting was to clarify all the above for the good functioning of the Centre, and that dialogue is supposed to be the process that was needed to clarify all differences. She then ensured the Board that, as the PPSA, they are doing all they can in their power to move all processes forward and that all those items related to staffing, strategic planning, and handover to UKZN are on the agenda and will be dealt with in this meeting. She apologized to the President of AOMA on behalf of the AORC Secretariat for only operating on the basis of MOI when sending invitation for this meeting without taking into consideration the constitution, while suggesting to the Board that they need to decide on how to reconcile the disparity between the composition of the Board as per the AOMA General Assembly (GA) held in 2010 and the composition of the Board that is defined by the AOMA the Constitution. After explaining the differences, referring to chapter 12 of the constitution and relying on what is in the resolution of the GA and highlighted the power given to the board by the GA to reconstitute, she requested the board to decide on the co-option and the right to vote for the additional members who are not provided for in the constitution as amended and approved at the 2014 AOMA General Assembly. The members to be co-opted are the following: Mme Traoré, Judge Cowan, Dr Tjiplica, Mr Mofokeng, and Mr Mthethwa.

#### Discussions:

On behalf of the University, Prof Mubangizi clarified that the idea was not to have three representative from the University on the board of AORC but rather that they are happy with Mr Mofokeng to step down as a Board member, and therefore only the Dean of the School of Law and the Deputy Vice Chancellor will form part of the AORC Board.

Prof Reddi suggested that it will be appropriate for AOMA to make a decision in terms of how the membership of the Board should be and that is usually done in compliance with the constitution.

Madame Fozia Amin, the President of AOMA highlighted the fact that the constitution, as adopted in the General Assembly in Addis Ababa, is constituted of the Chairperson who is the PPSA, the CEO of the PPSA, two representative of the University of Kwazulu Natal and



the President of AOMA. She then suggested that any other addition to this should be addressed at the upcoming General Assembly, which will probably be in 2016 in Tanzania, so that a revision can be made and approved by the constitution.

The chairperson then explained that the constitution only provided for 5 members while, with reference to the King III of the South African Company Act, the CEO of PPSA added that the idea is to have as many people as we might need. The Chairperson then asked the President of AOMA if she is moving that the members be co-opted and then a request be made to AOMA to change the constitution to give them voting powers.

Mme Traoré suggested that the co-option be done based on affiliation to AOMA, referring to Mr Mthethwa as not a member of AOMA anymore and suggested that rather another member of AOMA can be co-opted instead if necessary, for example, the General Secretary of AOMA, the Ombudsman of Kenya.

The Chairperson explained her reasons behind requesting the co-option of Mr Mthethwa that he is one of the visionaries behind the AORC and his skills and experiences are needed. After a lengthy discussion, some in favour and others against the idea of retaining Mr Mthethwa as a member of the AORC Board, and due to the fact that Mr Mthethwa is no longer working at the PPSA, but considering the fact that he is now a Chief Ombudsman on his own, although of in the public sector, he is eligible to the membership of AOMA; all Board Members agreed to the following resolution : Mr Mthethwa should formerly inform Board Members of his new position in writing, request for AOMA membership, and express his intension the be a co-opted as a Board Member, then the Board will proceed once they know his position. The matter of Mr Mthethwa was deferred until proper communication is received.

Due miscommunication between the Centre, The PPSA and Mr Mthethwa with regard to his resignation process and the reason for his non- participation at this board meeting, and since the PPSA being the Chairperson of the AORC is no longer linked to her position as Executive Secretary of AOMA, it was been resolved that: All AORC communication between the Centre and the Chairperson should be made directly to her office, meaning herself or her personal assistant or to the CEO of the Public Protector because she is a member of the Board, and not via the International Relation office of the Public Protector.

The Chairperson further commented on the idea suggested by Madam Traoré of co-opting the General Secretary as a member of AORC board, in her view it is important and should also be suggested to the recommendations for addition in the constitution, considering that it is not a burden to the General Secretary and it is not affecting the idea of separation of power between AORC and AOMA. She then recommended that the composition of the Board be dealt with at a later stage but it is accepted at the moment that the Board is properly constituted in terms of people who are in the constitution.

Upon the suggestion of Mme Fozia Amin in accordance with the new constitution, the quorum of this meeting is constituted, and in order to deal with the issue of co-option in a proper manner and in depth, it was resolved that : *The recommendation is that office bearers of the AOMA EXCO should be co-opted and the basis for co-option is deferred to next Board meeting, and proper Board documents around this issue should be prepared, that is, the background and what was proposed in this meeting. And that the next Board meeting should be within the next three month as prescribed in the constitution.*

## **6. AORC Development and Activities Report**

An activities report was presented by Mr Lwelela which highlighted the following points:

- Dr Malebakeng Forere was the acting director of AORC seconded by the University of KwaZulu- Natal to allow a recruitment process from 1<sup>st</sup> July 2014 until 31<sup>st</sup> December 2014. However, she resigned from the university before the end of the planned period leaving the Centre running without a Director since 31<sup>st</sup> October 2014.
- The addition of Prof John Mubangizi as AORC BM in his capacity as DVC and Head of Law and Management College as required by the University policies.
- The successful registration of the AORC as a Section 21 Non-Profit company in accordance with South African Law
- The review of the AORC strategic plan
- The AORC Training of Portuguese speaking members of AOMA in December 2014 and the development of the AORC Training Plan.
- The GIZ Assessment Study on AORC conducted by the University of Witwatersrand and recommendations to AORC.
- The AORC Staffing Crisis and the End of the Contract of Mr Lwelela



#### Discussion:

The Chairperson thanked Mr Lwelela on behalf of the Board and the PPSA for the work done which is beyond the capacity in which he was appointed as an Intern and apologised to him for the fact that despite his professional support and excellence he remained an Intern by designation. She also thanked the University and the PPSA staff for support and guidance given behind the scenes and Mr Thando for holding the finances of the AORC together. She then highlighted that Mr Mthethwa was the Acting Director of the AORC between May and July 2015 and should therefore be added in the genealogy of Directors of the AORC. She then expressed her gratitude to the Ombudsman of Portugal for conducting the Portuguese training, and the University and the Centre for making it possible and presented her apology for not being present during the training.

There were no further comments or discussion about the activity report. It was resolved that: [The AORC activities report was accepted with the only amendment that Mr Mthethwa should be added on the chronology as one of the Acting Directors of AORC.](#)

### **7. Staffing of AORC**

It was at this stage that the Chairperson excused herself and requested that the CEO of the PPSA continues to chair the meeting, while she attends to an urgent telephonic enquiry. Before she left, she proposed that the structure of the proposed Organogram for the Centre be slightly changed to incorporate Deputy Directors on the key area of operations such as a Deputy Director for Corporate Services, a Deputy Director responsible for research, and a Deputy Director responsible for training.

#### Discussions:

The discussions on this topic commenced with a comment from Prof Mubangizi suggesting that due to the size of Centre, a big structure will not be necessary and that the Centre would work better with a Director who has an oversight over the structure and operations of the Centre, and a Deputy Director who oversees all those other corporate services because it is a small establishment, then lower-level staff should be appointed rather than having all of them at the top and nobody to do ground work.



Professor Reddi supported the comment of Prof Mubangizi, adding that there will be costs involved in appointing Directors as opposed to only one Director, one Deputy Director, and administrative and lower level officers who perform other operations including what was mentioned under corporate relations. She then suggested that the proposed organogram from the Acting Director that is available in the Board pack is fairly good for a small establishment and it should be the document to which the discussion should be addressed. Her suggestion was supported by most of the Board members with the addition that the urgency now is to have a Director and a Deputy Director appointed, then if need be, the organogram can be revisited in the next Board meeting.

Decision: It was agreed that the focus is to appoint a Director and a Deputy Director who will stabilize the operations of the Centre, then the proposals regarding the organogram itself can be dealt with at a later stage with the inputs and the ground work that will be done by the Director and the Deputy Director which will assist the Board to take appropriate decisions.

In addition to the above decision, Prof Mubangizi raised a concern that the Director cannot run the Centre alone, low level staff is needed to help, which he referred to as skeleton staff. He suggested that the existing structure of the Centre be kept to assist the Director and the Deputy Director to run the Centre until a proper organogram is decided upon in future, then see in future how it can incorporate the old structure. He then raised the issue of Mr Lwelela who is an intern and whose contract is ending soon – he added that a decision should be made whether his contract should be renewed or he should be let go.

It was at this stage that the Chairperson returned and was briefed on the progress of the meeting. Mr Lwelela was then asked to leave the venue to give a space to Board Members to discuss the issue of his contract. After proposals and deliberations and considering UKZN policies, and also the issue of Adv. Ishara Bodasing to the position of Deputy Director, it was decided that:

Decision 1: Mr Lwelela will be retained but not as an Intern. The University will go through the process of credentialing, and if that is successful, he will take the position of Administrative and Communication Officer. This should be done latest by the end of March 2015.

Decision 2: All other positions will be advertised shortly, but the junior positions will be filled once the Director and Deputy Director posts are filled by the end of May 2015

Decision 3: Adv. Bodasing will be informed when the position of Deputy Director is advertised for the Centre and she is welcome to be an applicant for that position.

#### **8. Adoption of AORC Strategic and Preparation of the Implementation Plan for 2015 – 2016**

The Chairperson brought to the attention of the Board the fact that the Strategic plan that is in the board pack is missing the vision, mission, and timelines which are the parts that were supposed to be completed by the then Acting Director as agreed at the strategic plan elaboration meeting, but confirmed that all the strategic objectives are in the document. She requested that, since the very important part of the strategic plan is there, it can be completed by the old mission and vision to complete the set of documents that is needed as a roadmap. She then suggested that since the most important part of the document is there, it is very brief and specific and can therefore be approved on a page by page basis by the Board with amendments in terms of the timelines, the mission, the vision, and other changes discussed that are missing to be incorporated i.e. the change of the streamlined approach from Inform, Coordinate, Train, Advocate and Research (ICTAR) model to Research Information, Capacity and Advocacy (RICA) which prioritize Research, Inform, Capacitate and Advocate.

Prof Mubangizi seconded the request of the Chairperson, suggesting that the Strategic Plan be approved in its current form, while taking cognisance that there is a bit of work that needs to be done because what is there really provides the framework and the rest is details. It therefore can be approved as the framework of the Strategic Plan.

Decision: The Strategic Plan is approved as it is but subjected to amendment of timelines, the mission, the vision, and the change in the streamline approach to be incorporated. The final version should be submitted to the Board for approval on a round robin basis before the 31<sup>st</sup> of March 2015

The Chairperson raised another issue related to the same strategic plan which was the indication that in the original strategic plan, coordination was an issue in itself in the sense that AORC had the authority to just pay for an AOMA Board meeting or AOMA activities. However, the current strategic plan coordination has been cut out because of the separation between AORC and AOMA. The request to the Board is if coordination was supposed to be cut out, and if so in which alternative way should it be incorporated in the strategic plan so



that AORC could continue to sponsor some activities of AOMA so that there will not be a deviation from the original vision.

Madam Traoré then suggested that the sponsorship of activities of AOMA can be put under capacity building while raising the issue of who is going to be responsible for implementing this strategic plan once adopted because the Centre does not have staff yet.

Decision: Coordination will be cut from the streamline model of AORC, but will be put under Capacity Building so that AOMA can continue to benefit from the support of AORC in their activities

Due to the fact that the Centre does not have staff yet to deal with the finalization of the strategic plan, it was thus decided with the approval of the Acting CEO of PPSA that :

Decision: The acting CEO takes responsibility in collaboration with the University. The acting CEO will liaise with Mr Lwelela for all additional information that is needed and assist with incorporating the information, packaging the strategic plan, including the correct template and sign off. And in terms of the timeframe, he will work within the framework of the time of submission which is by the 1<sup>st</sup> of April 2015.

#### **9. UKZN Handover : MOU with UKZN**

The Chairperson commenced by mentioning that this is not a new MOU, the changes were occasioned upon request by the PPSA to the Board and later to AOMA to transfer the cost centre of AORC to the UKZN. She went on to say that the delay in the process was caused by the expectation of input from the funders which is the Department of International Relations and Cooperation (DIRCO). They only later recommended that the State Law Advisor should make input due to the international implications. DIRCO also stated that they do not want to get involved in holding the University accountable but rather the PPSA as per the original agreement. She then referred Board Members to the copy of the agreement in the board back while requested the Secretariat to take note so that whatever is agreed upon could be factored in so that the MOU could be signed before leaving Nairobi the next day.

Upon collective agreement after an in-depth discussion, the following changes were agreed to:

- On the cover page, AOMA is represented by the PPSA and not the Executive Secretary of AOMA, consistent with the decision made in Luanda that AOMA give authority to the

PPSA to run AORC on their behalf and not the Executive Secretariat of AOMA. The PPSA is therefor 'sub-contracting' the UKZN to run AORC on their behalf. The University is therefore entering into the MOU with the PPSA.

- Re-aligning the Preamble, which is page 2, with the strategic plan, the preamble was still under the old ICTAR model which put Research as the tail, whereas the change needs to reflect Research as the main focus of the Centre, and Coordination should be removed, as per the strategic plan agreed to in this meeting.
- The PPSA did not have any problem with all track changes in the document from the University and they were thus all accepted.
- Changes need to be made on page 10, points 6.2.2 and 6.2.4. to reflect the new president of AOMA, and 6.1.2.4 to reflect the new CEO of the PPSA or to remove the names of individuals.
- All the points agreed upon will be inserted into the MOU by Mr Mkhabela and Mr Kula, upon which the MOU will be signed whilst in Nairobi between the PPSA and UKZN as a temporary agreement to allow the process of transfer and handover to UKZN to happen, with special annotation that Item 12 will not be deleted and Item 3 is subject to review by the state law advisor and the lawyer over a period of 6 months.
- The MOU that will be signed in Nairobi will be an Interim MOU and will become effective on the date of the last signature of all the Parties and is expected to be reviewed within 6 months.

#### **10. Any Other Matters**

The only point in this item was the assessment of the AORC conducted by WITS University on behalf of GIZ. The Chairperson informed the Board Members that this item was for noting purposes only, but highlighted the comment made in the document, which points to the absence of intellectual input and participation of the academics in the accomplishments of the Centre. Professor Mubangizi, supported by Professor Reddi, explained that the cause of that is the lack of leadership at the Centre, because the academic intellectual contribution has to be garnered and coordinated through the leadership of the Centre. He added that according to the policies of the University, the Director of the Centre is technically a member of the academic staff of the School in which the Centre is based and that gives him/her the ability to mobilise and coordinate the intellectual participation from academics who will be seen as his/her colleagues.



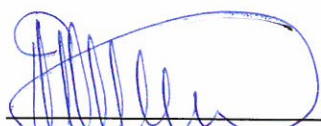
The Chairperson then concluded this item with a satisfaction that the University understands what is missing and the hope that it will be corrected in future. She then apologised to all members that the financial statement was not included on the agenda and requested the secretariat to send the financial statement to members on a round robin basis and requested Mr Mkhabela to give an overview of the AORC account.

Mr Mkhabela then took the floor highlighting that AORC has used up the first tranche of the funding transferred by DIRCO which was 7.1 million South African Rand. DIRCO is still owing the Centre 14 million ZAR as per the agreement, of which 6.1 million ZAR have been committed for transfer. In total 14 million ZAR is available to be spent by the AORC.

The Chairperson then reminded the University that DIRCO will stop the funding because the money that is mentioned above was supposed to be used up by the 31<sup>st</sup> of March 2015 by AORC activities and they want to see a visible footprint of achievements and expenditures.

She thanked the University for working with the Centre to achieve the Portuguese Training in December 2014, and she also asked Mr Lwelela to work with the University to try to finalize the augmentation of the comparative analysis study so that the book can be circulated and avoid the situation where nothing is happening at the Centre.

The 10<sup>th</sup> Board meeting was concluded by the Chairperson thanking everyone present and the Members for their contribution and patience, ensuring those who paid for their ticket that the AORC will make sure they are reimbursed and expressing her commitment to assist the University in playing the role of supporting the Centre.



**ADV. TN. MADONSELA**  
**CHAIRPERSON: AORC BOARD**  
**PUBLIC PROTECTOR, REPUBLIC OF SOUTH AFRICA**

14/07/2015  
**DATE**