

MINUTES OF THE 11TH BOARD MEETING
2nd JULY 2015 MARITIME CONFERENCE ROOM/AORC
HOWARD COLLEGE, UNIVERSITY OF KWAZULU NATAL
DURBAN, SOUTH AFRICA

TIME : 12 pm – 16:45 pm

PRESENT

CHAIRPERSON : Adv. Thulisile Madonsela, (Public Protector – South Africa)

MEMBERS : Prof John Mubangizi (DVC – UKZN)
Prof Managay Reddi (Dean-School of Law-UKZN)
Dr Maria Du Toit (CEO-Public Protector-South Africa)

OBSERVERS : Mr Kenedy Kaposi (CFO-Public Protector-South Africa)
Mr Momelezi Kula (Public Protector – South Africa)
Mr Franky Lwelela (AORC)

APOLOGIES : Mme Fozia Amin (Ombudsman – Ethiopia)
Judge Edmond Cowan-Ombudsman Sierra Leone
Dr Paulo Tjipilica (Provedor de Justica – Angola)
Mme Alima Traoré (Mediator du Faso)

1. Opening by the AORC Chair

The Chairperson started the meeting by welcoming all Board members present to the 11th AORC Board Meeting in Durban, expressing her special appreciation to Professors Mubangizi and Reddi for agreeing to have this meeting regardless of the short notice. She then extended her welcome and appreciation to all participants, while being grateful to Mr Lwelela for coordinating the meeting, and to the Public Protector South Africa team, including the CEO, Dr Maria Du Toit, the CFO, Mr Kenedy Kaposi, and the former acting CEO, Mr Momelezi Kula who is now the link for administrative matter between the Public Protector and the Centre for continually landing hand to the centre and to UKZN in the spirit of having a fully functional and flourishing Centre.

In her opening remarks, the Chairperson cited a quote by Samuel Parker that she extracted from the 8th Annual report of the Ombudsman for Bermuda of 2012 that says: “For the Cause that lacks Assistance, for the Wrong that needs Resistance, for the Future in the Distance and the Good that we can do”. With this quote, she highlighted the motive behind their get-together that is because they have the same vision and they are willing to take it forward by overcoming every challenges that they face. She then advised that where there is a will, there is a way, and both UKZN and Public Protector South Africa have the responsibility to put efforts together for a fully operational and prosperous centre, which is the main reason why the Public Protector South Africa has resolved that the best way they could add value to the centre will be under an arrangement that takes away the responsibility of managing the day to day activities of the centre and give it to UKZN and then became part of oversight together with AOMA.

The Chairperson concluded her remarks by suggesting that the meeting will mostly deal with the administration side of the centre, the matters arising from last meeting, but essentially to conclude the hand over to UKZN and reach common agreement on a way forward and how to make up for lost time in such a way that when reporting back to AOMA EXCO later this month, it will not be about morning the darkness, but also reporting on how the obstacles were been overcome and how the institution is now back on track.

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

Apology were acknowledged from Dr Tjipilica from Angola, Mme Traoré from Burkina-Faso, Judge Cowan from Sierra Leone, and Mme Fozia Amin from Ethiopia and President of AOMA.

It was at this stage a concern was raised regarding the composition of the quorum due to the discrepancy that seems to exist between the membership provision of the by-laws of the company regulation act of South African in which AORC is registered as a Section 21 Company with 7 (seven) directors as Board members, and the provision of membership as provided by the New Constitution of AOMA from which AORC is established as approved in Adisababa in November 2014 and under which AORC has only 5 members but gives to Board Members the power to co-opt other members with no voting power.

After a lengthy debate n the membership issue and the inability to establish a link between the AOMA Constitution and the Memorandum of Incorporation of the Company Act, a debate that also included an assessment of the letter sent by one of the Board Members, the Chief Executive Officer of the Public Protector South Africa, expressing her wish to resign from the AORC Board; all Board Members present agreed to the following resolution but subjected to ratification by other Board Members:

Resolution 1: The meeting will continue although it does not quorate. However, all actions, decision and resolution undertaken in this meeting will be subjected to a ratification by other Board Members in the next Board Meeting or on a round robin basis.

Resolution 2 : The original Memorandum of Incorporation will be requested from the lawyers and be align with the new constitution of AOMA in order establish a clear link between AORC and AOMA subjected to the South African Company Act.

Resolution 3: The AORC Board does not have the power to decide on resignation of the CEO of the Pubic Protector South Africa as a Board Member. Established by the constitution, it is an AOMA matter. The Public Protector will deal with this issue internally to find alternative ways, or submit the resignation request to AOMA. She is therefore still a Board Member.

3. Remarks by DVC and Head of College of Law and Management Studies, UKZN

Professor Mubangizi started his remarks by welcome all members at UKZN and conveying his appreciation for meeting some executive members of the Public Protector South Africa team for the first time. In relation to the above discussed matter, he suggested that the issue of

inconsistency in membership be tabled in the agenda for the next Board meeting so that a proper Board can be established in order to avoid the issue of quorum. He then reminded Board members that since the last board meeting in February 2015, nothing much has happened and nothing seems to be moving in the centre. He then added that the same concerns raised in Nairobi are still the same, namely, the handover to UKZN is still underway, and the appointment of staff has not happened yet. He then recommended that there is an urgent need of establishing the leadership at the centre without which they will be a tendency to think that the University is running the day to day business of the centre and at the same time nothing is happening at the centre. He concluded his remarks by reminding the Board that at the meeting in Nairobi, he committed to have a director at the centre by the next Board meeting but that was dependant on other things including the transfer of fund to UKZN and the finalisation of the MOU that could not be concluded on time due to some issues with regard to the mechanisms and modalities in documents sent to UKZN by the Public Protector Office that should facilitate the transfer of money to UKZN. However, he was very positive that as soon as this challenge is out of the way, things will start happening at the Centre.

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 to the content of the minutes except for some grammatical errors that needed to be corrected and a part for the chairperson signature to be added at the end of the minutes. The minutes were thus approved subject to correction of grammar without changing the content, task assigned to Mr Kula.

5. Matters Arising from the Minutes

The first issue was raised by chairperson about the co-option of Board Members, including Mr Mthethwa to the AORC Board to which it was been prompted that a decision was been made at the last meeting, the resolution as recorded in the minutes articulates that Mr Mthethwa would properly inform the board of his new position and the organisation to which he currently belong in writing to the board, request for AOMA membership, and express his intention to be co-opted as a member of the AORC Board. Mr Mthethwa was made aware of the decision and Membership forms were been sent to him. Subsequently, after discussion, it was been agreed by members present, subjected to ratification by other board members:

Resolution 4: The co-option of all board members who are in the company registration as Directors who are not in the constitution of AOMA, except for Mr Mthethwa whose matter was deferred until proper communication is received.

The second issue was the absence of the AORC Strategic Plan from the Board pack which conferring to the resolution of the board meeting in February 2015 should be done as a basis of the transfer and was supposed to be packaged by the Public Protector office and send to Board Members on a round robin basis for approval. The Strategic Plan was been done in November 2014, it was been adjusted and approved amended to few corrections by the Board in February 2015 in Nairobi, it is now sitting with the Public Protector office for finalisation

Resolution 5 : The Strategic Plan to be corrected, neatly packaged in terms of the government template and be sent to Board Members for approval on a round robin basis. The time frame given to the office of the Public Protector is one weeks from this meeting.

6. Addressing discrepancy between CIPC Registration of AORC and the AOMA Constitution

On this item of the Agenda, the Board agreed, subject to ratification by other Board members, that the original Memorandum of Incorporation will be requested from the lawyers and be align with the new constitution of AOMA in order establish a clear link between AORC and AOMA subjected to the South African Company Act (Reference : Resolution 2 above)

The Chairperson raised an issue of whether AORC should stay as a section 21, there was different ideas considering the fact that originally AOMA wanted AORC to be an international company to be dignify and be given respect and status that they deserve and diplomatic privileges. Professor Mubangizi suggested that clarity be asked from AOMA of how they initially wanted AORC to be registered, then request from them that AORC deregister under section 21 and register as an international organisation. It was thus resolved that:

Resolution 6: A recommendation be made to the Board, requesting that AORC deregister as a non-profit organisation and then register with the South African Department of International Relations and Cooperation as an International Organisation.

7. Co-option of Members of the Board according to the New Constitution of AOMA

On this Item of the Agenda, the Board has agreed, subjected to ratification by other Board Members, to co-option of all board members who are in the company registration as Directors and who are not in the constitution of AOMA, except for Mr Mthethwa whose matter was deferred until proper communication is received (Reference : Resolution 4 above)

8. UKZN Hand Over and AORC Staffing

It was at this that the CEO of the Public Protector South Africa explained her reasons to the concerns that Prof Mubangizi alluded to in his remark as the DVC and Head of College of Law and Management with regard to the mechanisms and modalities in the documents that were been sent to UKZN by the Public Protector Office in order to facilitate the transferred of money to UKZN. She highlighted the challenges facing with regards to the public finance management act of South Africa and the requirements that need to be fulfilled for money to be transferred. She added that there was a need for a common agreement between DIRCO and the Public Protector South Africa first, then the Public Protector South Africa and UKZN to clarify the accountability, the prescript and the report back responsibility for the use of the money, the manner in which the money will be transferred to UKZN, and the entity that will receive the money.

Prof Mubangizi then suggested that a simple way to solve the issue of transfer will be for the Office of the Pubic Protector South Africa to sit down with Professor Reddi and work out a simplest mechanism in common agreement as a team that will facilitate both parts roles and responsibilities while speeding up the process of transfer.

The Chairperson then spoke, whilst she seconded the idea by Professor Mubangizi, specifying that the agreement between the University and Public Protector South Africa in not mainly about money but about executing responsibility. She requested that the CEO, with the help of the CFO should work with Professor Reddi to revise and negotiate a simplest agreement as soon as possible. She then suggested that the main focus should to commit to purpose driven approach which is always about keeping ayes of the goal, manage the obstacles with an eye on scoring rather that focus on the obstacles and forget the purpose. And scoring the goal now is to get the centre running smoothly very soon. It was therefore resolved that:

Resolution 7: The CEO of the Public Protector South African, Dr Du Toit, assisted by the CFO, Mr Kaposi, and Mr Kula will consult with Professor Reddi and come up with an

agreed simplest agreement for the transfer of AORC funds to UKZN and get AORC standing and running as soon as possible. And a draft report to be submitted to the Board before the EXCO of AOMA that will be held in Ivory Coast on the 27th of July 2015.

Resolution 8: Once the transfer is complete, fast track the recruitment of a Director at the Centre and not the wait for the availability of the Board Chairperson to hold Interviews.

9. AORC Development and Activities Report

AORC activities and development report was briefly presented by Mr Lwelela which highlighted the following points:

- Minutes of the 10th AORC Board meeting drafted and sent to the Chairperson for Approval
- AORC activities Report drafted and sent to the Public Protector office for report to DIRCO.
- Website Update and Social Media updates made
- Additional Information for the finalisation of the strategic Plan Sent to the Office of the Public Protector South Africa
- Newsletter contents for the 7th Edition of newsletter Prepared and sent to the Office of the Public Protector for assistance with Publishing Process
- Request to proceed with the Arabic Ombudsman Training

Resolution 9: Request granted for the secretariat to go ahead with the Arabic training subject to all undertaking processes be submitted to the chairperson and to the University for monitoring and evaluation. Mr Kula to make sure proper procedure is followed.

10. AORC Financial report

The CFO of the Public Protector South Africa, Mr Kenedy Kaposi then took the floor underlining that the financial statement of 2011, 2012 and 2013 have been audited but the contract of auditors ended in 2013. Therefore, the financial statement of 2014 and 2015 was not been audited and the board need to pass on a resolution that will leads to the appointment of auditors for the financial statement of 2014 and 2015. He then added that there is a need for the assurance that when the terms are transferred to UKZN, they are audited. He also added that there is a need to agree on the terms in which the transfer will take place and discuss the issue of the bank account and cash flow issues. He then briefly highlighted that


the money received from DIRCO is R7.1 million and for 2013, R7.1 million for 2014. The R7.1 million for 2015 has not yet been received and the current cash balance is R5.9 million that will be transferred to UKZN. Further details on how the money was been spent was given to board member. However it was been agreed that the report be noted only for the time being and be presented for discussion after the transfer to UKZN is completed. It was thus been resolved that:

Resolution 10: Auditors must be appointed to audit 2014 and 2015 financials of AORC

11. Any Other Matters

The only point in this item the request received from Tanzania asking that AORC be represented in the technical team for the preparation of the 50th Anniversary of the Ombudsman institution and the 5th AOMA General Assembly. The Chairperson reminded the Board that this event might request the financial contribution from AORC. Further details need to be requested from Tanzania to evaluate the task involved in the technical team to see if there is a need for Professor Reddi to Assist. Yet, it was resolved that:

Resolution 11: Mr Kula will assist with the organising of the 5th General Assembly and the 50th Anniversary of the Ombudsman Institution in Tanzania, Prof Reddi will check her availability to assist.



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

19/02/2016

DATE